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# Doron F. Eghbali Entertainment Law

## [Nuts and Bolts of Literary Rights Option and Purchase Agreements](#)

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Television programming is mostly predicated upon original teleplays/telescrites or literary/dramatic works licensed from third parties. Such licensing is often negotiated through an option/purchase agreement between an author and a producer/production company. This article seeks to explore some of the salient points of such option/purchase agreements including the term of option, the value of the option, the amount paid for the option, the commencement date of the option, the NET profits paid to the writer for an option, and the exclusive rights granted to a producer for an option.

### 1. TERM OF OPTION

Term of Option could last from 90 days to 2-3 years. 1 year is the standard term of the option for a literary property. Nonetheless, literary properties could be optioned as little as 90 days if the producer has already presold the literary property to a network. On the contrary, when the producer needs relatively substantial amount of time to prepare a professional treatment and shop it around to networks, the option period could be as long as 2-3 years.

It is extremely important to note, it is often the case if the producer has not been successful in lining up a network within 1 year, extending the option beyond that period would not be prudent. Accordingly, it is intelligent to craft the options for at most 1 year and then extend them if the producer is in really serious negotiations with a network or funding source.

### 2. PAYMENT FOR AN OPTION

The question often arises as to the proper amount to be paid to the author for an option. Producer might seek to argue in return for producer's marketing and promoting the literary property, author should not receive anything. However, this argument is untenable on its own grounds.



Customarily, author should receive 10% of the purchase for the option. Nonetheless, the amount is negotiable and rarely zero.

### 3. COMMENCEMENT OF AN OPTION

The other question is when the option starts: Is it from the time all start negotiating or is it from the time the parties reach an oral or written agreement? Although there is no easy fast rule, it is prudent to start from when the parties drafted the agreement and state in the contract the commencement of the option to eschew problems down the road, to the extent possible.

### 4. VALUE OF AN OPTION

Invariably, the most salient question to ponder for a producer is how much is a work worth? Not surprisingly, there is no fixed rule or formula to calculate the exact dollar figure an option is worth. The option's current fair market value depends upon numerous factors, among which are:

- The Popularity of Genre
- The Popularity of Writer
- The Age of the Work
- The Budget of the Project
- The Term of Option
- The Medium(s) the Option to be Exploited In
- The Expertise, Business Acumen and Leverage of Parties' Representatives

Accordingly, an option predicated on a popular book for a prime-time network could be worth hundreds of thousands while an option based on a non-fiction work for a non-prime time non-network project could be worth five thousand dollars or so.

### 5. NET PARTICIPATION FOR AN OPTION

Unlike some other payments options, as a rule of thumb, the producer of an option should pay around 5% of the 100% NET profits for a script. Then, the 5% is divided between the owner of the literary rights AND the writer of the teleplay based upon the stature or contractual agreements.

As always, it is incumbent upon the parties' representatives to save lots of time and money by defining in uncertain terms "NET Profits".

As importantly, the Owner's representatives should be leery of any language which entails producer awarding the owner Producer's Net profits. The reason is the Producer might have relinquished some or all of whatever he owner to a TV network. Hence, at the end, the producer has much less or probably nothing of the Net profits. If the producer does no longer have the NET profits, the Owner will not receive anything or relatively much less.



## 6. EXCLUSIVE RIGHTS GRANTED TO THE PRODUCER FOR AN OPTION

It is rather customary for the producer to acquire exclusive rights to the property for film, television and all other audio-visual media. As importantly, the producer should acquire rights to promote the work, publicize the writer's name and likeness. The Producer should also obtain the right to copy, distribute, exhibit, license and broadcast the work in all media and translate it into ALL languages, among others.

It is as important for the producer to acquire the rights to edit, adapt and even alter the underlying work. Nonetheless, it is imperative for the Producer's representatives to ascertain if there are any

characters in the underlying work which have appeared in earlier works. The Producer for such works may not acquire exclusive rights to those characters.

In addition, the Producer may not always acquire exclusive rights to publishing. The exclusive rights to publishing may have already been granted to book publishers. It is easier for Producers to acquire publishing rights if they receive an original screenplay or teleplay.

### DISCLAIMER

This article NEITHER supplants NOR supplements the breadth and depth of such esoteric topic. In fact, this article ONLY provides a RUDIMENTARY synopsis of such esoteric expansive subject matter.

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