

A Guide to Producing Original Plays

Adapted from *The Stage Producer's Business and Legal Guide, Second Edition*, by Charles Grippio. His book has much more detailed information than can be presented here, and is available online through Amazon, Barnes & Noble, and other booksellers. Most theatres would benefit by having a copy on hand.

Imagine that one day an original manuscript crosses your desk and absolutely knocks your socks off. The author is unknown, and the script has never been produced. You are euphoric. Even as you read the last pages of the manuscript, you begin thinking what it would mean for you and your company if you produce it. And of course there is the artistic satisfaction of finding and nurturing a great new talent.



Now that you've found the play, what do you do? You're used to dealing with the major licensing houses for plays somebody else produced first, such as recent Broadway hits. Now you must negotiate with an unknown author for the rights to an unknown masterpiece.

Unless you have to run your choice of play past a committee, call the author and license the play right away. Most unknown playwrights submit the same play to many theatres at the same time. This is made necessary because theatres are notoriously slow in reading and selecting plays. (Playwrights know how overworked you are.) However, if an author submits their play to one theatre at a time, they could wait a lifetime for a production. So multiple submissions are the rule. The problem is, several other producers may be reading that masterpiece at the same time as you.

If you want the rewards of presenting the premiere production, you must act quickly, before someone else beats you to it.

But you still need to draw up a fair contract. Fortunately, this isn't as much of a problem as you may think. This article will show you how.

One caveat: Instead of dealing directly with the author, you may have to deal with their agent. The only difference is that agents are more experienced in negotiating contracts than most playwrights. The author may be more concerned about their artistic vision, while agents tend to focus more on the financial terms.)

The Dramatists Guild

Many playwrights belong to the Dramatists Guild, an organization founded by and run for the benefit of writers for the theatre. Unlike Actors' Equity, the guild is not a labor union. This is because its members are independent contractors, not employees. (Film and television writers are employees of the producers. They are represented by the Writers Guild of America, which is a collective bargaining agent.)

Instead, the Dramatists Guild publishes form contracts for use between producers and playwrights, gives business advice (to its members), and conducts various forums and seminars on the craft and business of writing for the theatre. Most importantly, it strives to ensure that its members receive a fair deal from the production community. Since it isn't a labor union, the guild can't force its will on any theatre or producer by strike or labor stoppage. However, the guild's current membership includes over seven thousand playwrights, librettists, composers, and lyricists—from legends of the Broadway theatre to unknown writers. They stand in solidarity with the guild member getting their first production in, let's say, Salida, Colorado. That's a lot of power.

To help protect playwrights, the guild has created "[The Dramatist's Bill of Rights](#)," which, as its title suggests, sets forth the minimal rights that playwrights have in their works, which ethical and honest producers should honor.

THE CONTRACT

At a minimum, a good contract between the producer and the playwright must cover the following issues.

Options versus Licenses

Producing theatres may use options to lock up the rights to a play for a specific period of time, if they have raised the money to produce it. The option gives the producer the exclusive right to present the play in a certain geographic territory and for a specific length of time. The producer does not want any competing productions until their production has run its course.

However, this means the playwright must take their script off the market during the term of the option, thus foreclosing the possibility of another production. In exchange for this exclusivity, the producer *may* be asked to pay the playwright an option fee. This fee is negotiable. It is not refundable. In other words, if the producer's presentation does not come into being, the playwright still keeps the money. The producer pays this fee at the outset.

Once a producer is prepared to actually present the play, they will exercise their option. This means the producer and the playwright will enter into a full production contract, based on the level of production the producer intends. The producer will owe the author another fee at this time, typically an advance against royalties.

This is not the typical situation in community theatre, however. There, a simple license is most common.

A license to produce a play differs in that it ordinarily does not involve a world premiere. It does not require exclusivity. The playwright does not take their script off the market for its duration. It involves the payment of royalties (discussed below). It is for a single production.

Level of Production

Before you contact the playwright, you must determine the kind and level of production you are able to offer them. The kind and level of production will determine the terms of the agreement you will negotiate.

For purposes of our discussion, we assume you will be presenting the world premiere of the work. Second, and all other subsequent productions (except moves from the nonprofit region to the commercial sector), usually fall under the general rules of play licensing, even if the script has not been published.

Equity or Nonequity

Your contract should begin by describing whether your production is professional or amateur. Generally, a production is considered professional if it employs at least one member of Actors' Equity Association (AEA) under an equity contract. Any other productions, even those that pay actors a small stipend, are considered amateur or nonprofessional productions.

