



The Ins and Outs of Literary Film/TV Option Agreements

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What Is an Option Agreement?

- Agreement for the right/option to purchase the rights to a work
- Exclusive

Who Are the Stakeholders?

- Author
- Publisher
- Producer / studio
- Other?

The Deal Terms

- The option
- Purchase price
 - What “counts against” the purchase price
- Term
- Rights
- Reversion / termination
- Credit
 - Any other non-monetary concerns

The Option

- What is being optioned?
 - One work?
 - Series?
 - Future works?
- Option price
 - Often 10% of purchase price

Grant of Rights

Effective upon Producer's exercise of the Option, Writer hereby exclusively sells, grants and assigns to Producer, Producer's successors, licenses and assigns all rights in and to the Work not reserved by Writer, throughout the universe, in perpetuity, in any and all media and by any means now known or hereafter devised, including, without limitation, all forms of theatrical and non-theatrical distribution and exhibition (including without limitation, free broadcast, pay television, cable, subscription, pay-per-view, video-on-demand, DVD and Internet), including without limitation the following: all motion picture rights, including the right to make remakes, new versions or adaptations of the Work or any part thereof; to make series and serials of the Work or any part thereof; the right, for advertising and publicity purposes only, to prepare, broadcast, exhibit and publish in any form or media, any synopses, excerpts, novelizations, serializations, dramatizations, summaries and stories of the Work, or any part thereof; and all rights of every kind and character whatsoever in and to the Work and all the characters and elements contained therein.

Alternate language

All right, title and interest (including all copyrights, and renewals and extensions thereof) to create and produce the Picture (i.e., one motion picture based on the Property) and to own, control, distribute, and exploit said Picture in all media now known or hereinafter discovered, throughout the universe, in perpetuity, (subject to the Reserved Rights and Frozen Rights detailed in Paragraph 9 below), including, by way of illustration, all theatrical and non-theatrical motion picture rights, all television rights (pay, free, cable, and otherwise), all home video rights, and all allied, ancillary and subsidiary rights in the Picture and all other rights of distribution and other exploitation, and publishing rights in accordance with Paragraph 9 (a) below, solely for purposes of promotion, advertising, and exploitation of the Picture and the Purchased Rights.

Purchase Price

- The price paid to acquire the work
 - Initial option fee part of price
 - Extended option fee not part of purchase price
 - Can vary depending on deal terms (sale to certain types of studios/networks)

Term

- How long is the term of the option?
 - 12-18 months typical
 - Can be extended for an additional fee

Grantor hereby irrevocably grants Purchaser the sole and exclusive option (the “Option”), commencing as of the Agreement Date and continuing after full execution of this Agreement and satisfaction of the Condition Precedent for the period of time specified on Exhibit A (the “Initial Option Period”), to acquire all right, title and interest other than the reserved rights specified on Exhibit A in and to the Property, including without limitation the right to exploit the Property, in whole or part, in perpetuity, throughout the universe, in any and all media and formats now or later known or developed, in and in connection with the Program (the “Rights”). Purchaser will pay the initial option fee set forth in Exhibit A (the “Initial Option Fee”) within 15 days after full execution of this Agreement, including the Memorandum of Option attached hereto as Exhibit B, and satisfaction of the Condition Precedent. Purchaser will have the right to extend the Option for the extension option period set forth in Exhibit A (the “Extension Option Period”) upon written notice to Grantor at any time prior to the expiration of the Initial Option Period. If applicable, Purchaser will pay the extension option fee set forth in Exhibit A within 15 days after Purchaser’s notice of extension.

The Initial Option Period and Extension Option Period, if any (collectively, the “Option Period”), will be extended automatically without additional payment for periods equal to the length of (A) any outstanding claims, litigation, or chain-of-title disputes relating to the Property (not to exceed 12 months in the aggregate with respect to any single claim or dispute unless litigation has been filed in connection with such claim or dispute), (B) any periods of uncured, material default or non-compliance by Grantor, or (C) any industry-wide labor disputes or other force majeure events (not to exceed six months in the aggregate with respect to any single force majeure event). Purchaser will provide written notice to Grantor of any such automatic extension; provided that Purchaser’s inadvertent failure to do so will not be deemed a breach of this Agreement or in any way affect the effectiveness of such extension. The Option, if exercised by Purchaser, will be exercised by written notice or commencement of principal photography or animation (as applicable) prior to the expiration of the Option Period. If Purchaser exercises the Option, Purchaser will pay the purchase price set forth in Exhibit A (the “Purchase Price”) within 15 days after Option exercise and subject to Purchaser’s payment of the Purchase Price and any rights of reversion specified in Exhibit A, Purchaser will own, and Grantor hereby irrevocably and automatically grants, transfers and assigns to Purchaser the Rights.

Rights

- What rights are the producer/studio acquiring?
 - TV / movie rights
 - Merchandising
 - Publishing
 - Theatrical
 - Radio/podcast
- Reserved rights (first / last refusal rights)
- Frozen rights

Reserved Rights can include:

- Publication rights (including ebooks and audiobooks and author written sequels and prequels)
- Radio and podcast rights
- “Classic” merchandise rights derived solely from the book
- Right to produce dramatizations and dramatic adaptations

“Frozen Rights”, as used herein shall mean all derivative, ancillary, and allied rights in and to the Picture, including, without limitation, remakes and/or the sequels, if applicable, and including, without limitation, episodic television, animated motion pictures, and television programs, direct-to-video productions, theme park and gaming rights, and novelization), other than the Purchased Rights and the Reserved Rights. Commencing on the date hereof and continuing until the Option has expired, or is exercised in perpetuity, neither party hereto shall exploit, or authorize the exploitation of the Frozen Rights, or any portion thereof, without the prior written consent of the other party.

Reversion / Termination

- If option not exercised within time given, all rights revert
- If option exercised, reversion may occur given certain defined circumstances
 - Not produced within x years
 - Pilot not picked up within x years
- Reversion subject to conditions
 - Repayment of purchase + interest
 - Royalty
 - Backend percentage
 - Non-compete conditions?

Reversion of underlying Rights to the Property if principal photography on a pilot or series based on the Property does not commence within 2 years of exercise of the Option (or within [2] years of conclusion of principal photography of a pilot based on the Property to commence production on the Series if that pilot commenced within that 2 year period); Reversion is subject to execution of Purchaser's customary turnaround agreement (i.e. repayment of purchase price plus interest, \$5,000 royalty and 5% backend, ...)

Credit

- Who is credited and how?

Additional Considerations

- Bonuses
- Residuals
- Producer / consulting agreements

Consultation Rights. Owner's Designee shall have a right of meaningful consultation with respect to the following key creative decisions ("Key Creative Element(s)"): (i) the first draft screenplay of the Picture; (ii) the final shooting screenplay of the Picture (excluding incidental changes made during principal photography); and (iii) any material changes to the Property with respect to characters (including gender), plot, and temporal and geographical setting. For clarity, in the event of an impasse between Owner's Designee and Company in connection with any Key Creative Element, Company's decision shall control and be binding in each instance. Notwithstanding the foregoing, all decisions with respect to any Key Creative Element shall be subject to distributor/financier approval and final control.

Shopping Agreements

- Right to “shop” a property
- No fee / low fee
- May be exclusive
- Can be shorter period of time

Questions?

Additional References

- *Hollywood Dealmaking: Negotiating Talent Agreements for Film, TV, and Digital Media* by Dina Appleton
- *The American Bar Association's Legal Guide to Independent Film Making* by Michael C. Donaldson and Lisa A. Califf
- <https://authorsguild.org/resource/model-literary-option-agreement/>