



NZSA Advice on FILM OPTIONS

What you should know if a producer wants to option your book

What period of time, typically, does an option cover?

An option will generally cover a one year period with the right of renewal for a further two.

How much should I expect to get for a one year option?

This is negotiable. It largely depends on the type of film they are likely to make, your standing as an author, the popularity of the book and so on. The range can be from \$2000 to \$4000. Start the negotiations by asking for \$4000 and work down.

What does the option entitle the producer to do?

The option entitles the producer to make a film of your work. Once they have this right they can then go about applying for funds to make it, get a treatment and/or the script written.

What doesn't the option include?

The option does not include any of the following:

- scripting
- treatments
- outlines
- plot breakdown

These are all separate issues and, if required, you would be looking at charging them a fee of up to \$15,000 for doing the first draft of a script and lesser amounts for the other things.

What should I do if I am asked to script the film?

If you are asked to do any of these we recommend that you join the NZ Writers Guild who can better assist you with negotiations of this nature. Also if you are given a film contract of any sort, you would need to be a member of the Guild in order to use their advisory.

What should I avoid talking about with the producer?

Avoid discussions with the producer along the lines of - "Where do you think the movie is in this novel?", "What is the strongest story line?" and so on. Producers often get writers talking along these lines and then go and get someone else to do the treatment or script it.

FILM OPTIONS ADVICE FROM RAY RICHARDS LITERARY AGENCY

A film option to a novel also needs the full contract on taking up the option, so it can be complicated overall.

The option fee reflects

- (i) the potential dimensions of the movie on the one hand, and on the other
- (2) the circumstances of the producer - established and able to find finance OR a director or writer who does not have staff resources or funding experience.

To simplify things for you:

A nil verbal option can apply when a producer is new to the business and is sounding out the market. Not longer than 12 months, giving the producer a chance to get started.

The lowest option fee would be \$1000 pa.

The acceptable minimum is \$2000 pa.

The high-end option fee would be \$5000 pa.

Taking up the option cannot be simplified in a memo such as this.

There must be a minimum that the author will receive, e.g. \$50,000+. Total author income is derived from percentages of the budget and the producer's net profit.

Finally.

1. Don't sign anything without taking professional advice.
2. Give the producer encouragement to get started.
3. Once funding is assured apply the above rules.

We have a small library on the subject, most of it from US lawyers, etc.

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Sample Novel/Story Option Agreement

Title of novel (story)

Author

Producer

This agreement, when signed and dated by the Author, and returned by mail to the Producer will confirm the agreement between the parties regarding any and all film, television broadcast, home video, remake, sequel, CD-Rom and all other computer-assisted forms of media, merchandising, allied, subsidiary and ancillary rights now known or hereafter invented throughout the universe and in any and all languages (exclusive of book publishing – and any other right you wish to retain, for example radio broadcast) to the novel (story) written by the Author titled _____.

OPTION

In return for \$ _____, receipt of which is hereby acknowledged, the Author hereby grants the Producer the exclusive option to purchase the above rights to the novel/story for an exclusive period of _____ months from the date of receipt of this signed agreement. This option may be extended for an additional _____ months by mutual agreement and payment to the Author of \$ _____.

PURCHASE PRICE

1. Theatrical Motion Picture

If the initial release is a theatrical motion picture, the purchase price is _____% of the "direct approved budget" (i.e. excluding legal, interest, contingency, overhead, and completion guarantees) with a floor of \$ _____ and a ceiling of \$ _____.

2. Television Movie

Network: If the initial release is a television movie for a U.S. network (ABC, CBS, NBC, FBN) the purchase price is \$ _____.

Cable: If the initial release is a television movie for a cable or non-network broadcast, the purchase price is \$ _____.

3. Sequels, Prequels, Spinoffs

50% of original.

4. Remakes

33 1/3% of original

5. Television series

For a NZ broadcast network prime time series, payments will be \$ _____ per produced episode of up to 30 minutes; \$ _____ per produced episode up to 60 minutes; \$ _____ over 60 minutes.

For a series on any other broadcast or cable entity, payments will be \$ _____ up to 30 minutes; \$ _____ up to 60 minutes; \$ _____ over 60 minutes.

WRITING SERVICES

Any additional writing services shall be paid according to appropriate NZWG minimums.

