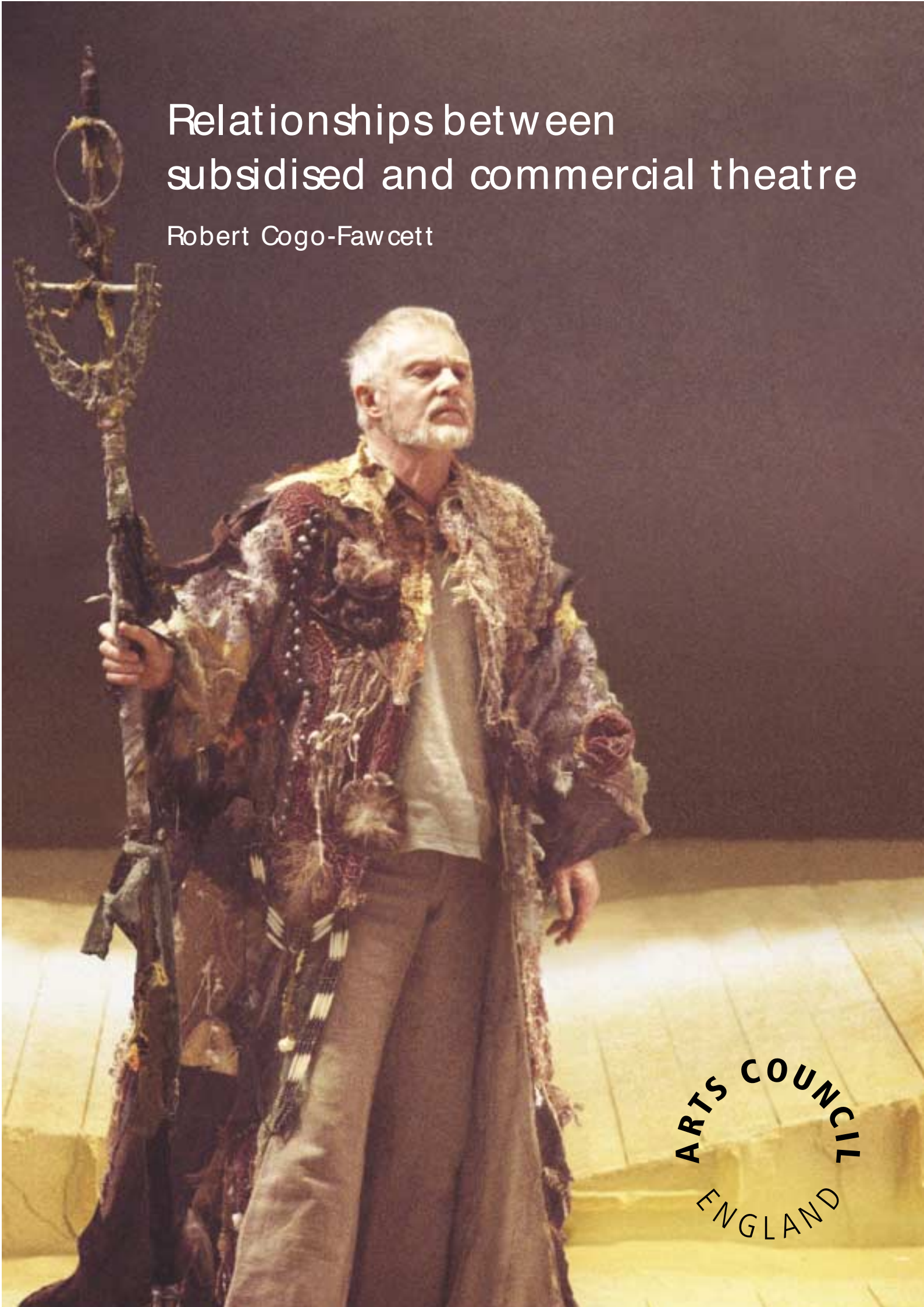


# Relationships between subsidised and commercial theatre

Robert Cogo-Fawcett



ARTS COUNCIL  
ENGLAND

Cover: Derek Jacobi in *The Tempest*.

A Sheffield Theatres Production: Crucible, Sheffield and transfer to The Old Vic, London. Director: Michael Grandage.

Photograph: Ivan Kyndl.

Old Vic transfer presented by Duncan C Weldon & Paul Elliot for Triumph Entertainment Ltd and International Concert Attractions.

# Relationships between subsidised and commercial theatre

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## Relationships between subsidised and commercial theatre

‘The sustained relationships and activities throughout the UK result in significant economic activity in the regions both indirectly and directly attributable to the West End theatre industry. A healthy West End is good for the entire industry, just as a healthy regional theatre scene is of great importance to the continuing health of the West End.’<sup>1</sup>

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<sup>1</sup> Wyndham Report, Society of London Theatre, 1998



# 1 Introduction

We like to believe that the UK is a world-leader in theatre. Certainly it is a hugely sophisticated industry with highly developed mechanisms which enable the distribution of productions in a variety of scales and delivery in a kaleidoscope of styles.

A number of different motives underlie the creation and development of these mechanisms, but two main philosophical strands predominate. Whilst both are primarily inspired by the desire to provide art and entertainment, one is motivated by pecuniary motives and by the desire to create profit and falls under the description of what we term 'the commercial theatre'. The other is founded more on the philanthropic principle that the primary purpose of art is to improve man's understanding of himself and his fellows.

No accurate term exists to describe this strand. It is practised mainly in what the Americans conveniently call the 'not-for-profit' theatre sector and what we inadequately designate 'the subsidised sector'.