A variation is the Equity Guest Artist Agreement (GAA), under which a college, university, or community theatre may engage an individual equity actor to perform a

specific role in a particular play. The equity actor is compensated for their services and works under the aforesaid GAA. The contract should clearly state the particular case.

Seating Capacity, Location, and Attendance

The seating capacity of the performance facility must be disclosed. This may determine the kind of contract to use. It also helps determine the size of royalties.

The location and purpose of the production may matter. These issues take into account the special needs and financial capabilities of the intended production.

In addition to seating capacity, if a theatre has been operating any length of time, it's fairly easy to determine average attendance for the kind of play to be produced. A classic comedy likely will draw more attendance than an absurdist piece. The producer should give the playwright an idea of what kind of attendance to expect.

The level of production determines the kinds of terms the parties may expect to give and receive from each other. Obviously, a community theatre company cannot give the same terms as a major equity house, and should not expect the author to give them the same rights a large production could demand.

Royalties

Royalties must be paid for any performance in front of an audience. It is irrelevant if tickets are free, the performance is for charity, or whether it is a public or private performance.

A reading also requires permission and the payment of royalties. Similarly, if persons not connected with the production are invited to dress rehearsals, then royalties are due for those also. (These are true of a production licensed through a rights agency like Concord or TRW, as well.)

Royalties may be a flat sum, a percentage of ticket sales, or a combination. Community theatre companies ordinarily pay a flat royalty for each performance. For a well-known, full-length play, the licensing agencies charge based on seating capacities. Look over your own contracts with those agencies to see how your fees are calculated. Royalties are lower for theatres with seating capacities of 150 or less. Higher royalties apply to theatres with seating capacities above 150; those royalties usually are a guarantee against a percentage (5-10%) of gross ticket sales.

There is no substance to the argument that a community theatre company should pay an unknown author less than it would pay for a play from a licensing agent like Concord

or Dramatic Publishing. Royalties are so low that it would be unethical to undercut an author merely because they are unknown. (Few playwrights are able to earn a living from their playwriting alone, as it is.)

Royalties must be paid to the author on a weekly basis. Commonly, royalties are paid on the Wednesday following the performance week for which they are earned. If the arrangement calls for the author to receive a guarantee against a percentage of ticket sales, their royalty payment must be accompanied by a detailed statement of box office receipts for the period, certified by the treasurer as being accurate. The author also has the right to audit the box office records.

Copyright

The copyright always belongs to the author. No exceptions.

Author Comps and House Seats

An author is entitled to see all performances of their show for free. At the community theatre level, they also may ask for a reasonable number of comps for friends, family, and professional attendees.

Comps are distinguishable from house seats. Comps are free and given to the artists and staff. Often the artists use them to invite agents and producers who can further their careers.

House seats are often the best seats in the theatre. They are for the producers, theatre owners, artists, and anyone else who can negotiate them into their contracts.

Any contract should specify the number of comps or house seats the author gets for each performance.

Run of the Play

The contract must specify the exact date the play is to open (including previews) and the exact date it will close. It should specify the number of performances, breaking this down to matinee and evening performances. (If the run is to be open-ended, then, of course, a closing date will be omitted from the contract.)

Extensions

If the run is for a limited time, and yet the show is a major success, it may be possible to extend the show. The contract should provide that the parties will negotiate in good faith any extensions by a separate agreement at the appropriate time.

Casting

Authors are entitled to casting approval, although not all require this.

Director Approval

Likewise, the author is entitled to director approval. This is especially important with a new play. The first production is artistically the most important. This is when the author gets to experience their work for the first time, in rehearsal with actors, and in performance before an audience. A good director helps the author determine the play's strong points, as well as its weaknesses. The author and the director absolutely have to be able to work together.

Presenting a brand-new play is an arduous process in which the author should be involved in as many areas of production as possible. Frequently, changes must be made in the script as the rehearsal process continues. (With a previously produced play the script is frozen by the time you have licensed it.)

Plays evolve in the production process. Often, a playwright will see things in rehearsal they didn't know were in their play, sometimes for the good, sometimes for the bad. As the actors and directors bring the manuscript pages to life, they may have ideas and suggestions either for the good or the detriment of the work. Finally, the early audiences (and critics) will tell the author what they have.

It is essential to have the playwright on hand. But, as in all creative endeavors in which there are many artistic hands at work, these situations are fraught with potential conflicts. (There is hardly a success in the history of Broadway which didn't have its share of artistic disagreements.) These easily can get out of hand and torpedo an otherwise promising production.

