



Protecting and Promoting Writers' Rights – on Screen, on Stage, on Air



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# Contract basics

- A written or spoken agreement
- Intended to be legally binding – evidence of intention?
- Between two or more parties
- An exchange of goods and services: i.e. writing services for a fee



# Contract

- If a producer/employer delays giving you a written contract, send them an email outlining the terms of the agreement as you understand them and ask them to confirm by writing in return .
- You should have at least 5 working days to review, consider and seek legal advice.
- Confidentiality obligations

# Copyright basics

- Ideas vs expression
- 'Subsistence' is automatic
- Joint authorship (co-writing)

**Copyright is a 'bundle' of economic rights:**

- To reproduce in material form
- To publish
- To perform in public
- To communicate to the public
- To make an adaptation (specific adaptations only: e.g. translations)



### **Infringement**

- Infringement of economic rights
- Causal chain
- 'Substantial part' must be infringed

But difficult and expensive to litigate.

Protect yourself by:

- Identifying all readers of your script
- Doing research on the people or companies you're sending your work to: agents, producers, competition organisers
- Registering your script



# Our contracts

- Feature Film Option & Assignment Deed
- Feature Film Agreement (Commissioning)
- Series and Serials Agreement (SASA)
- Miniseries and Telemovies Agreement (MATA)
- Children's Television Agreement (CTA)
- Theatre Industry Agreement
- Short Film Agreement
- Adaptation option
- Corporate commercial and non-commercial
- Script editing agreement
- TV-VOD Option & Assignment Deed for (Original Concept)



# Option & Assignment Deed

- Comprised of two parts: the option and the assignment deed
- Under the option, the Producer acquires exclusive rights to develop the script or underlying material and raise funding
- The producer can execute the option at any time during the option period

# Option

Look out for:

- Low option fees: aim for \$500 - \$1,000
- Long option periods: One year should be enough for each period
- No automatic extensions: Make the producer meet milestones

3.2. The Producer's right to extend the Option for the Extension Period shall, unless otherwise agreed by the Writer in advance and in writing, be subject to the Producer providing reasonable evidence that the Producer has secured significant commercial interest in respect of the Work or the Series from an arms-length third party investor, State or Federal funding body, a broadcaster/network or distributor.

## Option – ‘first right of refusal’

- You want to see this language in the Assignment Deed too
- May be difficult to secure for emerging writers

### 8.1 The Producer agrees:

- (a) The Writer shall have the right of first refusal to carry out any writing services for the development of the Series for the duration of the Option Period including but not limited to rewrites to the Work, the creation of new development materials including but not limited to synopses, treatments, bibles or pitch material for the Series and that such services will be contracted under separate MATA or SASA contracts (whichever is applicable) and the Writer shall be paid at least AWG minimum rates or fair and reasonable industry standards where no AWG minimum exists;

## Option - reversion

- 4.2 If the Producer does not Exercise the Option, then all rights optioned to the Producer pursuant to this Option Agreement shall revert to the Writer free and clear of any obligations to the Producer and at no cost to the Writer. For the avoidance of doubt, all rights in the Producer Material shall remain with the Producer subject to clause 4.3 below.
- 4.3 In the event the rights optioned to the Producer revert pursuant to clause 4.2 above, the Writer may use the Producer Material solely for the purposes of further development of the Series and for the purposes of pitching and securing finance for the Series provided that the Writer shall be entitled to an assignment of the Producer Material upon repayment of all reasonable and verifiable costs incurred and paid for by the Producer directly attributable to the development of the Series (excluding any amounts paid by State or Federal funding bodies or private development investment funds), which sums shall in any event be repaid no later than the first day of principal photography of the first program produced based on or incorporating the Producer Material, and subject always to any Third Party Agreements. The Producer shall keep the Writer advised of all such Third Party Agreements. The parties agree to execute and deliver all documents and to do all things necessary for such reassignment.

# Assignment

- What is being purchased?

