

Working with Publishers & Royalty Houses

What Is the Role of the Publisher/Agent?

Many people think the publisher or royalty house keeps all the royalty paid for a license to produce a play. This is not so, except in the case of a few small publishers who make an outright purchase of all rights to the play and then keep all royalty for themselves.

In essence, the publisher acts as the author's agent, collecting a small percentage (10%-20%) for handling the licensing agreements. (The word "publisher" here is a somewhat of a misnomer. Some book companies publish plays but do not handle rights. However, it's what the royalty houses call themselves. We like I.E. Clark's more exclusive term, "publisher-agent.")

The arrangement is a delicate one. The publisher-agent must follow the requirements set by the playwright and the copyright law. At the same time, the publisher-agent is in a business that demands that it satisfy customer needs.

"Our own philosophy," said Clark, "and one shared by most of the major publishers, is that the publisher-agent is the liaison between the author and the producing organization. We try to give our customers the best terms and the best service we can as limited by our contracts with our playwrights. We also try our best to see that our authors realize enough income from their work to encourage them to continue writing. Nothing pleases us more than to send a playwright a big, fat royalty check made up of payments from happy producers."

Why Royalty on Free Performances?

Royalty covers the performance of a play for an audience, regardless of the circumstances.

"Whenever there is an audience we charge a royalty," said Craig Pospisil of Theatrical Rights Worldwide (TRW). "If the work is done strictly in a classroom for a class, then it doesn't really constitute a performance. But if the class invites in an audience of parents or even another class, then it's a performance and subject to royalties."

Another example is the custom of inviting friends, family and other guests to a final dress rehearsal "to get the feel of a live audience." This requires payment of royalty because there is an *audience*. People not otherwise part of the production will be watching the performance and that is enough to trigger the royalty clause. However, because the performance is free and given to a small number of people, the royalty charged will likely be small.

It's up to the publisher-agent to decide whether a particular presentation is an actual performance, not the theater company. If you're in doubt, contact the publisher-agent and ask.

As for free performances throughout the run, said Clark, "We realize that there are performances at school assemblies, workshops, club meetings, and so on, where it would be impossible or unwise to charge admission. But we are appalled when a principal tells a teacher that admission may not be charged for a public performance. When was the last time the school had an admission-free football or basketball game? Why should drama be a second-class citizen to athletics?"

Are There Discounts for Nonprofit Groups?

No. The royalty fees listed in the publisher's catalog are already the rates established for nonprofessional theaters. Professional theaters apply for a leasing fee, and are charged differently. So don't ask for a discount--you won't get one.

Can Fees Be Reduced?

Yes and no. However, most publisher-agents prefer not to talk specifically about such reductions.

Said I. E. Clark, "This depends on many things, most of which we do not want to discuss publicly. It is a private matter between us and our customers. We are willing to consider such requests, but most of the time we say no."

Aileen Hussung of Samuel French mentioned two situations that might allow a reduction. "Since royalties are in part determined by the number of seats you can sell, you can block off auditorium seats and ask for a lower royalty than would normally be the case. And, if you're a good customer of ours, and the show doesn't do well, you *may* be able to get a reduction of royalty after the fact."

Again, there's no guarantee, here. But there's no harm in asking.

However, one playwright points out a number of concerns from the author's point of view.

Regarding the suggestion to cite small houses, he responds, "What assurance does the agent/playwright have that your 250-seat house seldom sells more than 90 seats?" Actually, some royalty houses pay "spies" to check up on that sort of thing. We know of one group that tacked on an extra week of performances without notifying the agent; they were discovered and made to pay the royalty plus a penalty.

"In most cases," he said, "the royalties charged are reasonable if not quite modest."

His real concerns come from experience--either his own, or that of other playwrights, including these dishonest ploys used by sundry groups.

- A play is a hit and the group 'adds' an extra performance or two. Justification? 'We paid them for ten, so why should they beef if we do 12 performances.'
- Change the title of the play and pay nothing--or, worse, keep the title of the play and pay nothing.
- The group is a one-time deal, planning to disband after the last performance, 'So let the agent try to find us.'
- Buy one copy of the play and copy the rest.
- Videotape a performance and sell the tapes to anyone who wishes to buy.
- If it's at a school, give an extra performance during the day and call it an 'assembly program.'
- Give lots of preview performances and call them 'dress rehearsals.'
- Inform the agent/publisher that the company is not going to do the play after all, ask for a return of the royalty, and then go ahead and do the play anyway.
- Notify interested parties that the business manager skipped town and took all the profits with him.

