

THE COWBOY WAY—Sept./Oct. 2002 issue

By Mickey Freiberg

Q: When a producer tells me I'll get “points” because the budget is very low (under a million), how many can I expect to get, and do I need an agent or lawyer for this type of deal? I have a feeling you've heard this question many times over the years.

Regardless of how low or high a budget on any film project might be, and prior to any “points” offered on the backend, you have not been legally hired as a writer until you've been paid an initial compensation. For a producer to take ownership and control of your material's copyright, there must first be financial compensation in order for the contract to be legal. If you are a WGA member, then the minimum rate is based on the guild's current scale. If you are not a guild member, and if the project is not guild sanctioned, the initial compensation can be any dollar figure you're willing to agree upon. Whether one dollar or one million, money needs to change hands in order to make your contract with the producer binding.

In regards to any options for backend “points” that are being offered, I'll fall back to the age old maxim that's never done me wrong this side of the border, “The more is usually the better, and the more so when you're hungry or broke.” But be more concerned with the definition of “points” that the producer is using, then exactly how many he's offering you. He could be handing over a heap of points based on the film's overall net, but you might be surprised how easy it is to put a production's numbers in the red when it comes time to tally your back end compensation. It's a tricky business making sure those points will end up being worth anywhere near the numbers they suggest. That's exactly why, if you're serious about making this project work for you, I would suggest you get an entertainment lawyer to conclude your negotiations. A lawyer is much better equipped to handle the legalese and definition of profits that will help to insure your long-term interests are covered. It also never hurts to have a Doberman at the ready when it comes time to collect.

Q: If I set up a deal by myself, i.e. have made the contact myself, got the script read and then received an offer, would you advise that I just hire a lawyer for 5%? What do I get for the extra 10% on top which would go to the agent?

If you have been talented enough (re: lucky bastard) to set up a deal (re: fall into an offer), and follow it through (re: wait for a phone call) to the point where specific negotiations are now required (re: you're faxing me how many pages?), I would suggest you look at this as a perfect opportunity to finally land that representation you've already been searching for and will certainly need when it comes time to go out with your next project. Since I've never met an agent that didn't have at least a touch of larceny in their blood, I have a feeling a writer walking around with a “ready to order sale” dangling from the neck will attract about as many sharks as a fresh cut shank of lamb at Seaworld. Find the one that makes you the most comfortable, and is not salivating so much as to forget your name once you've signed the contract, and feel confident in the fact that at least the shark is on your side this time around. If any of this makes you skeptical, just be sure to remember that the producer offering you the world on the other side of the table can't wait to gobble up the wide-eyed and unrepresented writer he sees before him (that's you!) just as soon as the door swings shut to leave the two of you alone.

Q: If you had two scripts you were ready to throw out into query-ville, would it be foolish to query an agent with both at one time? Would they, side-by-side, detract, distract or otherwise diminish the other?

From my own experience, and by my own business practices, I rarely give a query letter the chance to *wow* me past that first ‘all or nothing’ logline and paragraph. Different agents will, of course, react differently to the presentation and density of a query letter. But for my money, when you’re talking about piquing someone’s interest you always want to err on the side of brevity. Leave them curious and wanting more. Have the other pitch (or the other two or three I hope you have if you’re serious about your writing career) ready in case they call you to find out who you are and what else you’ve got. Assuming all of your projects are of relatively equal value, you can even rotate which chamber to fire when you query different companies. Do a little research and figure out what kind of scripts they usually look for before you send out a blind query. It’s always better to catch them with the one they’re likely to be looking for, than to bounce off any two they’d have no reason to request.

Q: Are there any agents out there that *don’t* charge \$200-300 USD to read your script?

It is against the law in the state of California for any licensed and bonded agent to accept money for the service of reading either solicited or unsolicited materials. Agents are in the business of finding material, selling that material, and profiting from a commission paid by their signed clients and based solely on the sale of that material. If you’ve been charged for the mere reading of your material, you were either taken advantage of by an unsavory agent or manipulated into thinking a licensed agent was looking at your material when it was really just going into the hands of an enterprising individual that likes to be paid to read. In the first case shame on him. In the second case shame on you.

Q: Why is it so difficult to get an agent to represent you? What's the secret, if any? I've been acting for years *and* have my own local show and am trying to get more exposure.

As you might have been misinformed, let me clarify that I am indeed a literary agent, and have fallen into the habit of responding to questions relative to the literary world. But since I was, once upon a time, a theatrical agent, and have found myself especially moved by the dilemma you find yourself in, take this answer along with any ire that might have rubbed off along the way. The fault lies either in the show you seem to be banking your career on, or the level of talent you are able to demonstrate away from that show. If the show isn’t impressive enough to get you representation by itself, then fall back on your connections and abilities as an actor independent of the show. If your connections and abilities independent of the show prove equally incapable of landing you representation, then perhaps you should take a much more critical look at yourself. Assuming the problem lies with you, then be happy you even have your show, and keep trying to improve as an actor. So says the literary agent.