PROFIT PARTICIPATION

_____ % of 100% of net profits from all sources to _____ (Production Company.)

WARRANTY

The Author warrants that he/she has (a) exclusive 100% ownership of the Rights contained in this agreement (b) the authority and unencumbered right to enter into this Agreement and grant the Rights to the Producer.

Until such time as the parties execute a more detailed document incorporating these and other provisions standard for such agreements in the entertainment industry, this will constitute an agreement binding on the Author and the Producer and their respective successors, assigns, heirs, and legal representatives. The Producer shall consult with the Author or the Author's representatives regarding the assignment of the Agreement but shall have the sole

discretion to assign this Agreement or any of the rights hereunder, but no such assignment shall relieve the Producer of the Producer's obligations hereunder unless the assignee assumes all such obligations in writing.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and no modification of this Agreement shall be effective unless it is in writing executed by both parties. Nothing contained herein shall be deemed to create or constitute a partnership between or joint venture by the parties. This Agreement shall be construed in accordance with the laws of New Zealand applicable to contracts negotiated, executed, and to be wholly performed within New Zealand.

Reference to the Producer shall include _____ (production company) and conversely.

ACCEPTED AND AGREED:

Author Name

Date

Producer Name

Date

What the contract should cover

Producer name _____

Name and title of person signing for the producer. _____

Producer address _____

Author name _____

Author address _____

Name of the proposed screenplay or film _____

Date of the Option/Purchase Agreement _____

The full rights purchase price _____

The copyright for the Literary Material entitled _____ is held under
(name) _____

Initial option fee _____

First option period _____ (months)

Whether the first option fee is 'applicable' or 'non-applicable' _____

Second option fee (renewal payment period) _____

Whether the second option fee is 'applicable' or 'non-applicable' _____

Second Option Period _____ (months)

Residual fees _____ (if applicable)

Percentage of box office profits _____ (if applicable)

Payment schedule _____ (how and when the author will be paid)

Warranties and indemnities _____

Rights covered or reserved _____

Rights of consultation _____

Reversion of rights _____

Collection societies authorised to collect residual fees _____

What laws will govern the contract? _____

Disputes procedure _____

The New Zealand Writers Guild has a comprehensive Q and A page on their website:

<http://www.nzwritersguild.org.nz/faqs/>

And the answers to questions about contracts and other important things.

<http://www.nzwritersguild.org.nz/knowledge/answers.html>

Purchasing Film Rights to plays, novels and stories

Options:

When a producer is interested in adapting an author's work for the screen they typically request an option on the work. An option is an agreement to acquire all or some rights in a literary property such as a novel or a play. Producers use it to develop the screenplay, perhaps line up the cast and secure funding for the project. The option gives them time to put this in place. Normally a producer will take an option for a 12 month period and may also want the right of renewal for a further six to 12 months. The option agreement will also state that the producer is under no obligation to make the film. It can be exciting to have your novel or story optioned but the option is no guarantee the film will ever be made.

The right of renewal will allow the producer to extend the option upon payment of an additional sum. This means that should they be close to signing a deal with a backer they don't lose out because they can't renew the option or, some other producer comes along with a better deal. The right of renewal must be exercised before the initial option period expires. If the parties have agreed that the producer would have a second or third right of renewal, the producer could extend the option further.

Note that an option gives the producer the exclusive right to purchase film rights within the option period. No one else can buy the movie rights during that time. The author can do nothing that would interfere with the producer purchasing those rights during the option period.

Once the option expires, however, the author retains not only the option fee but all film rights as well. Some authors have sold options on the same work more than once because earlier options expired without being exercised. Of course, once an option is exercised, the producer owns the film rights outright.

Option fees:

During the 12-month period the producer has the exclusive right to exercise the option and buy the film rights. As a rule of thumb option fees are around 10 percent of the full purchase price, but the amount is negotiable. In New Zealand typically option fees range from \$1000 to \$5000. We advise that the author tries for \$5000 and negotiates down.

An author has to realise that most New Zealand films don't make a profit and many small producers operate on a slim budget. The producer may want to option the work for a token fee say \$50 and promise you a share of the net receipts once the film gets to the box office. This means the author significantly shares the risk. If the film doesn't make a profit then there will be no royalties. It is probably better to stick with a reasonable option fee as 10% of the rights purchase price. If the author does this, then the producer knows they have to secure funding to pay the author for the rights rather than relying on a dream of big box office returns.