And yet subsidised theatre does not always wholly belong in the 'not-for-profit' realm. Frequently, the commercial theatre, perceiving an unexploited opportunity, seeks to move subsidised theatre into the commercial arena. Juxtaposing its motives with those of its subsidised counterpart creates questions and conflicts often as weighty and dynamic as the art which has caused them.

The Wyndham Report demonstrated the vigour and economic significance of the West End theatre and concluded that a part of this success was due to the symbiotic relationship it maintained with the non-commercial sector. One of its conclusions was that:

Implicit in this (strength of the West End) is a healthy working relationship between the commercial and grant-aided sectors of the West End with both the commercial and grant-aided sectors in UK theatre as a whole.<sup>2</sup>

Yet the history of such a relationship is clouded with suspicion and deep mistrust. Commercial producing managements have often

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<sup>2</sup> *ibid*

been characterised as predators on the subsidised sector. Indeed the very theatrical entrepreneurialism which Wyndham describes as such a positive attribute of the West End, has frequently been used by subsidised managements as a term of professional abuse.

Whilst it is difficult to pin down the source of such ill-feeling, a brief survey of one of the simplest forms of such a relationship, where a commercial *producer* seeks to purchase a production from a subsidised one, provides an indication of the vast differences which exist between such arrangements. Deals vary enormously.

Precisely because there is no standard or accepted practice in the area, subsidised managers often feel inadequate in negotiating with a commercial colleague. Precedent in such matters is all too often veiled in the secrecy of insecurity rather than the discretion appropriate to a business arrangement. Once the production begins its commercial life the vicissitudes of the marketplace and the commercial discipline exacted by the producer often compound the mutual misunderstanding which leads in turn to a lack of reciprocal tolerance between the sectors.

If the Wyndham Report itself does not suggest that the subject requires fresh inquiry then the pressing need to promote wider access to work created within the public sector should do so. The economic efficiency of enabling this to happen via commercial means is obvious. Developing new audiences and markets is not a preserve of the subsidised sector. As the *National policy for theatre in England*<sup>3</sup> suggested, this needs lively partnerships between art and commerce to provide audiences with fresh opportunities and the industry with a dialogue and a dialectic in which creativity across the sectors is encouraged to grow and the symbiosis to which Wyndham refers, to develop.

This document exists to do three things: to define and clarify Arts Council England's policy; to explore what forms of exploitation subsidised companies may undertake for themselves; and to give guidance on ways in which the sectors might deal with each other. Examples are provided of commercial budgets for transferred productions, of agreed deals and their outcome, of a co-production agreement and of a commercial play agreement.

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<sup>3</sup> Arts Council of England, July 2000



Finally, and in an attempt at demystification and user-friendliness, there is also a glossary of commonly used expressions which might be helpful to the lay board member unfamiliar with the vocabulary of commercial transactions with the subsidised sector. These terms are in italics where they first appear.

## 2 Arts Council England principles

Arts Council England itself welcomes cooperation between different sectors within the theatre industry particularly where this results in the promotion of opportunities for greater access to work initiated with the help of public funds. Such cooperation can also result in the creation of valuable income streams for subsidised companies. Arts Council England recognises the importance of such self-generated income and has undertaken not to penalise a company's success in this area of *endeavour* by way of reducing grant-in-aid. Nor does it look for reward or recompense for the original investment in the company's production. When it is possible however, and certainly wherever the subsidised company receives credit, Arts Council England expects to receive appropriate recognition.

Although the subsidy with which Arts Council England provides its clients should not be used with a view to creating work whose primary purpose is its fitness for commercial exploitation, it recognises that the creation of theatre productions within the subsidised sector may eventually be of benefit to commercial producers<sup>4</sup>, theatre operators and owners. Where the commercial world seeks to derive such benefit, however, the subsidised sector should be appropriately rewarded for the effort, cost and risk it took in originating the work. Such reward should be based on a reasoned assessment and debate between the parties of the respective values each brings to the commercial endeavour.

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<sup>4</sup> For the sake of clarity managements operating in the commercial arena are referred to as 'producers' or 'commercial managements' throughout this document. Subsidised managements or charitable companies are referred to as 'charities', 'subsidised managements' or simply as 'managers'. In reality some of these terms are interchangeable between the sectors.

Whilst Arts Council England neither seeks to control nor supervise the contractual terms and conditions of such relationships it relies on the members of its clients' boards to oversee and regulate the conduct and outcome of such negotiations and to recognise their role in protecting the value of the work their company has created.

Boards should also be aware that where individuals with executive responsibilities within the subsidised company also have a creative function in the production under discussion, conflicts of interest can occur. Where such a function is to be remunerated by the commercial management, the board should take steps to see that decisions regarding the production's future are only made with its approval and that the terms of future recompense for such individuals are wholly transparent. Such transparency should form a structural element in such 'creative' individuals' employment contracts. So too, when members of a *creative team* are hired for a specific production, the company should ensure that it alone has contractual ownership of the right to use the work it has commissioned<sup>5</sup>. In this respect the ownership of devised work (both oral and visual) is often difficult to provide for within a contractual framework. This subject is dealt with in greater detail in paragraph 17 and 18 below.

Guidelines regarding the comparative earnings from transferred productions of subsidised managements and members of the creative team were discussed in the Cork Report, *Theatre is for All*<sup>6</sup>. This suggested that the aggregate of creative team remuneration, excluding author(s) and composer(s), from a commercial management should not exceed the income received by the subsidised theatre. Though the underlying intention is clear, the proposal's financial logic is muddy and it has rarely, if ever, been achieved in practice. Commercial propriety alone rather than the recommendation itself is probably a more reliable preventative to producers making controversially high *royalty* payments to such individuals. Examples of royalty structures for transfers can be found in Appendix 6.

