

A producer comes calling: five essential steps to protect your writer-client

By Sally Helppie

Studios regularly acquire advance copies of new books from major publishing houses in order to turn them into movies. Optioning a potential best seller makes sense because there is a built-in audience. More recently, with the relative ease of self-publishing, the universe of available literary properties has grown exponentially. Consequently, savvy film and TV producers have turned to self-published fiction as sources for their new projects.

Representing an author:

For every “The Martian” that is turned into an Oscar-nominated major motion picture by Hollywood heavyweights, there are thousands of books written by hopeful authors who jump when a “producer” comes calling. Your job is to get the best deal for your client while not blowing what could be the only opportunity to see the book brought to life onscreen.

1. Who is the producer?

Before diving into the legal points, do some industry research. Has your client been approached by a legitimate production company with an established track record – or an inexperienced wannabe? While it is easy to say “yes” to negotiating with Disney or Lionsgate or Millennium Films, you don’t necessarily need to say “no” to the new film school grad looking to make his mark. Perhaps he is the next big thing. Take time to evaluate the proposed producer and the likelihood that a movie eventually will be produced.

2. How much is the option payment?

Rule of thumb one: The longer the option period, the larger the option payment. Rule of thumb two: Never grant a free option. Sometimes a writer will take a gamble because the optioning producer has contacts with studios or financiers. But when there’s no money for a proper option, consider a Shopping Agreement (“SA”) instead. A SA grants the producer a limited right to “shop” the book to others who *do* have the ability to make the movie. Limit the SA to specific companies (i.e., don’t let the producer run all over town with your client’s book since there’s only one chance to make a first impression) and a tight time period. Retain reasonable control over any final deal. This can be done many ways, including by requiring that the writer have final approval over all material terms or allowing the producer to negotiate his own deal with the financier but conditioning any option or sale on the writer agreeing to her own separate deal.

3. What is the purchase price?

You must negotiate an ultimate purchase price. Avoid solely contingent back-ends. If the producer cannot offer a specific fee, tie the price to something readily verifiable – for example, a percentage of scale from the WGA (or other Guild), with a minimum floor. The Guilds set minimum (scale) rates based on budget *ranges*; if a producer enters into a Guild agreement, the producer is obliged to produce a final Cost Report, which is separate verification of the ultimate budget (allowing calculation of the purchase price with limited ability to argue). Of course, if the producer suggests that the purchase price be negotiated later, don’t necessarily be quick to reject it. While that is a terrible deal for the producer, it can be a golden opportunity for the writer since she can base a decision later on the value of the project and essentially hold the producer hostage.

4. What are the non-financial points?

Try to limit the scope of the option. The first offer is likely to be for “all rights,” but evaluate your client’s interest in (and value of) retaining certain rights – such as stage rights, character rights, sequels, etc. Your client also can bargain for the right to review and provide notes on the screenplay adaptation of the book, visit the set, get invitations to screenings, etc. Of course, be sure to negotiate for a proper credit since that is part of the *cache* of Hollywood. The minimum credit should be “story by” or “based on the book by.”

5. Is “boilerplate” negotiable?

There’s no such thing as boilerplate; every term must be analyzed. For example, most producers will include a provision allowing assignment of the option agreement. Insist on approval rights so the option isn’t assigned to random cousin Joe, which would make your initial research into the producer moot. Other key issues: dispute resolution procedures and forum, indemnification, insurance coverage, and termination rights.

Sally Helppie is Of Counsel with Vincent Serafino Geary Waddell Jenevein, and an Adjunct Professor at SMU in both the Dedman School of Law and the Meadows School of the Arts. She can be reached at shelppie@vinlaw.com