

BOOKS BECOMING MOVIES

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It is important to have an overview regarding the general subject of movies adapted from books. Many of the best movies of this century have been just such adaptations. Meanwhile, movies and their ancillary uses represent a huge portion of the entertainment industry, which is, itself, by many accounts the largest exporter of American fare to the world.

The following Academy Award best picture winners were films adapted from novels or non-fiction books ("books"). (Many of the other best picture winners were adapted from plays or stories.):

All Quiet on the Western Front, 1930, from the novel by Erich Maria Remarque

Cimarron, 1931, from the novel by Edna Ferber

Mutiny on the Bounty, 1935, from the novel by James Norman Hall

The Life of Emile Zola, 1937, from the book by Matthew Josephson

Gone With the Wind, 1939, from the novel by Margaret Mitchell

Rebecca, 1940, from the novel by Daphne Du Maurier

How Green Was My Valley, 1941, from the novel by Richard Llewellyn

Mrs. Miniver, 1942, from the novel by Jan Struther

The Lost Weekend, 1945, from the novel by Charles Jackson

The Best Years of Our Lives, 1946, from the novel by MacKinlay Kantor

Gentleman's Agreement, 1947, from the novel by Laura Z. Hobson

All the King's Men, 1949, from the novel by Robert Penn Warren

From Here to Eternity, 1953, from the novel by James Jones

Around the World in Eighty Days, 1956, from the novel by Jules Verne

The Bridge on the River Kwai, 1957, from the novel by Pierre Boulle

Gigi, 1958, from the novel by Colette Ben-Hur, 1959, from the novel by Lew Wallace

Tom Jones, 1963, from the novel by Henry Fielding

The Sound of Music, 1965, from the novel by Maria Augusta Trapp

In the Heat of the Night, 1967, from the novel by John Ball

Oliver! 1968, from the novel by Charles Dickens

Midnight Cowboy, 1969, from the novel by James Leo Herlihy

Patton, 1970, adapted from two books about Patton, one by Omar Bradley and another by Ladislas Farago

The French Connection, 1971, from the novel by Robin Moore

The Godfather (1972) from the novel by Mario Puzo The Godfather, Part II, 1974, from the novel by Mario Puzo

One Flew Over the Cuckoo's Nest (1975) from the novel by Ken Kesey

Kramer vs. Kramer, 1979, from the novel by Avery Corman

Ordinary People, 1980, from the novel by Judith Guest

Terms of Endearment, 1983, from the novel by Larry McMurtry

Out of Africa, 1985, from the book by Isak Dinesen

Dances with Wolves, 1990, from the novel by Michael Blake
The Silence of the Lambs (1991) from the novel by Thomas Harris
Schindler's List (1993) from the novel by Thomas Keneally
Forrest Gump, 1994, from the novel by Winston Groom
The English Patient, 1996, from the novel by Michael Ondaatje
A Beautiful Mind, 2001, from the book by Sylvia Nasar
Other Memorable Films based on Books:
The Birth of a Nation, 1915, from a novel by Thomas F. Dixon, Jr.
The Good Earth, 1937, from a novel by Pearl S. Buck
The Wizard of Oz, 1939, from a novel by L. Frank Baum
Wuthering Heights, 1939, from a novel by Emily Bronte
The Grapes of Wrath, 1940, from a novel by John Steinbeck
To Kill a Mockingbird, 1962, from a novel by Harper Lee
The Graduate, 1967, from a novel by Charles Webb
All the President's Men, 1976, from a book by Carl Bernstein and Bob Woodward
Julia, 1977 from a novel by Lillian Hellman
Raging Bull, 1980, from a book by Jake LaMotta, Joseph Carter and Peter Savage
Mommie Dearest, 1981, from a book by Christina Crawford
The Right Stuff, 1983, from a novel by Tom Wolfe
The Color Purple, 1985, from a novel by Alice Walker
Passage to India, 1985, from a novel by E.M. Forrester
Prizzi's Honor, 1985, from a novel by Richard Condon
Heartburn, 1986, from a novel by Nora Ephron
The Unbearable Lightness of Being, 1988, from a novel by Milan Kundera
Born on the 4th of July, 1989, from a book by Ron Kovic
Interview with the Vampire, 1994, from a novel by Anne Rice
Get Shorty, 1995, from a novel by Elmore Leonard
Sense and Sensibility, 1995, from a novel by Jane Austen
The Hours, 2002, from a novel by Michael Cunningham
Le Divorce, 2003, from a novel by Diane Johnson

It is easy to see from the above lists of film adaptations that authors should be respected in the deal-making process. And it is hard to imagine the film industry's enormous success and impact around the globe had these books never been written and movies based thereon never made.