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<sup>5</sup> Two different examples of the wording of such contractual conditions are provided at Appendix 5 below

<sup>6</sup> Arts Council of England, September 1986

Just as the generation of theatrical productions should not be influenced by commercial motives so every effort should be made by the subsidised company to ensure that its work is not altered or compromised without its understanding and permission, simply because it enters the commercial domain. There are many examples where artistically valuable work has proved to be extremely successful in the commercial arena and brought credit and financial reward to its subsidised home theatre.

### 3 What can the subsidised management do?

The answer is virtually anything it wants to, provided it keeps its activities to those prescribed in its memorandum. Such documents tend to be very wide in scope and allow the charity to trade in most areas in which they are likely to have intelligence and expertise. The majority of subsidised companies and certainly nearly all those funded by Arts Council England have charitable status. This delimits their activities only in so far as their objectives should primarily be charitable, that is for philanthropic and educational purposes. Furthermore a charity may not distribute any surplus or 'profit' it makes to shareholders or members of its company. Such surpluses on its trading activities should be held by the charity and reinvested in its activities to enable it to pursue them further. In some cases the charity may retain surpluses beyond the end of its financial year as reserve funds.

The charity should not indulge in unnecessary risk nor expose its assets beyond the bounds of prudence. In any relationship with a producer its potential liabilities should be qualified. Where the commercial management is a *general partner* in an endeavour, the subsidised manager should remain a *limited partner*. Risk-taking may be axiomatic to theatre production but the company's memorandum will, in all likelihood, describe the community or the geographical area which should benefit from the charity's activities.

Though such a description is not intended to be proscriptive, it is, for example, probably questionable for a theatrical charity whose home is in Liverpool to trade in London and put its Liverpool-based assets at risk by virtue of undertaking such activity. Similarly the charity should tour only when such a tour serves the interests of the charity's principal activity and should always seek to minimise its risk by ensuring that the tour is relatively well underpinned financially by fees from the venues it visits.

## 4 Touring

There are, of course, some subsidised theatre companies which tour because that is their *raison d'être*. Shared Experience Theatre, Out of Joint and Oxford Stage Company are three such examples. Sometimes such a charity will decide that it wants to play a season in London.

Shared Experience, Theatre de Complicité and Cheek by Jowl have played in a number of London theatres, including some within the commercial sector. The motives are unlikely to be commercial but will generally have more to do with a desire to improve their profile, both publicly and professionally, to attract national critics and to use a London theatre to showcase their work. Yet almost without exception, they have sought to diminish their exposure to risk by pre-defining the length of their season.

West End theatres tend to work on a run-of-the-play basis; that is, the play will continue until it fails to attract at a level at which it covers its *weekly running cost*. At that point, in theory, an agreed period of notice may be served by either party and the run will end. Whether the production has continued to cover its running costs after notice was served and whether it has *recouped* any of its set-up costs by that time are risks normally understood by commercial managements.

Pre-defining the season limits the potential of such losses. Whilst it diminishes the commercial management's risk however, it limits the production's potential financial reward, and a higher rate of production turnover (where each production presents a new risk opportunity) as well as the possibility of the theatre going dark for periods of time is unattractive to theatre owners.

## 5 Using reserve funds

Some subsidised managements, lucky and wise enough to have built up reserve funds, have been known to use these to re-mount their work in the commercial arena. Whilst strictly speaking there is no reason why they should not do this, boards should adopt appropriate accounting and management policies for such reserves and their use should be limited to these stated objectives.

## 6 Rights acquisition

Of equal significance to risk exposure is the fact that the subsidised company is unlikely to have either the facilities or the expertise to exploit all the rights it may hold or be able to acquire in a *property*.

Whilst the Independent Theatre Council/Writers' Guild of Great Britain (*ITC/WGGB*) agreement allows for the manager to participate in the author's income for five years after the first performance under the manager's aegis, the *Theatrical Management Association/Writers' Guild of Great Britain* (*TMA/WGGB*) agreement contains provision for the purchase of a range of *options* in other media and circumstances as well as stage rights in other territories beyond that in which the contractor is based. It is essential for the charity to ensure that it does not let such options lapse without the certainty that they are of no further value either to the charity or to anyone else. The same is true of any rights it holds under the terms of its creative team contracts. But if it retains such rights, it is unlikely that it will be able to exploit them directly itself. The absence of risk capital and its lack of expertise are the major barrier to such exploitation. Where the commercial motive behind the purchase is obvious (because, say, the production has achieved huge popularity and, maybe, critical acclaim) it is more than likely that a commercial management will have made an approach to acquire the production and the property. The negotiation for their disposal may then begin.

Whilst it may seem self-evident to suggest that the rights in devised work should be vested in the deviser(s) it is often the case that as such work progresses through workshop and rehearsal stage, issues concerning the rights in the property fail to reflect such progress. By the time the work is in front of an audience it may bear little relation to its original conception. Unless the process itself and the participants in that process are accurately reflected in the commissioning party's rights agreement (or in underlying agreements between the participants) there may be room and occasion for argument about ownership which could hamper any further exploitation of the work.

## 7 Separate trading companies

A number of subsidised companies have established trading companies specifically dedicated to commercially exploiting the work of the charity. In theory such vehicles have the advantage of allowing the charity to maintain creative control over the production as it moves into the commercial arena whilst divorcing it from responsibility for any liabilities which might occur. The trading company may *co-endeavour* with a commercial management and undertake the responsibilities of a general partner which the charity would not sensibly wish to do.

