



From the AACT Resource Library

## Commissioning New Works

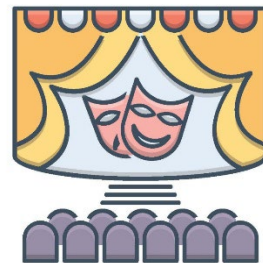
Adapted from *The Stage Producer's Business and Legal Guide, Second Edition*, by Charles Grippio

Instead of producing a script that has already been written, you may wish to create your own play from scratch. Unless you are also a playwright yourself (and have the time outside of your producing duties), there are two ways to create your own work:

1. Commission a playwright to turn your idea into a finished work, which is the focus of this article.
2. Have the members of your company collaborate to create a brand-new script. This is often called "devised theater." See "[Devised \(Collaborative\) Theatre Productions](#)" in the AACT Resource Library (you must be signed in to the website in order to access this)

The advantage to commissioning a play is that you are involved from the beginning in shaping and structuring the piece according to your own vision and needs. You are not restricted by the demands or the form of a script that has already been written.

If you operate a nonprofit company, many foundations and governmental agencies make funds available to develop new works. In recent years, funding sources have become especially interested in supporting plays that dramatize certain social issues such as child sexual abuse, immigration, or LGBTQ rights. Special consideration is often given to female playwrights or members of minority groups.



A commission can occur in any one or a combination of several ways:

- You (or a member of your company) have an idea you wish to develop into a full work.
- You have obtained grant money for that purpose.
- A playwright approaches you with an idea (but not a finished script) and seeks a commission.
- You are particularly anxious to work with a certain playwright and want them to create a work especially for you.
- You have acquired the rights to dramatize a particular property from another medium, such as a novel.

However you initiate the project, the process and the legal requirements are the same: you are paying a playwright to create a particular work for you.

Once you have decided on a project and selected a playwright, both parties must negotiate two separate, yet interdependent, contracts between them: (1) the commission agreement and (2) the full production contract.

The commission agreement is a simple document which sets forth the terms of the arrangement between the producer and the playwright to create the work.

The full production contract sets forth the terms of production, once the play has been written and the producer is ready to present it. The full production contract is the more complicated and should be based on the model described in the article, "[Producing Original Plays](#)" in the AACT Resource Library (you must be signed in to the website in order to access this.)

I recommend negotiating the full production agreement at the beginning of the relationship. Although it is possible to put off finalizing the agreement until after the writer has completed their script and you have decided to present it, this is the less desirable approach. It is better if both parties have a clear understanding of the terms of the production before the playwright actually begins work. If you wait until the script has been completed and the two of you cannot reach a satisfactory production agreement, both of you may find all of your work, time, and expense has gone for naught. If you are hopelessly deadlocked, at least one party (and probably both) will lose.

In addition, the production negotiations will demonstrate how well you and the playwright can get along and reach agreement on substantive issues. If you can't even agree on the terms of production, how will you work together to create a finished play? And how will you work together during the actual production process?

If you choose to wait to negotiate the production agreement until the script is finished and you have decided to produce it, then all you need do at the start is prepare the commission agreement. Add a clause therein, such as the following:

*In the event the producer deems the work satisfactory, then, prior to any production, the parties shall negotiate in good faith an additional agreement, setting forth the terms of the production.*

The full production contract would be the same as you would give the playwright if they had presented you with an already completed script. See "[A Guide to Producing New Plays](#)" in the AACT Resource Library.

## **Risks**

The commission agreement is an option to produce a work that is yet to be written. (This distinguishes it from producing an already completed script, as discussed in chapter 5.) Unlike an already completed play, you have no way to judge its quality, playability, or suitability for your needs.

You can minimize your risks. You can work with a playwright with whom you have worked before or with whose work you are familiar. However, this in itself may be a risk. The well-

known playwright may be "written out" by the time you commission them. They may lack the fresh perspective or vision that a newer playwright may bring to the piece. And, while using a well-known playwright may help sell tickets, it forecloses your chance to discover a new star.