If the book is a novel, the author has created from his or her imagination a world of people, a story no one else ever knew or dreamed of. That is worth a lot, not only monetarily, but as a contribution to the art of film.

If the work is non-fiction, as were, for example, All the President's Men, The Right Stuff, Out of Africa and A Beautiful Mind, the author has undoubtedly done voluminous research, cleared the rights to use the stories of living people, ensured that privacy rights have not been violated and, essentially, guaranteed the filmmakers that, as long as they stick to the story as written, they will not get sued for defamation or invasion of privacy, or for violating someone's rights in some other way.

So, when you are making a film deal for a book that might become the next Oscar-winning Best Picture, what will the option/purchase contract between Author and Producer, be it a studio or production company, involve? These contracts always start with an outright grant of rights in the book, excluding those rights that Author reserves, such as live stage and radio rights. (The primary reason for these reservations, which are set forth in a later paragraph and usually require Author to wait a number of years before exercising them, is not only that Author is making a deal to sell the book for adaptation into a movie and, therefore, should, by all rights, keep these other rights, but also that Producer is not experienced in either stage or radio productions.) After stating the amounts to be paid for the option and purchase prices (and only the first year's option payment should be applicable against the purchase price), as well as the contingent compensation, the option/purchase contract states that if a sequel or remake of the original motion picture is made, Author will receive one-half or one-third of the compensation paid for the original movie. If the movie is to be aired first on television, another sum of money is set forth. Author is also paid more money if a television series (as well as a spin-off series) is made down the road. Usually these payments are fixed sums that vary only with the length of each episode but sometimes Author will receive a percent of the final production budget for each episode. For example, I was involved in a negotiation that gave the author (a very famous writer) 5% for the initial and second run; 40% for the third run (if on network television, otherwise 30%); 25% for the fourth through sixth runs and 15% for the seventh and all additional runs.

Author's rights to accountings and audit rights follow, though few exercise those rights, given the expense of an audit and the ease with which "profits" can be hidden by wily studios and production companies.

Much is made of rights to so-called "Author-Written Sequels", e.g. a novel using the same character(s), some part of the plot, etc. as the original book for which the contract is drawn. Some authors are able to keep these rights entirely to themselves but most contracts obligate Author to give Producer a first negotiation/first refusal right with respect to such work, with the obligation, of course, to negotiate in good faith, usually for thirty days. In any case, it is very important to Author to retain as much control over Author-Written Sequels as possible, because many authors do, in fact, write such sequels and the deal for author's first book will probably not contemplate huge success for sequels to it.

Following these standard deal points come what many lawyers call the "boiler-plate" clauses, but, to me, there is no such thing, because important issues can be hidden in what appears to be standard language. For example, Author must warrant and indemnify with respect to the fact that Author is the sole author, that everything is original, that nothing in the book infringes on anyone's rights, including copyright, that there is no defamatory matter and that nothing in the book (assuming it is fiction) is in the public domain anywhere in the world. Furthermore Author must warrant that the work has not been assigned, licensed or in any other way encumbered. And after these warranties, Author agrees to indemnify Producer in case any of the above turns out not to be the case. It is imperative that

Attorney (for Author) ensure that Producer also warrants and indemnifies to the same extent as has Author, and this goes to the issue of changes, additions or deletions made by Producer in the work. Author will grant Producer the right to use Author's name, likeness, etc. but should insist that Author must give written approval, which will not be unreasonably withheld.

Author's credit both on screen and in paid ads often appears towards the end of the contract. Usually the size, boldness, etc. of such credit are tied to that of the screenwriter but this can vary or be left up to the discretion of Producer - the latter not recommended unless Author has little clout.

An assignment clause will appear somewhere toward the very end of the contract, giving Producer the right to assign obligations. However, Author should always insist that Producer, at the very least, stay secondarily liable. I also insist that Author be given the right to approve the assignment in writing before letting Producer off the hook, even if the assignment is to a(nother) major studio, let alone a "mini-major", the identities of which change from day to day.

