

Film Production and Entertainment Law: Shopping and Option Agreements

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What is Entertainment Law?

Entertainment law is not in and of itself a “legal specialty” with its own procedures, legislation, or regulations. Rather, entertainment law is the intersection of various areas of law that can impact the film, music and sports entertainment industry.



At its core, however, lies the many principles of business law, which then branch out into other areas. Each area calls for legal considerations to keep in mind before, during and after the production process. These include, but are not limited to:

- Contracts
 - Guilds and Union Agreements, Non-Disclosure Agreements, Confidentiality Agreements, Licenses, Sub-Licenses, etc.
- Corporate Structuring & Tax Considerations
 - Film Tax Credits
- Intellectual property
 - Chain of Title (Copyrights, Trademarks, Clearance/Releases)
- Financing
- Errors and Omissions Insurance & Location Permits
- Labour & Employment
 - Workplace Safety & Governance
 - Guilds & Unions
- Immigration
- Distribution & Publishing

Shopping Agreements vs Option & Purchase Agreements

This article will provide a brief, high-level review of Shopping Agreements and Option & Purchase Agreements in the context of film production.

You may be a Creator of a work or an aspiring Producer in the entertainment industry. As a Creator, you have created work, such as a script or screenplay (the intellectual property, or “Creative Work”) that you want the world to see on stage, television, the big screen or on a streaming service. As a Producer, you found the Creative Work and want to support its distribution.

A typical next step for a Creator and a Producer is to enter into an agreement with one another. The type of agreement will depend on factors such as the parties' respective needs, interests, goals and anticipated level of involvement. Key terms in any such agreement will include which rights are granted to the Producer and which are retained by the Creator.

Shopping Agreements

A shopping agreement is a contract between the Creator and a Producer which gives the Producer the right to pitch or "shop" the Creative Work to a prospective Buyer (e.g. production studios, networks, financial supporters and distributors). The Creator does not typically receive compensation from the Producer but benefits by gaining exposure for the Creative Work through the Producer's network and experience.

A shopping agreement is essentially an agreement for services between the Creator and the Producer which gives the Producer the right to shop (but not sell) the Creative Work around for a specific amount of time, with exclusive agreements having shorter terms than non-exclusive agreements.

An exclusive agreement usually has shorter terms as it ties up the Creative Work for the duration of the agreement. Accordingly, only the Producer has the right to shop the Creative Work around until the term ends or the Producer finds a Buyer that the Creator approves.

On the other hand, a non-exclusive agreement means the Producer may not be the only one with the rights to pitch the Creative Work. A non-exclusive agreement may be helpful for Creators who wish to have as many options as possible in getting their Creative Work adapted into a film or television production. However, it may deter Producers or make it difficult to obtain the best deal.

It is important to note that although the Producer has the rights to shop the Creative Work to other parties, the shopping agreement does not convey ownership rights in the Creative Work to the Producer. Creators retain all ownership rights to their work and would have significant control over whether to proceed with a prospective Buyer. This may be disadvantageous to Producers as the Creator could refuse every offer that does not meet their expectations or standards until the agreement term ends. At that point, the Creator could move on and choose to work with another Producer.

For Producers, the advantage of entering into shopping agreements is that they do not have to invest any money upfront. However, if the Producer is unsuccessful in finding a Buyer, neither the Producer nor the Creator receives compensation for their time and effort. If a Buyer is found and the parties move forward, each of the Creator and the Producer have the flexibility to negotiate their respective deals with the Buyer. The Creator would have significant control over the terms of the sale of the rights to the Creative Work, such as the purchase price. The Producer on the other hand would negotiate how it will be attached to

the production going forward.

Option & Purchase Agreements

An option & purchase agreement (more commonly referred to as an “option agreement”) is a contract between the Producer and the Creator that gives the Producer the “option” to purchase the rights to the Creative Work on an exclusive basis, for a limited amount of time and for a specific purchase price. The Creator typically receives a portion of the purchase price (the “Option Fee”) in exchange for agreeing not to offer and sell the rights to the Creative Work to anyone else during the term of the agreement (the “Option Period”).

The Option Period of an option agreement is typically for a longer period of time than a shopping agreement to provide the Producer time to secure financing, arrange development and marketing plans, and ultimately decide whether to pay out the purchase price. If the Producer requires additional time, the agreement can be renewed in exchange for an additional Option Fee amount payable to the Creator that is typically greater than the initial Option Fee.

For Producers, the advantage of entering into an option agreement is the ability to take the Creative Work off the market at any time during the Option Period by exercising its option to purchase.

For Creators, the advantage of entering into an option agreement is that they receive the Option Fee on the front end, and, if the Producer opts not to exercise the option to purchase by satisfying the purchase price, then the Creator keeps the Option Fee and retains ownership of the Creative Work. The Creator can then option the Creative Work to other prospects.

Disadvantages for Creators in entering into an option agreement include that they have less control over who the Producer might work with to develop the Creative Work as well as less control over the terms of the deals which follow. Even if the Producer exercises the option to purchase the Creative Work, there is still a risk that the project will take much longer than contemplated to produce. For example, inaction or financing and development arrangements may fall through, during which the Creative Work, for all intents and purposes, is tied up and may never be distributed.

Including a provision in an option agreement that defines when a Creator may reacquire ownership rights to the Creative Work, if the Producer does not produce the project within a certain period of time after the option to purchase is exercised, may provide Creators and Producers some peace of mind.

In any case, it is important to obtain any agreement in writing to ensure each party’s needs and interests are accurately identified. This article is not intended to be an exhaustive review of agreement options available to Creators and Producers in the entertainment industry. If we

can be of any assistance, please do not hesitate to contact us.

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