The producer must discuss choice of director early with the playwright. In fact, a wise producer will insist that the potential director confer in great depth with the author prior to hiring that director to make sure they can work together and that they share the same artistic vision for the script. It can be a nightmare if, once rehearsals are underway, the director and playwright clash. With today's technology, such as Skype and Zoom, the parties can communicate together even if they are on opposite sides of the country.

Other Personnel Approval

Authors are also entitled to approve the designers of the scenery, lighting, and costumes. In the case of a musical, the composer has the right to approve the choreographer, musical arrangers, orchestrators, and music director.

Artistic Changes

In the theatre, the playwright, traditionally and justifiably, holds the position higher than the director's. Therefore contractually, historically, morally, and ethically, the playwright's vision should prevail. No artistic changes should be made in the script without their consent.

This means you (or your director) cannot change the time period, characters, genders, names, dialogue, action, or any other part of the script without the author's approval. Now, some authors are willing to allow changes, while others demand complete fidelity to their work. Obviously, it becomes a case-by-case situation. If you want to make changes, you should outline your desires to the author well in advance of your production. If you are working side by side with the author in the rehearsal room, this is easy to discuss.

If you find you want to make too many alterations, perhaps the script isn't right for you in the first place. In that case, find another play. Or write your own.

Ownership of Artistic Changes

Any artistic changes that the playwright adopts belong to them as their sole property. It doesn't matter whether the actors, director, or producer thought up the ideas. The playwright owns them outright. They don't have to compensate anyone for them.

There are sound reasons for this. During the course of production, many people will offer suggestions, invent bits of business, or find new facets to characters. Historically, all ideas discovered during production, regardless of the source, have been recognized as belonging to the playwright, to do with as they see fit, including to retain in their script. After all, those ideas wouldn't exist if the play hadn't been the blueprint in the first place.

It's often difficult to determine exactly who contributed what—even the artists themselves won't remember. Sometimes one actor might throw out an idea, which triggers a better idea from the director, which sparks an even better idea from the playwright. The burden of attributing credit would be too great.

For the creative process to work effectively, artists need absolute freedom. They must be able to contribute ideas, as well as to accept-or reject-them.

The Dramatists Guild takes the position that playwrights own, automatically, any material of which they approve that the producer or any other persons contribute to the show. They do not have to compensate the contributor, unless they have made a separate agreement with him to do so. I wholeheartedly agree with the guild.

Producer, Protect Thyself

Producing theatres are increasingly finding themselves in the middle of this tug-of-war between artists. As a consequence, many playwrights are demanding, in their contracts, that producers hold them harmless and indemnify them against any claims by anyone connected with the production for ideas the playwrights incorporate into their scripts. This is not unreasonable. After all, the producer hired the alleged claim jumpers. So authors want producers to make it clear to all their employees that all ideas and suggestions become the author's sole property. If any person has a problem with this, perhaps they should not work on an original script, unless they enter into a separate contract with the playwright.

Producers can protect themselves by requiring all of their employees to waive, as part of their written employment agreements, any and all claims they might have against authors for any ideas or suggestions they contribute or claim to contribute. This would be strong evidence in any subsequent controversy that the producer did their part.

Merchandising

As an additional revenue source, some theatres sell merchandise with the play's title and logo on it—T-shirts, buttons, jackets, and so forth. The author must consent, and they are entitled to a percentage of the profit. The terms are negotiable.

Rehearsals

Authors are always entitled to be present at all rehearsals. No one may exclude them. For their own protection, a producer of a world premiere may wish to insert a clause committing the author to attend a certain minimum number of rehearsals and previews, or otherwise to be available for rewrites, as necessary. If the producer expects an out-of-town author to attend rehearsals and/or previews, the producer must pay for the author's reasonable travel and living expenses. See below.

Author Travel and Housing Stipends

Out-of-town authors are entitled to reasonable travel and housing expenses. If the budget is tight, there are ways to minimize housing costs. Either the producer or a generous board member could give the author room and board. A local hotel may be coaxed into exchanging a room for advertising space in the program, or co-sponsorship of the show.

Again, as mentioned earlier, if the author's physical presence at rehearsals is not practical, either for monetary or other reasons, Zoom, texting, and various other forms of technological communication can compensate for this issue.

