

Pay Me Now and Pay Me Later: Lump Sum vs On-going Royalties

November 10, 2011 by Bob Tarantino

Over at the Dear Rich, Nolo's IP blog, they've got [a question and answer segment](#) which is worth some attention for those advising individuals in the creative industries:

Dear Rich: I'm trying to figure out whether to ask for a lump sum payment or royalties for a deal I am making. Is there some formula for figuring out what to ask for in terms of a lump sum?

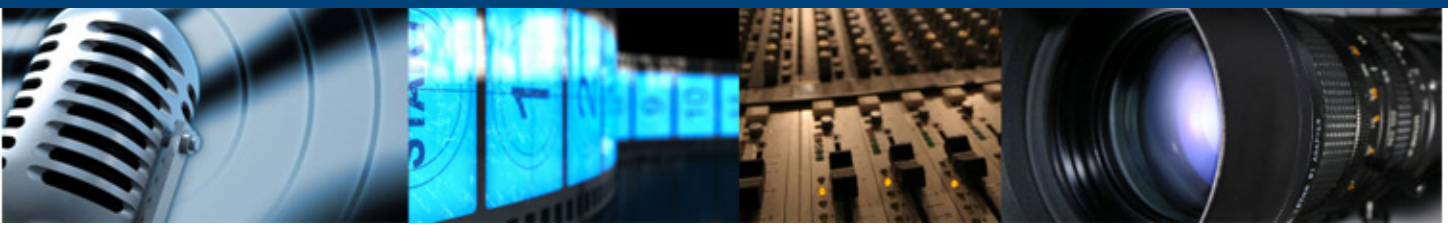
This can be a critical question for owners of rights who are granting intellectual property rights to others for exploitation by that other person (for example, the owner of rights in a graphic novel or screenplay who is being asked to grant an exclusive option or license to a film producer). As with many questions, the question of whether to ask for a lump sum up-front payment or royalties is best answered by challenging the premises underlying the question - in short, why not choose *both*?

The Dear Rich Staff point out the basic pros and cons of each arrangement (and also [link to this nice little summary](#) which describes different types of royalty arrangements in more detail):

- with a lump sum, up-front payment (i.e., payable upon signing the contract), you're assured of actually receiving the money, since you generally would avoid signing without having the funds in hand (such as in the form of a certified cheque) - you also avoid having to worry about the expensive and stressful process of checking royalty statements, disputing them, auditing them, trying to get paid for discrepancies, etc.
- but with an entitlement to ongoing royalties, you get to share in the potential success of a particular property (would you rather have had \$1,000,000 up-front for *Avatar*, or [0.5% of world box office gross](#)?)

But describing this as an "either/or" proposition is a little too simplistic when it comes to the entertainment industries. We can take guidance from the arrangements put in place by many of the creative guilds in the film and television industries: they generally require minimum payments up-front *plus* ongoing residuals entitlements (which, in the case of some Canadian guilds such as ACTRA, can be "pre-purchased" for limited periods of time by an increased up-front fee).

The combination of upfront payments (sometimes in the form of recoupable advances) and an ongoing participation right in future revenues (though usually defined down to be something less than "gross") is the norm in the entertainment industries, whether music, film/TV, publishing or videogames. In film/TV arrangements, grantors of rights should also aim to supplement their future participation in a project by building in quasi-participations in the form of things like box office bonuses (pre-set payments payable upon the achievement of a particular box office gross), budgeted fees (such as for performing "script consultant" services) and royalties (such as per-episode royalties payable as a result of the fact that the episode was produced, irrespective of commercial success)



and agreements to engage (such as a commitment on the part of the producer to engage the grantor as the writer of a certain number of episodes for a television series).

Ultimately, the answer to "how am I going to get paid?", should be a complicated one: grantors of IP rights should be aiming to contractually enshrine multiple forms of revenue participation, so as to ensure *both* up-front payments *and* ongoing participations if their property achieves commercial success.

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