3.1 With effect from the Exercise of the Option, the Writer as beneficial and legal owner grants and assigns to the Producer all right, title and interest (including copyright) in and to the Work in any and all media now known or later brought into existence throughout the world including without limitation the following sole and exclusive rights throughout the world for the full period of copyright therein including any extensions and renewals:



# Assignment – the importance of the contract

- What are you getting paid?
- What are your creative rights?
- You are most powerful before you sign. Trust in the quality of your work. Don't get pushed into signing a deal you may regret.



# Assignment - fees

- Front-end payment: percentage of the **budget with a floor, per episode fee**
- Back-end payment: percentage of **net receipts**
- Subsequent series payments: percentage of **budget and net receipts**

## Assignment – creative rights

- 8.3 The Writer shall be afforded the right to attend all brainstorming, story conference and plotting sessions for the Series provided that they are available at the time of such sessions. The fees for such services shall be agreed in good faith and subject to at least the AWG minimums for such services or fair and reasonable industry standards where no AWG minimum exists.
- 8.4 The Writer shall have approval over any other writer engaged by the Producer to write the Series provided that in the event of any disagreement the view of the commissioning broadcaster, completion guarantor or any other financier with a right of approval over that element shall prevail.
- 8.5 The Producer shall meaningfully consult with the Writer over the following key creative aspects of the Series: cast, script producer; final scripts where not written by the Writer; director; DOP and production and costume designers provided that in the event of any disagreement the view of the commissioning broadcaster or any other financier with a right of approval shall prevail.





# Shopping letters

- US-style agreement becoming more popular in Australia
- The right to 'pitch' (vs the right to 'develop')
- Short time periods
- Arms-length



# Shopping letters

For **\$1.00** and other good and valuable consideration, the receipt and sufficiency of which are now acknowledged, you grant to **[The Producer]** ("**Producer**") the sole and exclusive right throughout the world to shop and pitch the Series to parties including but not limited to broadcasters, distributors, financiers and investors for a period of **ninety (90) days** following the full execution of this agreement (the "**Pitch Term**"). In the event that the Producer is in negotiations with any broadcaster, distributor, financier or investor in relation to the Series, and those negotiations are on-going at the end of the Pitch Term, the Producer shall notify you of this prior to the end of the Pitch Term and the Pitch Term shall be automatically extended for the duration of such negotiations, not to exceed fourteen (14) days unless otherwise agreed by the parties.



# Shopping letters

Watch out for:

- Options 'disguised' as shopping letters
- Any assignment of rights

# Shopping letters

- The producer is **not** committing to your project. Don't work for free and don't give them rights to your material under a shopping agreement.
- If the producer wants to develop your concept, they should get an option over your work.

## **AWG-SPA negotiated agreements**

- Negotiated between AWG and SPA: Series and Serials Agreement (SASA), Miniseries and Telemovies Agreement (MATA) and the Children's Television Agreement CTA)
- Old (pre-SVOD) agreements, due to be updated
- The SASA fees are complicated. Speak to us if you don't understand how they're calculated.

# Miniseries and Telemovies Agreement (MATA)

## Fees

The Producer will pay the Writer a minimum of:

- \$38,082.63 per commercial hour or 3% of the production budget, whichever is higher, for Telemovies and Miniseries.
- The Writer's fee covers payment for a Treatment, 3 drafts and 1 polish
  - 10% of the Writer's fee per additional draft
  - 5% of the Writer's fee per additional polish

## MATA fees

Service	Minimum Fee
Story Conferencing Full Day	\$491.07
Additional Research Full Day	\$573.53
Brainstorming Session Full Day	\$982.15
Brainstorming Session 4 hours or less	\$523.08
Attendance at sessions	\$307.69



# AWG-SPA negotiated agreements

The AWG-SPA agreements are for individual episode scripts **not** for series concepts. Use the TV Option instead.

Production companies will often have separate Schedules or Annexures that cover situations that the original agreements did not anticipate.

Even if the contract has a SPA/AWG mast-head, send it to us!

Email [industrial@awg.com.au](mailto:industrial@awg.com.au)





# Questions?