Option fees, and any payments for rights of renewal, can be applicable or non-applicable. If the payments are applicable, they count as an advance against the purchase price. If they are non-applicable, they do not apply against the purchase price. For example, if an option was for \$5,000 applicable against a purchase price of \$50,000, a producer wanting to exercise the option would pay an additional \$45,000. If the \$5,000 option was non-applicable, the Purchaser would pay an additional \$50,000 because the \$5,000 option payment would not count against the purchase price.

Purchase of film rights:

When a producer purchases the option they will simultaneously negotiate the terms of the purchase agreement. The option contract is typically a two- or three-page document with the agreement to purchase the film rights as an attachment. When the option is exercised, the film rights purchase agreement automatically comes into effect.

This agreement gives the producer the exclusive right to purchase the film rights for a set fee (see example above) at a certain time in the future, typically before the option or, the renewed option lapses. Usually producers don't want to exercise the right to purchase the film rights until the first day of principal photography, (that's the day they start shooting) when they know for certain that a film will be produced.

If the producer doesn't have an agreed fee for purchasing the film rights as part of the option agreement, then when they want to purchase the rights, they have to negotiate the fee with the author. For example, the producer purchased an option for \$1000 for one year but didn't agree on the terms of the film rights purchase agreement. Nine months later the producer decides to exercise the option and buy the film rights and so sends the author a cheque for \$10,000. However, the author objects, wanting \$20,000. Since the parties have not agreed to the term of the sale, the contract is unenforceable. The producer has a worthless option, and the time and money spent developing the project may be wasted.

In selling the film rights authors may want to reserve certain other rights. For example; publication rights, stage rights, radio broadcast rights and the right to use his characters in a new novel (a sequel). The latter right should be distinguished from sequel film rights which allow the producer to use the characters in sequel films.

Reversion of rights:

The contract should have a reversion clause, meaning that all rights to the work can revert to the author if production has not commenced within a set time (e.g., five years from the date the film rights were bought). Thus, the author will regain rights to the work and have a chance to set it up elsewhere. However, this doesn't entitle the author to the screenplay or any other work the producer has done.

Warranties and indemnities:

The producer will want the author, to warrant that they own all the rights they are selling, that they are free and clear of any other obligations. This means that you must own (or have retained) the subsidiary rights to the work. If you have signed a publishing contract it is quite likely the publisher has secured these rights, or if you are agented the agent could have secured the rights to negotiate film rights.

The producer will also want the author to indemnify them just as you had to do with the publishing contract. For example, to warrant that the work does not defame or invade anyone's privacy, or infringe on another's copyright.

The right to adapt the work:

When putting together the contract, the producer may want to secure the right to make changes to the work when adapting it. Backers are not going to invest large sums of money to develop a screenplay only to find that the producer is unable to change a line of dialogue without the author's permission. There is likely to be consultation, just as there was when the publisher produced the book but the producer will want to reserve the right to have the final say.

If an author is concerned about the way the script is being developed, if they have asserted their moral rights in the contract, then they do have the right to object to derogatory treatment of the work. However it is highly likely that the producer will ask you to waive any moral rights in the work so they can adapt it in the way they wish. It is a tricky area and often authors are not happy with the end result. It is best if it is a collaborative effort and in New Zealand it is more likely to be than elsewhere.

Other rights:

Once the film rights are sold, the producer will typically want to have the right to adapt the work into a film and release it in ancillary markets such as home video. The producer may also obtain sequel and remake rights, although an additional payment may be due if and when these rights are exploited. The producer may want merchandising rights (think of the promotional toys associated with Shrek III). The producer may request the right to excerpt up to a set number of words from the book for advertising and promotion purposes.

Credits:

Credit is another topic that needs to be addressed. The producer may want the right to use the name and likeness of the author to promote the film, although the author is rarely featured in advertising. As for billing credit, the NZ Writer's Guild agreement with SPADA will usually determine who receives writing credits assuming the production company is a Guild signatory. The producer cannot arbitrarily assign credit. In case of a dispute over credits, the Writer's Guild will most likely have some method of arbitration to determine the outcome of any dispute.