Video and Audio Recording

Many theatres automatically assume their license to produce the play also gives them the right to record the show "for the archives." No! The license to produce the play is only that: the right to present the show, live, in front of an audience for whatever number of performances the author has granted. Any recording—even if "for the archives"—without the author's consent is a violation of copyright. Some theatres post videos of all or parts of their shows on YouTube. This is absolutely a violation of copyright, as well as a violation of most licensing agreements. The only exception might be a brief excerpt, usually not more than ninety seconds, to serve as a marketing device for the production. However, the author must consent. (See below.)

Authors properly have many concerns with recordings. The author has no quality control over the recording or the edit. Even worse, it creates a record of a show that still may be a work in progress. The author must have a chance to fix any weaknesses in their script before a record is made of it. Very bluntly, the author may not like your production, and therefore, they would not want it posted on the internet for the whole world to see. In addition, the author can't control where, how, or to whom the tape is shown. "For the archives" is meaningless. The author may not want certain people to see a video of the play, at least in its present stage of development. Any commercial use of the tape may interfere with the author's ability, at a later time, to sell the film or TV rights to their script. It may hinder their chances of getting a major production, since the sale of movie rights is a major inducement for investors to back the play.

If a video recording "for the archives" is desired, the author may place any restrictions on its use that they want.

It is reasonable to seek author permission to record a brief excerpt from the play (not exceeding 90 seconds) for use in TV or radio broadcasts, or on YouTube or the theatre's website, promoting the production. But the recording must be used only for

that purpose.

No member of your audience should be permitted to record audio or video of a performance for any reason. With smartphones and other handheld recording devices, this has become easier than ever for audience members to do and then post their videos on YouTube. The producing theatre must be vigilant in prohibiting this practice—just as it would with a play or musical secured from one of the major licensing companies.. The theatre must post notices in their programs and make announcements prior to each curtain that recording is forbidden. Uhe hers should be on the lookout for violations and take appropriate measures to stop them.

First-Production Credit

Ordinarily, published versions of play scripts contain a page describing the first (and sometimes also the second) production of the play, giving credit to the theatre, initial cast, director, and so forth. One hesitates to expect an author by contract to guarantee this credit. The author has to negotiate their own contract with the eventual publisher, and it's unfair to tie their hands any more than necessary. But, while it's acceptable to *ask* an author to use their best efforts to secure first-production credit. as a matter of course, publishers usually give the credit anyway, so it's not necessary to haggle about it.

Billing

The author is always entitled to credit whenever the title of their play appears within the producer's control—programs, publicity, advertising, handbills, website, social media, and so forth.

The credit usually appears on a separate line, thus:

TOO EARLY TO TELL
by Vernon North

The author's name should appear in a type at least 75 percent of the size of the typeface used for the title and in the same font.

The parties should agree upon what action must be taken if a mistake occurs in billing, due to printer's error, oversight, and so forth. Sometimes an insert into the program can solve the issue. If the author's name is misspelled or left off a subscription brochure, the error is more serious and can be expensive to correct. Make sure you assign someone to proofread your programs and check for these kinds of errors. Whatever the nature of the billing mistake, the responsibility for correcting it belongs to the producer. In your contract, you must agree to correct the mistake promptly or upon notice from the author.

Exclusivity of Run

If you are presenting the first production of a brand-new play, tie down the exclusive rights to the world premiere. After all, you can't take the credit for the world premiere of a play if another theatre presents it first.

Due to the long waits for theatres to read and make decisions about plays, authors commonly send the same script to many theatres at one time. If you're interested in a hot play, several other theatres may also be interested.

Of course, you must give the author solid reasons why you should be first. Can you get your production up before anyone else? Do you have a very visible venue or strong reputation? Are you personal friends with the playwright? Can you offer them more money?

If you can't offer the playwright a significant-enough first production, then ask for the exclusive rights for the run of the play in your area. This is a reasonable request only if yours is the first production. With previously produced plays, licensing agents and authors rarely give exclusive geographic rights, unless it's a really major production. Ask the playwright for exclusive rights to the play within a 50-mile radius of your theatre for 90 days prior to your run.

Be reasonable with your request. Unless you are offering a very significant level of production or a lot of money, it's unfair to ask the playwright to pass up other opportunities so you can have exclusivity.

Subsidiary Rights

The life of a successful play may extend for decades. From its first production in a Community or regional theatre, it may get a commercial transfer to Broadway or off Broadway. Afterwards, there may be the sale of the movie rights, as well as amateur and stock licensing. All of these constitute the subsidiary rights, which the author owns.