## Fees

There are two formulas for paying commission fees to the writer.

1. Under one formula, the producer pays the writer half the commission fee when they sign the contract. The writer receives the balance when they turn in their first draft.
2. Alternatively, the producer pays the writer half of the commission fee when they sign the contract, an additional one-fourth when they deliver their first draft, and the balance when either the producer accepts the first draft or the playwright turns in their second draft.

It is likely at this point that the producer will conduct readings with actors and a director to determine whether the script works in its present form. You may ask the writer for rewrites. If the producer requires more than two drafts, they must pay additional compensation to the writer for each successive draft.

Commission fees are never conditioned on the acceptance or quality of the final work. The producer takes the risk the work may be not suitable or satisfactory.

The size of the total commission payment is negotiable. It may depend upon external factors, such as how much grant money you have received or the restrictions placed on that money by the donors. It must be sufficient that the writer feels reasonably compensated for their time and effort.

If the playwright must travel to research the project, the commission fees should include reasonable reimbursement for their expenses. If they must acquire materials for research-such as copies of old documents-you must reimburse these charges also.

If it is any consolation, higher commission fees look good on grant applications. And it may be money well spent. Unlike regular option fees, commission fees are not recoupable out of royalties.

## Copyright

Regardless of who generated the idea, the copyright always belongs to the playwright, even for commissioned works.

## Schedule

Provide for a specific schedule to which the writer is expected to adhere in turning in their drafts. The schedule you negotiate will depend upon the work that is to be done, how fast the writer works, and whether travel or substantial research must be done.

Also factor in the time it may take to arrange readings and to complete the rewrites that surely will occur as a result.

Ask the playwright whether external factors might interfere-such as family or job responsibilities.

You are entitled to know if the playwright has prior obligations to other producers. Inquire whether they are under contract to write a screenplay for a film company. Under the Writers Guild contracts with the film companies, the screenwriter's services are exclusive to the studio until they have completed the contracted-for screenplay. Therefore they cannot begin work on your project until that time.

Factor in when you would like to present the play as part of your own schedule.

### **Satisfactory Work**

When the script is completed satisfactorily, you will choose to go ahead with production. The terms of the full production agreement will kick into effect.

At this point, you are taking an option to present the work. You owe the writer an option payment (separate and apart from the commission fees).

### **Unsatisfactory Work**

After all is said and done, you are free to choose not to present the play. Although you commissioned the work, the writer is free to take the play elsewhere, with one exception. The exception occurs if you own the dramatization rights to the underlying work, such as a novel. In such event, unless you release the rights, the project is dead in the water.

It may be fair to negotiate a mechanism by which you will assign your underlying rights to the playwright (or their subsequent producer) in consideration of a fee.

Certainly it would be reasonable to expect reimbursement of whatever money you have paid for those rights. This arrangement allows the writer to salvage their work product, which, without the underlying rights, otherwise could not be produced.

And it compensates you for fees you advanced for a project you have chosen not to do.

In the case of a satisfactory script, you will always assign your rights to the underlying work to the playwright.

### **Exclusive and Nonexclusive Rights**

By commissioning the author and paying the subsequent option fees, you are purchasing the rights to present the world premiere of the work.

You may reasonably request the right to present the play more than once-perhaps several times over a period of years-at your venue, exclusively in your geographic area. (A geographic area is usually defined as within sixty miles of your location. I have seen it stretched to as much as 200 miles-with, however, a corresponding increase in fees and royalties to the author.) For each subsequent production you present, you must pay royalties to the author, just as you would do for any other play.

It is unreasonable to demand the exclusive right to present the play anywhere in perpetuity. After the initial run, the playwright should have the right to take the work to other producers, especially outside of your geographic area.

### **More Information**

Much of the contractual information for a commissioned playwright mirrors the content of a contract for producing a new play. See "[A Guide to Producing Original Plays](#)" in the AACT Resource Library (again, you must be signed in to the website to access this.) The article also includes links to various fill-in-the-blanks forms.