Lyric Theatre Hammersmith, the Royal Court and Hampstead Theatre all have such vehicles although they vary in the constitution of their finance and governance as well as in their aims. These companies may either have equity in the form of shareholder funds or loan capital or may simply raise funds on each occasion that they decide to exploit a production generated by the charity with which they are associated. Profits (or the producer's share of profits) may in certain instances be covenanted back to the parent company providing a direct income stream.

A charity's trading company may have directors in common with the parent body although generally they will have invited commercial theatre experts to join their board. Such experts may also help the common directors in the conduct of arm's length negotiations between the charity and the trading vehicle, which might otherwise prove problematic.

Some charities, particularly those based in London, have not felt the need to establish separate companies before venturing into the commercial world. Their boards' assessment of the risk involved and how closely the venture in question is allied to the objectives of the charity are the determining factors in this.

## 8 Conflicts of interest

It is essential to recognise that the 'common' directors may face other conflicts of interest where the application of a commercial discipline may conflict with the charity's philanthropic aims. The pursuit of a commercial objective may involve the commercial company in behaviour with which the charity may be unsympathetic.

Although one of the main motives for establishing the trading vehicle may be the artistic and managerial control which this lends the parent body over the production itself, there will almost certainly be times when business has to be put before art, particularly where the trading company is answerable to shareholder membership. The successful subsidised production, remounted on the commercial stage by its trading arm, lambasted by the critics, derided within the industry and playing to uneconomically small houses, is an example of just such a dilemma.

For the sake of reputation if nothing else, the charity's reaction might well be to have the play close at the earliest possible opportunity. But if keeping it on for a short while longer might enable the producer to *qualify* for additional rights in the property (in other territories or media), then the commercial motive may outweigh all other considerations and in the directors' minds best serve the trading company's interests.

In the case of a trading company suffering catastrophic failure, perhaps because the production it has promoted on the commercial stage has not sufficiently attracted, its losses may be limited financially because of the nature of its corporate constitution. However the loss of reputation rebounding on the parent body will be severe and may be thought sufficiently damaging to outweigh the value of ever having established such a vehicle.

## 9 Who are the producers and commercial managements?

*Contacts*<sup>7</sup> lists over 150 individuals and organisations in its Theatre Producers section. How many of these actively produce within the commercial sector varies from year to year. The *Society of London Theatre (SOLT)* has a little over 100 members, including theatre owners as well as independent producing managements, the majority of whom have been active within the last two years. Most of the theatre owners also produce and transfer productions into the West End. Additionally, there are a few managements which specialise in producing and presenting work on the commercial touring circuit. Most of these belong to the Theatrical Management Association (TMA).

Whilst there are no qualifications for becoming a producer, those who present work in West End theatres<sup>8</sup> usually use Equity contracts. In order to use these producers must be in non-deposit membership of SOLT which effectively means they have been producers in good standing on at least four previous occasions<sup>9</sup>. Alternatively they must place a cash *bond* or *deposit* equivalent to the full value of the Equity members' rehearsal salaries plus three weeks of playing salaries with the *London Theatre Council*.

A similar situation obtains in the regions. There, commercial producers who are not TMA members, are required to deposit a bond of a similar scale with the *Theatre Council*.

It is always possible that more than one producer will be interested in acquiring a subsidised management's production. Consideration of the merits of rival offers should allow comparison not only of their terms but of the reputation of the producers concerned and the opportunity value of the form of the proposed exploitation. A coalition of producers may

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<sup>7</sup> Published annually by The Spotlight, 7 Leicester Place, London WC2H 7RJ

<sup>8</sup> A list of these is included in Appendix 1

<sup>9</sup> The non-deposit status is granted at the discretion of SOLT and after consultation with Equity and may only be achieved by a deposit member completing four previous productions for which he/she has 'deposited' ie paid a cash bond.



offer to acquire a subsidised production. In such instances it is important to ensure that one individual has been mandated by the other(s) to negotiate on their behalf with the charity's manager.

If a charity is in any doubt about the producer with whom it is dealing, SOLT, TMA or ITC may be able to provide the necessary reference.

## 10 Where does the producers' money come from?

A very few producers use their own resources but most have to raise funds from investors. Most producers guard their investor lists very closely. They may include other producers, institutional investors or people within the theatre world. SOLT maintains a list of potential *angels* interested in receiving details of investment opportunities in productions. Funds are raised on the basis of the profit opportunity the production may offer. This will clearly depend on the nature of the production itself, its cost and the timescale on which it might recover its *production costs*. The reputation of its author, the creative team, the artists, the producer or commercial management and in the case of a transfer, the production's provenance will all contribute to the perceived value of the opportunity. The West End theatre and/or the tour venues where the production will be presented are also factors which the angel may take into account.

## 11 Theatre Investment Fund

Only one organisation exists to which the producer may apply for funds. The *Theatre Investment Fund (TIF)* is a charity which receives funding from SOLT and a *TIF levy* on productions playing in the West End. The rest of its income is made up from endowment funds and the profit returns it gains from successful productions in which it has invested. Its criteria for assessing applications are a little different from those of the ordinary investor. Besides estimating the risk involved in the offer it also looks at the structure of the proposal. It will then routinely invest subject only to the availability of funds.

However it is unusual for it to invest more than £15,000 in any one production and its rules prevent it from investing more than 10 per cent of a production's *capitalisation*. A commitment from TIF is often interpreted as a seal of approval by other investors. It aims specifically to encourage new producers.