There are some authors who are also capable of writing screenplays, usually determined by the fact that they have previously done so. For them, it is necessary to negotiate their right to write at least the minimum number of drafts of the screenplay, as required by the WGA's Minimum Basic Agreement, and, certainly, be paid at least WGA minimums, though I cannot imagine agreeing to those amounts unless there is one pot of money for Author and he or she is more concerned about establishing a high price for future book sales than a high salary for future screenwriting assignments.

The basis of all these deals is that Producer finds a book he or she wants to make into a movie. It would be silly, even if Producer were very, very rich, (let alone a studio) for her to buy the book outright. An Industry mantra is that you never spend your own money to produce a movie. Furthermore, Producer needs to see a screenplay and decide if the book will work as a movie. So arises the concept of the option to purchase. Much fuss is often made about how long the option period should be. Traditionally, it is for one year with the right to extend the period for a second year. Some producers try to get a total of three years, but, to me, this is too long for a book to be tied up for only option money. If nothing is happening after two years, it is time for Producer to accept that the project probably will not work. However, if the only problem is that principal photography cannot start because the star or director is not yet available, it is only fair to exercise the option by purchasing the movie rights to the book. This exercise takes place upon the expiration of the last option period or the commencement of principal photography whichever happens first.

It is, of course, necessary in order for the concept of "option" to make sense that the Producer state clearly to Author what Producer will pay for the purchase of the movie rights. Thus, the initial conundrum: Author needs to hire an attorney to negotiate what is now an option/purchase deal. If Attorney does the job properly, he will try to make Producer's lawyer give him a short-form deal memo, rather than a long-form document. A long-form not only would be a burden for Author (in terms of cost) but also it could contain a great deal of onerous language that Author would have little leverage to eliminate. After that, of course, it would be too late - until the movie was a blockbuster or Author had another book that other producers wanted.

Generally, the option price is 10% of the purchase price. Generally, the first year's option payment is applicable against the purchase price, while the second year's is not. The amount of the purchase price can range from a small to a huge sum, depending on the fame of the Author and the success of her prior books, or that of movies adapted from her prior books. Often, there are bonuses built into the contract if the book, currently only in manuscript form, makes the New York Times best-seller list. The reason a contract might be drawn so soon is that Author's agent has sent it to producers early, in anticipation of a feeding frenzy. Sometimes such frenzies can lead to an auction, not unlike those by publishing houses for the manuscript, among various studios and other producers. Should that happen the power shifts from Producer to Author immediately, and Author can choose one producer over another for reasons ranging from money, to a reputation for quality films, to how much creative control Author will exercise over the movie as ultimately made, to Author's whim. In fact, many authors successfully insist on being technical (read "creative") consultants during the film writing and producing processes. In any event, the purchase price is often determined by the budget of the film. Some lawyers for authors agree to a percent (e.g. 2%) of the budget with a floor and a ceiling. Others (and I count myself among these) prefer a sliding scale that gives Author increased pay for every e.g. \$5 million more in the final budget. For example, if the budget is under \$10 million, Author agrees to accept \$250,000; if the budget is between \$10 and \$15 million Authors gets \$300,000; if the budget is between □ . And so on up to, let us say, a budget of \$50 million or more, in which case Author gets \$1.5 million, and that figure would be the cap.

In addition to the purchase price (and option payment(s)), there is the backend or contingent compensation. Again, this figure can range all over the map, but what we might call standard is 3-5% of 100% of the net proceeds with Author's definition of net proceeds being on a favored nations basis with all other net proceeds participants. Of course, we all hate the concept of "net" anything, because it very, very rarely results in a paycheck (the proverbial movie that has grossed over \$100 million and cost only \$20 million, but is still in the red). If Author has the power, it behooves Attorney to demand at the very least an adjusted gross participation with only a very detailed, limited list of items that may be deducted before Author begins to participate in the wealth, along with Producer, director, stars, etc. And, of course, if Author has any influence a "Blocked Funds clause" will not appear in the contract.

Finally, a word to producers' attorneys: it is not wise to try to nickel and dime authors or, as my late mother might have said, "Don't be penny-wise and pound foolish." If the author is someone substantial whose work your client respects and if dealings with you and your client are amicable, odds are good that the author will show your client his or her next novel first. Why should that author want to start a relationship with another producer all over again if this experience has been a good one? And that goes for the attorneys, too. It is so much easier to deal with someone nice than to have to plead for each and every item that so many final draft contracts ultimately contain, anyway. If the attorneys for both sides have a cordial relationship, they can influence their clients to return to each other, as long as no one is making too big a sacrifice.

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