

THE COWBOY WAY—May/June 2003 issue

By Mickey Freiberg

Q: If an agency/agent, manager, lawyer says they are going to represent you, how and when is that formalized? With attorneys/law firms, an engagement letter is pretty standard at the time they make the decision to take you on as a client. But with agents and managers—when they “go out” with your material, does any written agreement exist?

Any agency operating within the state of California keeps on file a standard talent contract that has been proscribed to the letter of the law. A manager is not so solidly bound to these state requirements, but the majority of the more reputable are likely to keep very similar documents lying around in the event that they find a writer they would like to sign to contract. So you would think that this means every client represented by every agent and manager in the state of California has been signed to such a contract. I will not speak for myself, but I do know this is not the case. Let's talk brass tacks here. Many people prefer to test drive a car before they go through all the paperwork involved in buying the thing. Similarly many agents prefer to gauge the value of their prospective new clients (as well as the quality of their working relationship) before investing any time and energy that might be better used representing the proven commodity of their established stable of writers. Now I realize this might initially sound unfair to the enterprising young writers out there looking for stable representation. Not necessarily so. Follow me along to this next question and you might just see what I mean.

Q: An agent is interested in one of my spec scripts, but we have not yet gone into a contract. He has agreed to “find interest from packagers or production companies” before we can go into a contract. My question is how can I attach my name to the director's seat once interest is secured?

Alright, here's a perfect example of an agent who's attempting to hedge his bets. He can conjure up all sorts of reasons, but the simple truth is he doesn't want to go to the trouble of formally signing you until he knows that you're worth his time. Of course, if he “finds interest” in your material from a producer, then he'll jump at the chance to snatch you up and broker a deal that's now in the bag. So, the question is what kind of options does that leave you to protect yourself? The trick worthy of that same enterprising young writer is to turn this situation to his or her advantage. If an agent or manager wants to represent you on a handshake alone until the time that he finds “producer interest” then go ahead and let him. It's not really hurting you to have a capable agent running your script around town. But don't forget that when that agent or manager does come across a producer that flips for your script, there is no binding contract (by his choice) that says you have to let that agent or manager broker the newfound deal. Maybe he's done a great job for you; maybe he's exactly the guy you've been looking for to further your career, but maybe not. If you don't like the idea of being test driven, then just be ready to do the test-driving when the time comes. Let me be clear that in my previous answer I was in no way suggesting that an agent or manager should be willing to represent any client not under direct contract to his company. Neither am I now assuming a writer has any right to seek more committed representation once his “handshake” agent or manager has scrounged up interest in his material. I'd simply like to take the chance to warn both parties that the one thing constant in any kind of a test-drive is that the driver is bound to end up right back where he started from.

Q: Can you offer some insights about negotiating the situation where multiple agents/managers might become interested in repping you?

Okay, so you've got a line of agents and managers winding around the corner, chomping at the bit to be the lucky one that gets to represent you. Sounds like some kind of writer's wet dream to me; but hey, crazier things have happened in this city. So, if you wake up tomorrow without a hangover, and the answering machine is still beeping the lambada, then you know one thing for sure: whether it's your script or yourself you've certainly got something of value on your hands. My advice is simple: don't waste this chance. What you want to keep in mind is that you are likely the only one in this little scenario that is going to be keeping your long-term best interest in mind. There is a hungry pack of wolves waiting outside your front door for the chance to sell your current wares. What you need to figure out is which one of those wolves is most likely to be there after your initial luster has invariably worn off? What's going to happen if your hot new script doesn't end up selling? Don't forget that you're looking for the kind of representative that's going to be interested in your career as a writer; not just the sale of one measly script (as good as everybody might seem to think it is). As a writer, I'm assuming you're in this for the long haul ... let's just hope the representative you choose will be, as well.