

Shopping Agreements

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Shopping refers to the practice of producers pitching a story that they do not own or have not optioned. Let's say you are a writer. You go in to see a producer and pitch your project. The producer says "Interesting. Let me think about it for a few days and get back to you." After you depart, the producer calls his buddy, an executive at ABC, and pitches your story without your knowledge. If there is interest, the producer takes an option on your project. If there is no interest, he passes. He never tells you that behind your back he pitched your material and it was rejected.

You go on your merry way and pitch your story to a more ethical person. Let's call him producer Bob. He takes an option on your story before pitching it. When he goes in to ABC they inform him that they already heard your story and passed on it. Producer Bob is unhappy that you did not disclose this fact to him.

Shopping without permission of the writer is unethical. Producers who do not risk any money on an option tend to hastily package and pitch a project. The tendency is to throw the project up against the wall to see if it will stick. A more careful approach developing the project and attaching elements would likely produce better results. Shopping can tarnish a project. Once ABC has heard and passed on your story, it is unlikely that they will reconsider, even if your story is better the second time.

While bestselling authors and acclaimed screenwriter are not likely to enter into shopping agreements, there are many novice writers who are open to have an experienced producer pitch their script even without being paid an option fee. Many writers don't have connections to production companies, networks, studios or platforms. A novice writer may feel fortunate to have her material presented by a legitimate producer with a track record and access to those who have the power to get a script produced. Moreover, producers may be reluctant to spend money optioning material from an unknown and unproven writer. Sometimes the material is so original and unique that it is clearly a longshot to get it set up.

Furthermore, the number of producers who have first look or exclusive deals at studios have declined. Under those deals, the studio typically would provide development money that could be used as option money. Producers who do not have such an arrangement with a studio have to pay option fees out of their own pocket. Consequently, shopping agreements have become increasingly common in the industry.

Producers like to have the opportunity to present the material without making a significant financial commitment up front. Writers hope that having an experienced producer shop and package the script with other attractive elements will increase its chances of getting produced. There is nothing improper about such an agreement provided the arrangement is disclosed and everyone understands the nature of the deal.

A shopping agreement typically provides that the producer can bring the material to potential studios and networks, and, if there is interest, the writer and producer will each negotiate their own deal. This arrangement has some benefits for each party but also some potential pitfalls. If, for example, either party is unreasonable in their demands when negotiating their deal with a network, the other party cannot proceed without them. The producer has wasted his time and effort.

With an option agreement, the producer has much more control over the project. The producer typically has the right to exercise the option, at which time the purchase agreement, which has been negotiated already, kicks in. The terms for the sale of the script have already been agreed upon so the writer has very little leverage and cannot prevent the project from moving forward as long as the producer abides by the terms of the option purchase agreement.

Shopping agreements are sometimes referred to as producer attachment agreements. The producer is helping prepare the project to be presented and may also attached other elements such as a star that will make the project more appealing. The producer typically has a track record, and a network takes comfort in knowing that they are dealing with someone who has the proven ability to produce a project.

Shopping agreements tend to have shorter terms than option purchase agreements. The term is often less than one year; although, if the project is set up it may automatically be extended. The producer is protected by having a written agreement that prevents the writer from pursuing the project with a studio or network introduced by the producer. The writer is often precluded, even after the term, from pursuing the project with a third party that the producer has brought the project to. Producers sometimes pay a fee to the writer to compensate him from taking the project out of the market.