## 12 Risk capital

Investment prospectuses issued by producers contain by law stringent warnings about the fact that not only is theatre investment per se an enormously risky activity but that unusually it is an investment where the result of the endeavour produces few tangible assets<sup>10</sup>. Thus, in the event of failure, there is generally little of value with which to repay investors. Failure, often a result of fickle public taste, can be extremely sudden and come at any time. Unlike shares there is also unlikely to be a market for the investment given the ephemeral nature of theatre production.

Its risk is further compounded by the fact that the angel has no control over the endeavour into which they have introduced their money. Unless the production is a transfer of an existing show it is quite possible that the play/musical may not even have been written when the funds for its production were raised. Indeed putting money into the theatre has sometimes been described as being more akin to betting at the turf accountants than to investing on the stock exchange. TIF sources suggest that only two out of every ten productions fully recoup and that only one out of ten will return a profit.

With these sort of odds it is perhaps not surprising that theatre investment is generally extremely difficult to raise, even for transfers of existing productions, and particularly so for new and young producers with little reputation to provide wary investors with comfort. It is the scale of this risk against which the subsidised management will nearly always wish to protect itself but to which it must be sensitive in dealing with commercial producers.

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<sup>10</sup> Investment in theatre production is controlled by the Financial Services Authority and investment documentation is subject to a process of verification and control by a person or firm regulated by that body in the conduct of investment business.

## 13. When do producers start collecting funds?

This will depend on the stage at which producers become involved in the project (see section 17 below). They may raise money on the basis of their intention to commit to a production or have already entered into a commitment. In either case they will need to be able to budget with some accuracy the expenses for which they will become responsible. They will also need to have entered into at least 'in principle' arrangements on any aspects of the production which the manager does not control and which the producer wishes to include in his prospectus as part of his 'sales pitch' to potential investors. The project's total cost to the producer, its capitalisation, will be fractionalised into shares or *units of investment* of a size which the producer believes angels will find acceptable as an appropriate minimum investment in the production.

## 14 How much do tours and transfers cost?

Two examples of production budgets are included in Appendix 2. One describes the production and running cost of a play toured out of a regional producing theatre. The other deals with a musical production transferring to the West End. The cost of any production will obviously depend on its size and nature although the examples are useful in detailing categories of expenditure common to all transfers and tours. It is unusual nowadays to find a play transferring to the West End and being capitalised at less than £150,000. Transfer costs for musicals will typically be considerably higher.

At least one-third of a transfer's cost will be spent on marketing and publicity. This will include a sum to be spent on a press relations campaign as well as expenditure on creating a front-of-house display at the theatre. In addition, prudent producers will establish a reserve fund to be used to *nurse* the production through its opening weeks. As well as the bond which the producer may be required to deposit, the theatre may also demand a cash deposit as a contractual condition. Whilst all three of

these items will be unexpended in the event of a successful run, funds need to be raised and the sums included in the capitalisation to meet the contingency of failure.

Actual production costs, particularly if there is no requirement to re-rehearse a transferred production, may be restricted to topping-up creative team fees and artist and stage management salaries, transporting and *getting-in* the set, refurbishing it and making good the costumes. They will include any sum paid to the subsidised management as the purchase price for the show's physical assets. Producers will also budget a fee for themselves for setting up the transfer as well as their *office costs* and those of an accountant. If they wish to employ a *general manager* to supervise all administrative and operational aspects of the production they will need to provide for this cost as well as for that of a production manager to organise the move and *fit-up* in the West End theatre. Additionally they will have needed to make provision for insuring the show as well as for any legal costs they may incur.

## 15 Can the subsidised management invest in the commercial endeavour?

For the management to invest cash is a decision for its board although charities should not use their funds in speculative commercial activity nor should any such investment endanger the assets of the charity. Once again, if the charity has an associated trading company, this may wish to invest in the commercial presentation and the charity in its negotiation with the producer may wish to safeguard the right of the company to do so.

The charity, by the very fact of selling or leasing the asset it created, generally at a considerably lower price than its cost, will already be making an investment in the commercial venture. It will also have committed a period of its annual overhead charge to generating the production even if it does not account or charge the producer for such expenditure in this way.

## 16 When does the producer get involved?

At any time: a producer may wish to jointly commission a writer together with a subsidised management or to co-produce a show with a manager. As such they may be involved from the pre-planning stage of a production's life and play an extremely active role in its development. Or they may simply persuade the manager to produce a property which the producer owns, playing little or no part in its realisation and where the subsidised management is being used purely to 'try-out' the play.

Alternatively the producer may wish to join up with a subsidised management at a later period in a production's life. They may have learned about the commercial potential of a production on the grapevine or from the rehearsal room. Rather than play any active role in the producing process, the producer may simply wish to buy an interest in the property's future or perhaps purchase an option on a production with a view to exploiting it at a later date in the commercial arena. (This is sometimes referred to as a 'first-look' agreement). More usually however, producers will adopt the 'wait and see' approach and make an offer to transfer or tour a show once they have seen it in front of an audience.

It is important to remember however, that close though a producer's involvement may be, and even though it may informally be called a 'partnership' and even formally a 'co-production', it is an arm's-length coalition of interest. The manager must finally remain in charge and responsible for the production process at the subsidised theatre. The producer assumes responsibility from the moment the production leaves the *get-out* door of the subsidised venue. This normally includes the cost of any necessary re-rehearsal for the tour or transfer.

Care needs to be taken in budgeting the cost of the get-out itself since the procedures adopted in moving sets and properties dedicated to a future life out of a theatre may be more expensive than those required to 'trash' a production at the end of its run. If the subsidised management is to bear any further responsibility for the production's physical attributes a protocol for any further cost sharing will need to be established.