"The list of cons is endless," the playwright said, adding that they are all well-known to agents--who are naturally suspicious folk to begin with. So he doesn't suggest you try any of these. "One dinner theater company tried to charge \$28 for admission: \$25 for "dinner" and \$3 for the 'play'; royalty house Samuel French was not amused.

"All these gimmicks are dishonest, unethical, immoral and usually illegal," he added..

One last comment: "You'd be amazed at the number of theater groups that continue to hand out play programs that fail to mention the playwright's name," he said. "A program without the playwright's name ignores the fact that without the author, there would be no reason for a program."

When is royalty due?

Check your licensing agreement. In almost all cases you must pay *several weeks prior* to the first performance. (Only professional, for-profit theater companies normally pay a royalty based on ticket revenue, determined after the show has opened.)

Can We Make Changes and Cuts?

Sometimes. However, most playwrights oppose changes in the text, and warnings against this are clearly stated in the contract. Cuts or changes in dialog may seem minor to the director, but can easily alter the author's intentions. In most cases the license states clearly that the play must be performed *as written*.

This does not mean that changes are impossible--merely that you must check with the publisher-agent beforehand.

Indeed, most publishers *urge* directors to contact them regarding possible changes, because there may be an accommodation. The key to acceptance is how the change affects the integrity of the script. Playwrights and their agents are reasonable people, and if your request makes sense, it may be granted. However, allow enough time for the approval process. Most requests are handled on an individual basis, and in many cases the playwright or the playwright's estate must be contacted for permission.

One recent addition to licenses is a "gender clause," which restricts changing a character's sex from female to male or vice versa. This grew out of a lawsuit won by the royalty house in which a company changed the gender of Reno Sweeney in *Anything Goes* from female to male.

Considering that Reno has a romance with a British gentleman in the show, the sex change put an entirely new slant on the plot.

Playwrights also have stopped a male Truvy in a production of *Steel Magnolias*, and an all-male cast in *Who's Afraid of Virginia Woolf*.

Because changes are not a black-and-white situation, it's a good idea to be certain about them before you present the play.

"Always ask," Hussung told us. "It *never* hurts to ask."

Make your requests as specific as possible, said Craig Pospisil of Theatrical Rights Worldwide (TRW). "Don't write and ask to 'cut a little bit' out of act one. Be specific about the cuts, including the specific words and lines and pages."

As you might expect by this point, there is no across-the-board formula regarding excerpting or cutting plays for competition or similar uses.

"You can't cut or excerpt Albee, Beckett or Williams," said Pospisil. "Others may allow it, but each request has to be checked with the author or his estate."

All the representatives we talked with agreed that it is easier to get approval to do just one act rather than cut down an entire play to fit a time constraint.

The same goes for substitutions of songs in musicals.

"Composers get livid when you put in songs from the movie version," said Steve Spiegel of Theatrical Rights Worldwide (TRW). "And rightly so, since you are altering their work."

In most cases you are not allowed to substitute or add songs in a musical. For example, since many people are most familiar with the film version of *Grease*, many directors are tempted to add songs written for movie. This violates the license. (The current national touring and Broadway version has, however, negotiated rights to the movie songs.) When a university theater company asked to add the song "If You Go Away" ("Ne Me Quitte Pas") to the score of *Jacques Brel is Alive and Well and Living in Paris*, they were denied.

Such substitutions aren't always caught. Charles Tweed of the Jewel Box Theater in Oklahoma City reports that when the conductor's rental score of *Funny Girl* arrived, he discovered that a previous user had drawn a line through the first page of the overture (which begins with "Don't Rain On My Parade") and written "Substitute "My Man," a song used in the film, but not by the authors of the musical.

What Constitutes a Copyright Violation?

The most frequent violation is presenting a play without permission and without paying royalty. However, many violations are unintentional.

