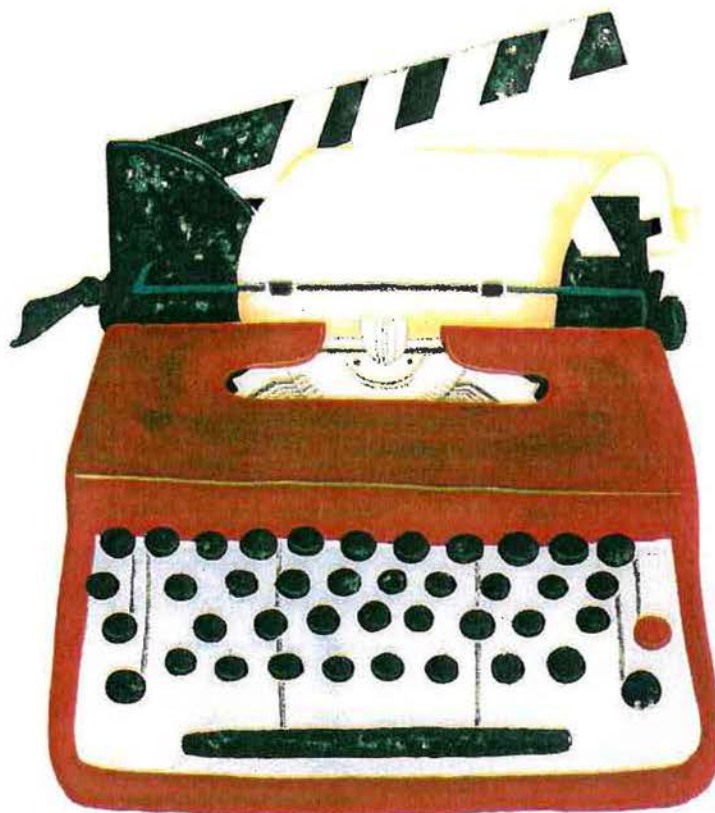


BARE-BONES CONTRACTS

WHAT REALLY NEEDS TO BE IN A CAST AND CREW CONTRACT?



The sole purpose of any contract is to address the issue of “What if?” What if we get distribution? What if the actor gets sick? What if a line of profitable toys springs from the film? What if we breach our obligations to the actor? The questions are endless.

Every producer has to initially decide how many “what ifs” he or she wants to address in the contracts with cast and crew.

The Internet is filled with free

sample contracts. Relying on such form contracts is a reasonable way of saving money, but be aware that you’ll have to differentiate which contracts are right for your particular production.

Do not pay an attorney for access to these form contracts; pay an attorney to make sure you are using the right contract and, more importantly, for the attorney to be the skilled negotiator who knows how to combat your cast’s agents and attorneys.

The minute the actor’s representatives begin asking for more, you should speak with counsel. This is true regardless

of whether the contract that is suddenly now subject to negotiation is one page or 30.

When structuring your cast and crew contracts, you’ll need to choose between greater economy and greater security. The former is bare-bones, laying out the absolute minimum basics that will permit you to achieve the “legal deliverable” requirements of a distributor, while the latter adopts an “abundance-of-caution” approach to address every conceivable issue that could arise in relation to identifying compensation, promising attendance, assuring the work can

be used in the film and ensuring that if anything goes wrong, the cast or crew can't prevent the work from being shown.

If you're the type who goes to Vegas and puts all of your money on one bet at the craps table, then you're likely to view the one-page contract as adequate. But if you go to Vegas strictly for the shows and buffets, avoiding the casinos completely, then your risk-averse nature will be more apt to want the 30-page contract in place.

Regardless of your disposition, cast and crew contracts must be designed to achieve three things: 1) Bind the cast or crew to show up when they are supposed to and perform as required; 2) describe how the cast or crew will be compensated; and 3) obtain the necessary releases for showing the film to the public and limit the cast and crew's ability to sue you.

A CLOSER LOOK AT THE THREE ESSENTIAL TERMS OF ANY CAST OR CREW DEAL...