Depending on the nature and timing of the relationship, the producer may require to share, or as it is usually termed, 'participate', in the charity's box office income. Whilst it would be imprudent for the manager to let the producer enjoy income before budget targets have been met there is no legal impediment to prevent the producer having a share. Indeed beyond a particular level of income such sharing might act as a deal-sweetener for the manager's own subsequent element of having a share in the commercial venture. Examples of reciprocal participation are detailed in Appendix 6.

The earlier the producer's involvement, the better the possibilities are for ensuring that all aspects of the production will be suited to its eventual transfer or tour. Many of these will require expenditure which the charity might not otherwise undertake and should therefore be reflected in the terms of the deal. The sets and costumes, for example, will probably need to be more durably made and with less combustible materials (or with a better standard of fireproofing) than may be normal in the manager's own theatre<sup>11</sup>. If the producer wants to introduce creative team members or actors of his/her own choice they may require more remuneration than the manager is able or willing to provide and the producer will therefore need to 'top-up' what the manager normally pays. The producer may have a specific theatre or theatres in mind for the tour or transfer and these might affect the design and its cost.

The manager should not expect to be able to recover the cost of any of these items retrospectively. The hazards of theatre production may cause the producer not to go ahead with the commercial leg of the show's life and in such circumstances the recovery of expenditure may be problematic.

None of this is to suggest that the producer is always the initiating party in such relationships. Indeed a subsidised management may wish actively to pursue commercial contacts with a view to being able to attract private funding to work it wishes to produce. Simply bringing the subsidised management's work to the producer's attention can result in a production undertaking a journey it might otherwise not have had and is rarely effort wasted.

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<sup>11</sup> The fire regulations, under which most regional touring and all West End theatres operate, require all items on stage to be Class 1 fire resistant.

If the producer wants to transfer the production to the West End, securing an appropriate theatre may form a significant milestone in the critical path of the transfer transaction. The availability of any West End theatre depends both on market forces and on the inclination of a theatre owner to hire it for the production and to the producer in question. The owner's apparent discrimination may give an indication of their valuation of the production and possibly the producer. Direct contact between the manager and the owner of the prospective theatre(s) may help confirm or deny any such perceptions.

## 17 How to acquire and exercise rights and options

The *TMA* and *Theatres National Committee (TNC)* agreements with the writers' unions<sup>12</sup> specify a period of 16 weeks and eight months<sup>13</sup> respectively following the first performance of the production within which the writer must be notified that the company wishes to exercise an option to extend the scope of its rights in the property. Scales of payment for each option are specified (which in all cases is a non-returnable advance against the royalty the writer will receive in each *territory*). In the *TMA* agreement the options are divided into four territories: the UK (excluding West End); the West End of London; the USA and the 'rest of the world' for English-speaking productions. The terms of the appropriate option must be negotiated and agreed and the relevant option payment made.

A form of commercial play licence is included as Appendix 3. Although it has been drafted from the point of view of a producer' a writer may well seek to improve or vary its terms. It provides however an indication of the areas which need to be covered in any such contract and broadly describes a route which a commercial management might take in exploiting a property.

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<sup>12</sup> The writers' unions are the Theatre Writers' Union and the Scottish Society of Playwrights.

<sup>13</sup> TNC agreement specifies six months in the case of a West End option.

Whilst it is not essential to use legal expertise in drawing up (and perhaps negotiating) such an agreement, its complexity ought to indicate the advisability of such a course of action. The document is probably the single most important agreement governing the commercial exploitation of the transferred production. It may be the first step of a very long journey for the work in question and as such it is difficult to over-emphasise the care needed in its negotiation and preparation.

The subsidised management will probably wish to enter into such an agreement with a writer within the period allowed under the TMA or TNC agreement and as soon as there has been a meaningful demonstration of interest by a commercial producer. However the financial consideration demanded within the agreement itself as well as the legal costs entailed in its preparation will involve expenditure and this may be something the manager does not wish to entertain until there is some form of undertaking from the producer.

Alternatively, as the rights for which the charity is negotiating will be the subject of an assignment to the producer, it may well ask the producer to act on its behalf in any such negotiation. The producer is likely to have more experience in this area and to understand the range of rights needed for the exploitation of the property. However, it may not be desirable for the producer to assume that being involved in such a negotiation implies that the grant of an assignment is a foregone conclusion. The charity should always stipulate clearly that until such time as an agreement between the producer and manager exists the rights are being taken up in its name.

Although the relationship that contributors of devised work have to the property they are creating may change during the devising process, the resolution of any redistribution of copyright ownership should lie with the contributors to that process. Provided that a commissioning agreement exists between the management and the contributors, any such redistribution should not materially affect the manager's rights in the property nor (providing such a right is contractually stipulated) the ability to assign them.



Where a play is not protected by copyright but lies in the public domain, there is no property to be assigned. The producer will in effect buy the right to use the manager's production. In such cases it is essential that the charity has exclusive ownership of the right to use all the creative contributions it has commissioned<sup>14</sup>. Without these rights the manager's bargaining position may be diminished if not marginalised altogether.

It is important to remember that any assignment the manager makes is likely to run co-terminously with the rights and options contained in his or her agreement with the writer. Consequently the manager's share in the income from the commercial life of the production should always be linked to the producer's ability to exploit or license these rights and not simply the production. Further productions of the same property within the term of the licence first granted should always benefit the original producer, the charity, since the value which accrues to the property begins from the moment it is first produced in front of an audience.