"We occasionally receive a letter from a high school director telling us that he or she ordered one copy of a certain play and is enclosing the royalty payment," I. E. Clark said. "When we ask where he got copies for the whole cast, he replied that he photocopied them; he had no idea that he was breaking the law." [See the Knowledge Base article on photocopying.]

"We have found very few violations by colleges and universities and by church schools," Clark continues. "High schools are generally honest. Perhaps the most frequent type of cheating by high schools and junior highs is paying royalty for one or two performances and then presenting three or four."

With so many theaters scattered all over the country, many cheaters get away with royalty violations. But a surprising number don't, and for reasons they might never suspect.

One is that most publishers subscribe to clipping services that regularly monitor newspapers for ads and articles about theater productions. These are then checked against the company's list of licensees.

A surprising number of violations turn up in other ways, however, said Clark

"An acquaintance who has moved to another state writes me, 'I saw a great performance of Play X by ABC High School last night.' Or a director: 'I saw a performance of Play Y and I'd like to order a copy.' Or customers: 'The Z Theatre did

the same play we did, and I thought you'd like to know that our performance was better.' Of course, we check to see if these productions were authorized, and on occasion they are not."

Rival theater companies have been known to turn in offenders as well. The Rodgers and Hammerstein Theatre Library (now part of Concord Theatricals) reported up to a dozen anonymous tips a week.

Violations turn up in quite unexpected ways. A playwright sent a publisher a manuscript and, as proof that his play had been performed, he also sent the printed program that just happened to list other plays performed by the same theater company--including one from that publisher which had been produced without permission.

"Under all these circumstances we check our files to see that books had been ordered and royalty paid," Clark said. "When we find a violation we get to work on it."

One of the most blatant violations came to light when an announcement appeared in a Houston newspaper that one of Clark's plays was being performed "by a prestigious local theater. The producer had checked out a copy of the play from the public library, made copies, and presented the play. Another example was a community theater company in New England that ordered copies of a play and paid the leasing fee for 10 performances. We saw a photo from the production in a theater trade publication: the caption under the photo mentioned that the play was performed 12 times."

Penalties vary. In some cases, the theater is billed for the cost of the royalties they should have paid. In more cases, a fine is imposed on top of the royalty. Repeat offenders face legal action, with damages on occasion substantial enough to close down the company for good.

Producing a play without paying full royalty is stealing. And it's stealing in a very public venue. The chances of being found out are great.

Said Clark, "Our advice to cheaters is: Don't advertise your play, don't tell anybody about it, don't let anybody come to see it."

Other Licensing Issues

Author's Name: Most contracts clearly state that the author's name must appear in all publicity. Publisher-agents not only use clipping services to check whether a license has been issued, but to make sure that the author's name is mentioned in all ads. If it isn't, the agent will take legal action.

Using a Song: If the playwright includes the singing of a song as part of a straight play, rights to perform that song do *not* usually come with the rights to produce the play. You normally must seek separate permission. However, performing that particular song may or may not be required. You may be able to substitute, but check with the publisher-agent first. Also, remember that the play royalty does not usually confer the right to use the song itself in the production, because the playwright probably does not own rights to the song. Again, ask the publisher-agent. You may have to clear song use through ASCAP, BMI, or other music organization.

Advertising in Advance: "Always check with the licensing company before you put a show in your season brochure," said TRW's Steve Spiegel. "One reason is that touring companies often negotiate city and territorial restrictions. These can happen unexpectedly." There may be other reasons, too. One community theater company announced its new season and put in the standard "all productions subject to availability" notice. They received a letter from Neil Simon's attorney, telling them that they were not to announce *any* Neil Simon play until after the contract was signed. There was no explanation, just a slap on the wrist. Your check is the binder to guarantee that you have rights to the show in most cases. However, contracts allow a royalty house to pull rights--although they seldom do it--and some say they never do.

Final Thoughts

Royalties, rights, and licensing are integral elements in the process of presenting plays to the public. It's true that the rules are not always clear--mostly because each playwright works out the rules separately, and often separately for each play.

But it's also true that most publisher-agents want to make it as easy as possible for you to license their productions. After all, they make their money by doing so.

"Community theater is the backbone of our business," said TRW's Spiegel.

This means that you do have some leverage. So, work with the publisher from the get-go. If you have questions, ask. If you are considering changes, ask. If you have a problem, explain.

After all, we're all in this together.