1. BIND THE TALENT TO SHOW UP AND DO WHAT YOU WANT THEM TO DO • Every contract needs to set forth the name of the actor, his or her role, the location where he or she is obligated to perform and the dates he or she is obligated to work, including work during post-production. Obtaining the actor's firm commitment to perform is essential for an independent moviemaker with a low budget.

It is common practice for an actor's agent to delay the actual signing of a written contract. The agent wants it both ways: The minute the casting director telephones and states the producers want the actor, the agent believes he has a binding deal from which the producers cannot escape. Yet, if a better film comes around before

anything in writing is signed, that same agent will be the first to claim a binding deal was never in place.

Therefore, smart producers will ensure that their casting directors coordinate the method in which an offer is conveyed with the production attorney. Alternatively, a production attorney can give a precise form to the casting director, which is designed to clearly designate that no contract exists until the actor signs his offer memo. The following language should do the trick:

On behalf of ABC Production Company, we are pleased to make the following offer for JANE DOE's ("Artist") acting services in regards to the motion picture currently entitled "My Film" ("Picture"). Set forth below are the offer terms. If these terms are acceptable, please acknowledge acceptance by signing where indicated and fax back to the number at the bottom of this deal memo. A formal contract will then be forwarded to your agent for negotiation. This offer may only be accepted by Artist's written acceptance. Until and unless that occurs, no binding agreement shall exist.

2. DESCRIBE HOW TALENT WILL BE COMPENSATED • You need to set forth precisely how your talent will be paid. In making that determination, you need to consider: Which union rules apply; which state and federal wage laws apply; the actor's rate for similar low-budget films; what other cast members are being paid; and what your budget will permit.

Legal counsel can give you some initial direction in how to craft your forms to be in compliance with laws and union rules, as well as how to best take advantage of the legal loopholes and benefits permitted by those laws and union rules.

Creative producers should consider alternatives to purely fixed compensation. Different types of deferred compensation,

GOOD TO KNOW

BE OPEN TO CHANGE, BUT AT THE SAME TIME, GO WITH YOUR GUT FEELING. YOU'D BE SURPRISED HOW MUCH MORE ACCURATE YOUR INTUITION IS COMPARED TO YOUR COMMON SENSE WHEN IT COMES TO THE DAMAGE CONTROL WORLD OF LOW-BUDGET MOVIE MAKING.

—RAMZI ABED, WRITER-DIRECTOR, IN A SPIRAL STATE

contingent profit participation and bonuses may help the low-budget moviemaker attract the best possible talent. However, when utilizing one of these alternatives, be sure you fully understand how each is defined and realize that you as the producer have the right to define these at the time the offer is made. You also have to consider whether you can actually offer the particular type of benefit.

For example, an independent producer cannot contractually guarantee that an actor will receive "first dollar gross directly from distributor." You cannot contractually commit the distributor to pay this generous profit calculation without its permission and if you have such a contract term, most distributors

will pass on your film unless the star actually warrants such treatment.

Likewise, independent producers commonly make the mistake of awarding "box office bonuses"—additional compensation when the movie reaches a certain gross at the box office.

Remember, compensation includes more than just money. Anything of value should rightfully be considered "compensation" to the cast or crew member. Items such as credit positioning in the main titles and paid ads have real value. The types of travel accommodations, the size of the actor's trailer and the ability to select what publicity photos are used also have real value.

HERE IS A SAMPLE OF SOME COMMON COMPENSATION TERMS:

FIXED COMPENSATION • "SAG Schedule F"- SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) ("Fixed Compensation") for all services rendered in relation to the Picture. Money to be escrowed with The Superstar Agency prior to commencement of services.

PROFIT PARTICIPATION • Provided Artist is not in material breach of contract and appears in the role for which

GOOD TO KNOW

ASK YOURSELF, "AM I SURE I WANT TO MAKE THIS MOVIE?" THEN ASK YOURSELF, "WHY?" A GOOD FOLLOW UP QUESTION IS, "AM I INSANE?"

—STEVE BUSCEMI, ACTOR-DIRECTOR, INTERVIEW

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she is cast in the final cut of the Picture, Artist shall also receive a total of TWO PERCENT (2%) of one hundred percent (100%) of "Producer Share of Gross Profits" (if any) from the distribution of the Picture (if any) "Producer's Share of Gross Profits" shall be defined on a Most-Favored-Nations basis with all others.