## 18 What else is there to sell?

The production's physical assets, its costumes, sets, furniture and props, where they belong to the manager, may be sold or hired to the producer. It is important to clarify their ownership, their insurance, their means of delivery to the producer as well as their disposal at the end of the production's commercial run and to define who pays for all these aspects. Also the set and costumes may require adjustment, refurbishment or substantial rebuild or remake for their future life and the responsibility for these costs needs specifying. Similarly if the manager is to have any ongoing responsibility for the supervision of any physical aspects of the production, the terms of such an arrangement should be dealt with contractually.

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<sup>14</sup> It would be reasonable in these circumstances to expect the creative team members to expect a statement of first refusal for their services in the event of any further use of their work as well as an assurance that their work will not be used without appropriate payment by a commercial producer. See Appendix 5.

The right to use work, such as the designs for a production, originally commissioned by the charity, must be treated, contracted and paid for by the producer. If the charity has pre-negotiated the terms for the acquisition of such a right then the producer will have to deal with the charity alone, although more usually they will negotiate with the agency representing the appropriate creative team member. In every case however, the subsidised management's best interests will be served if they have an exclusive contractual right to grant a licence for the further use of an individual's work. Only in this way can the charity protect its own interests in the future use of individual elements in a production. The totality of these make up the whole production and being unable to deal with any individual item may hamper the satisfactory outcome of the negotiation for the show as a whole.

Minimum terms for each individual's entitlement are stipulated by Equity<sup>15</sup> and if a producer requires further services from creative team members it may be appropriate for the producer to pay additionally for these. In certain circumstances the producer may wish the manager to act as an agent in this regard. Any hire contracts for items required by the producer for the production held in the manager's name should be re-drafted and put into that of the producer. Similarly, items belonging to the manager's stock of props, costumes, lighting or sound equipment should be hired or bought by the producer at an appropriate rate.

The producer should agree with the manager about the personnel required for the transfer (artists, stage management, wardrobe staff and so on). The manager may have pre-optioned the cast for the possibility of transfer but if not, and providing they are willing and able, the producer will engage their services by contracting them in his/her own name. In the case of Equity members, special salary conditions attach to transfers to the West End where artists' services have been pre-optioned by the subsidised management or where there is a gap between the non-West and the West End contractual engagement periods<sup>16</sup>. Cast replacement because of unavailability will increase the producer's costs if it involves re-rehearsal and may be something the manager has to take

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<sup>15</sup> See Appendix 4.

<sup>16</sup> See Appendix 4.

into account in negotiating the terms of the transfer. Replacement as a result of producer or director preference might not play a part in the negotiation of terms although the manager may wish to protect the director's rights in such a contingency.

The components or individuals involved in devised work may require greater protection against replacement particularly where the extent of their contribution to (and possibly ownership of) the work differs from that originally envisaged in any existing property contract.

## 19 Interrogating the producer's budget

Any assessment of the value of what each party to the subsidised/commercial relationship may bring to the table will require an understanding by each party of their respective budgets. Mention has been made in paragraph 14 of some of the main items in the commercial budget and examples are provided at Appendix 2, which detail other expenditure headings. Crucial to the producer's business opportunity will be the estimate of the show's weekly running costs. This cost, deducted from the potential box office income, will leave a surplus the size of which will determine the number of weeks it may take to recover the show's production cost. Any restriction on the length of time the production may be able to play – either on the road or in the West End – will clearly influence the show's ability to recoup and also its potential for making profits.

The producer will usually draw up a *recoupment* schedule. Whilst there is no standard form for the schedule it may look something like this:

## Draft West End recoupment and *post-recoupment* projections

Subject to change and for illustrative purposes only				£
Production costs to be recouped excluding bonds, reserves and deposits				245,000
Net weekly box office cash capacity				145,000
Box office %	80	75	70	
Receipts	116000	108750	101500	
<b>PRE-RECOUPMENT</b>				
Fixed running costs	30200	30200	30200	
Royalties at 11.75%	13630	12778	11926	
Theatre rent and <i>contra</i>	21000	21000	21000	
Total weekly running costs	64830	63978	63126	
Weekly profit/(loss)	51170	44772	38374	
Weeks to recoup	4.8	5.5	6.4	
Subject to change and for illustrative purposes only				£
Production costs to be recouped excluding bonds, reserves and deposits				245,000
Net weekly box office cash capacity				145,000
Box office %	80	75	70	
Receipts	116000	108750	101500	
<b>POST-RECOUPMENT</b>				
Fixed running costs	31460	31460	31460	
X royalties at 15.5%	17980	16856	15733	
Theatre rent and <i>contra</i>	21000	21000	21000	
X Theatre's additional percentage	3480	3263	3045	
Total weekly running costs	70440	69316	68193	
Weekly profit/(loss)	45560	39434	33308	

65	60	55	50	45	40
94250	87000	79750	72500	65250	58000
30200	30200	30200	30200	30200	30200
11074	10223	9371	8519	7667	6815
21000	21000	21000	21000	21000	21000
62274	61423	60571	59719	58867	58015
31976	25578	19179	12781	6383	-15
7.7	9.6	12.8	19.2	38.4	n/a

65	60	55	50	45	40
94250	87000	79750	72500	65250	58000
31460	31460	31460	31460	31460	31460
14609	13485	12361	11238	10114	8990
21000	21000	21000	21000	21000	21000
2828	2610	2393	2175	1958	1740
67069	65945	64821	63698	62574	61450
27181	21055	14929	8803	2676	-3450

X Royalties for the creative team may rise post-recoupment and the theatre deal will probably change.