Producers of a world premiere may seek to share in the author's future income from these sources. However, in recent years, this has been the subject of contentious debate, with arguments on both sides. Playwrights, justifiably, believe they should not have to give up any portion of their subsidiary rights, except in the case of a Broadway production. They argue that many theatres exist for the purpose of finding and developing new scripts and playwrights. These companies, which are invariably nonprofit entities, receive donations, tax benefits, and grants to support playwrights and expand the theatre repertoire. A theatre acquires a boasting tool when it discovers and

presents the world premiere of a show that becomes a tremendous success. This helps it attract audiences, donations, and grants, as well as giving it status and prestige.

Playwrights also maintain that if the theatre demands a share of their subsidiary rights or a piece of a commercial transfer, it is less a development venue than an investor in the show.

Playwrights are poorly paid to begin with, so it is wrong to take any money out of their pockets. In addition, a play encumbered with financial obligations to one or more nonprofit companies is a tougher sell to commercial producers, who prefer scripts with no monetary strings attached.

For their part, theatres claim that most productions, even successes, are money losers. Grants and donations are fine, but often slow in coming, and may not come in at all. They argue that they should receive some kind of compensation for having faith in both the play and the playwright, and that additional compensation helps to subsidize their other activities. If they develop a show that transfers to great profits for the commercial producer, why shouldn't they share in some of that income? Moreover, even if the play does not get transferred to a first class production on Broadway, it may still have a life in the secondary market, from which the author may collect royalties for years to come. Why shouldn't the theatre get a piece of those, they argue—after all, they took the initial risk, both financially and artistically.

The Dramatists Guild has long advocated against theatres taking a share of the author's subsidiary rights. Many companies now agree with the guild and so abstain from this practice.

Author Warranties

It is reasonable to ask the author to warrant that they are the owner of the work, that it is original with them (except for public domain material), and that they have the sole right to contract for production with you. The playwright should also represent that they have already copyrighted the work, or will do so before your production. If they have used material from another source, they should represent that they have the right to use such material. The playwright should hold you harmless ,and indemnify you if their warranties prove to be untruthful.

Here's why this is important. Suppose you have contracted with Author A to produce a play they claim to have written called *The Fatal To-Do List*. In your contract, The author warranted the piece was original with them and agreed to hold you harmless and indemnify you, if it was not. You produce *The Fatal To-Do List*, and subsequently, Author B sues you, claiming that they, in fact, wrote the play. If a court finds for Author B and

awards them a judgment against you, Author A is responsible to pay that judgment because their warranties of authorship were false.

Adaptations & Underlying Rights

A playwright might base a script on a work, such as a novel, TV show, or movie, whose copyright is owned by a third party. The new work may be a musical version of a stage play. The novel, TV show, movie, or stage play is called the underlying work. Permission from its owner must be secured in order to adapt and present it. If such permission has not been granted, both the adapting playwright and the producing theatre will be sued for copyright infringement.

It is incumbent upon the producer to insist that the adaptor provide a copy of their written agreement with the owner of the underlying work, giving (a) permission to adapt the material and (b) sole authority to license the adaptation to a producer of the playwright's choice. Sometimes the owner of the underlying work may demand approval of any productions of the adaptation. Or they may want to co-license the adaptation.

The producer must ascertain that they are contracting with the right party for their presentation.

Assignment of Contract

As a producer, you may wish to assign your rights to present the play to another producer. Authors are justifiably leery of such clauses.

An author-producer relationship is, in some respects, like a marriage. Both parties should be committed to each other and to the work. It is a relationship based on trust and shared vision for the future. A producer wishing to assign their rights to another is like a fiancée wishing the right to substitute her best friend in her place at the altar at the time of the marriage ceremony.

There are only two circumstances under which a producer may justifiably assign their rights: first, when they need to bring in a coproducer to help present the work; or when they are assigning the rights to the limited partnership that will provide the financial backing. In both events, the producer remains with the show.

Termination

An author has the right to terminate the contract if the producing company fails to live up to its obligations thereunder. An example might be if the producer fails to pay royalties on time, or does not pay the proper amount of royalties.

BLANK FORM CONTRACTS FOR AACT MEMBERS

If all this seems like a lot to do, we refer you to the business and legal forms available to AACT members in the Resource Library on the AACT website.

These include:

- A contract for a simple production license for an original play.
- An underlying rights contract to use if the owner of those rights is willing to strike a deal with you. See page 13.
- A limited license form, in case the producing theatre wants a recording of the production for its archives. See page 9.

[Click here to view the business and legal forms in the Resource Library](#)

(You must be signed in as a member in order to access these.)