CREDIT • Separate card, no less than third position. Paid ads wherever billing block appears and on all video and DVD packaging.

PERKS • All travel and accommodations shall be first-class. Artist shall receive wireless, high-speed Internet access at hotel, a rental car and paid parking at hotel. Per diem shall also be accorded on a Most-Favored-Nations basis. Artist shall receive a DVD of the completed Picture if and when the Picture becomes commercially available on DVD. Artist and one (1) guest shall be invited to the initial premiere of the picture (if any).

3. OBTAIN NECESSARY RELEASE LANGUAGE AND LIMIT THE ABILITY TO SUE • Even the most bare-bones contract must have the all-important release language that states all services are "work-for-hire," which is a legal term of art defined by the Copyright Act. It means that while many contribute to the creation of the film, the production company alone holds the copyright. In addition, an express release of name,

voice, likeness and image is necessary to depict the actor in your film. This type of release applies to right of publicity laws that exist by virtue of assorted state statutes and common law. This release should cover all "media and formats (presently known or hereafter devised) throughout the universe in perpetuity." Since you never know when a crew member might appear as an extra or in "behind-the-scenes" footage, include this release language for crew, too.

Some contracts spend five or six pages fully defining

GOOD TO KNOW

IF YOU ARE MAKING A UNION FILM, THINK TWICE ABOUT HAVING A CHILD ACTOR. THEY CAN ONLY WORK NINE HOURS AND THREE OF THOSE HAVE TO BE TAKEN UP WITH SCHOOL. YOU'LL BE AMAZED HOW LITTLE YOU GET DONE.

—DAVID JACOBSON,
WRITER-DIRECTOR,
DOWN IN THE VALLEY

GOOD TO KNOW

THERE ARE NO RULES. EVERY JOB, EVERY STORY, EVERY SHOT IS DIFFERENT. AND EACH TIME YOU DO IT, IT'S LIKE DOING IT FOR THE FIRST TIME.

—ZACK SNYDER,
WRITER-DIRECTOR,
WATCHMEN

“COMPENSATION INCLUDES MORE THAN JUST MONEY... ITEMS SUCH AS CREDIT POSITIONING IN THE MAIN TITLES AND PAID ADS HAVE REAL VALUE.”

the work-for-hire and release of likeness concepts, while others argue that two all-encompassing sentences can cover everything in a more comprehensive way than the documents that explain every possible variation of copyright and the right of publicity.

If there is the possibility that the film may play outside of the United States, there is a concept known as “droit morale,” applicable in certain foreign jurisdictions, which talks about certain inalienable rights that belong to creators of fine art. Therefore, a waiver of droit morale is both prudent and necessary.

Depending how risk-averse you are, contracts can spend several paragraphs addressing the many permutations of the droit morale concept and the method in which air-tight waivers are obtained. But at bare minimum, a one-sentence waiver will generally be deemed acceptable for delivery purposes by a distributor.

Finally, every contract that a producer enters into with anyone who provides any type of service to the film must have a “no injunctive relief” clause. This clause creates the contractual obligation that “the show must go on.” In other words, if the producer does someone wrong, cast and crew can sue the producer for money, but under no circumstances can they prevent the film from being shown in public.

HERE IS THE MOST BARE-BONES CLAUSE, INCORPORATING THE ASSORTED RELEASES AND NO-INJUNCTION LANGUAGE AS INCORPORATED INTO AN OFFER MEMO:

“WORK-FOR-HIRE”/OWNERSHIP/RELIEF • If Offer is accepted, all services shall be deemed “work-for-hire” commissioned by Producer with waiver of all so-called “droit morale” rights of Artist (if any). Artist irrevocably grants Producer the right to use his/her name, likeness, voice, image and bio for all purposes in relation to the Picture, the promotion thereof and any and all allied, ancillary or derivative works. Producer shall own all results and proceeds of Artist's performance for use in any and all media presently known or hereafter created throughout the Universe in perpetuity. In the event of a dispute, Artist agrees to pursue monetary damages only and forgoes any injunctive relief. **MM**

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