The income the charity receives from a production may be a charge to the production cost, the running cost or to the net profits of the venture (or to any combination of these). It is possible by using such a recoupment chart to test the sensitivity of the charity's financial reward against the robustness of the production's financial stability. Whilst this may not help the manager to achieve a 'better' deal, a greater level of understanding of where tolerances exist within the production's financial equation ought to help both parties strike a bargain that the producer may find it easier to live with.

A touring recoupment schedule may differ from this as the theatres to be visited will vary in size and cash capacity. Whilst a similar schedule may be created based on the average cash capacities it is more usual to show the effect of the same percentage cash capacity at each individual theatre.

## 20 How does the producer benefit?

The producer may charge the production budget with the expenses which they have undertaken prior to the opening night. Whilst this is a reimbursement of costs the producer may also charge a *development fee* and a *management fee* to the same budget. The management fee is normally based on the number of weeks' rehearsal (or re-rehearsal in the case of a transfer) together with a number of weeks of pre-preparation and closure of the production. *Development costs* may cater for expenses that the producer incurred in the early stages of collaboration with the manager.

In the first instance once the production has recouped (and possibly at intervals prior to recoupment) the producer is bound to return in full the value of the unit/s purchased by each investor. Each *unit of investment* entitles the angel to a 60 per cent share of a proportionate profit return. Thus, for example, if a transfer were to be capitalised at £500,000 in 100 x £5,000 units, an investor who had bought one unit would first receive back £5000. Thereafter the investor would receive 60p for every

£1 of profit the production made. The producer would retain 40p. In the United States the producer/investor division of profits is more commonly 50/50 and in the UK experienced investors introducing significant sums into a production may argue for a larger profit share than the norm.

The producer's management fee may contain an inbuilt profit element. They may also charge the production a royalty levied on the *box office receipts*. Both forms of income benefit the producer, unlike the investor, prior to recoupment.

The producer may not simply regard the first production, transfer or tour of the property as the commercial endeavour. Occasionally work has been produced in the West End simply to give it exposure to the world-wide theatre industry marketplace. Markets vary from territory to territory and it is not uncommon for example for work to fail economically in the UK but succeed in the USA or vice versa.

The sale of rights to overseas producers to produce in other territories may result in valuable income streams which sometimes, though not always, may return to the West End endeavour even though the West End production has long since ceased<sup>17</sup>. A producer's longer-term approach may frustrate the charity's immediate need for a cash reward but, as the Royal Shakespeare Company's participation in *Les Miserables* demonstrates, the longevity of an income stream can be extremely valuable.

## 21 Assessing value

The terms of the transaction between the parties ideally represent what each brings to the next stage in the production's life and an assessment by each of what they bring to the negotiating table. The producer has the skills and the knowledge to exploit the production commercially. They will be able to demonstrate or at least to give the manager confidence and

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<sup>17</sup> Producers will vary in the ways in which they allow investors to benefit from productions in other territories. Thus it is important for the charity's participation to be linked to the exploitation of all the rights detailed in the property contract.

comfort in their ability to raise finance. They will have the reputation and the contacts to have at least an in principle agreement with a West End theatre about the production's presentation or to demonstrate that they are sufficiently confident that one will become available to allow them to proceed. The manager's negotiating strength depends entirely on the significance they believe the production lends to the endeavour. This statement is not as obvious as it sounds for in one sense the manager is not dealing with a futures market, but with a commodity for which there is no known demand. How much credibility therefore does the play's author, the production's director, the rest of its creative team and its actors – indeed the producing theatre itself – bring to the endeavour?

The costs of the manager's own production, albeit that at the negotiating stage they are likely to be putative, will probably outweigh potential box office income and may not be particularly helpful in assessing either the production's future costs or its ability to earn money at a commercial box office. What it is possible to assess with some accuracy is the saving the producer is likely to have made by virtue of transferring a pre-cast, rehearsed production with available sets and costumes.

Yet this only represents an element of its value. Whether it is a new play or a revival, a classic or a 'discovered' text, a serious drama or a light comedy, all these attributes and many other wholly subjective judgements will be seen to have an important bearing on the production's future viability, and therefore on the negotiation for its sale. Reviews, both local and national, also play a significant role and indeed, in the case of co-productions, extending invitations to national critics to attend a show whilst it is playing at the producing theatre, may be a subject of negotiation.

Competitor producer interest may give some indication of the production's perceived value in the commercial arena. Taking soundings from theatre owners, whether or not they are likely to be involved in the production's future, may also provide helpful information, although once again a thwarted potential landlord may not be the most accurate of sources.



## 22 Creative control and production maintenance

Before the charity decides how it might like to participate financially in the commercial endeavour it is important to make a number of strategic decisions about the future life of the production and the property.

(The significance of dealing with these separately is described in sections 23 and 24 below). Once the creative team and the artists have been employed directly by the producer and the producer has control of the property, the manager's financial control and responsibility ceases.

If the director or any of the creative personnel are members of the producing theatre staff the problem of retaining creative control may be reduced, but without this direct artistic connection such control is extremely difficult to maintain. In these circumstances creative team and principal artist replacements are matters which the manager may wish to deal with contractually by way of consultation if not approval.

Apart however, from the unenforceable agreement between manager and producer suggesting that there be no distinction between their standards and values, there is an equally powerful argument that without the financial responsibilities entailed it is quite proper that the manager should have no further creative control.

Yet whilst the production accredits the producing theatre, it must be important to the charity that the commercial production's standards do not demean the producing theatre's reputation. While the charity can only rely on the good offices, professionalism and sense of reputation of the creative team and the artists for the maintenance of creative standards, it may wish to insist contractually on an involvement in the physical upkeep of the production.

This might suggest that the production manager and stage management team be common to both the producing theatre and the commercial production and that the subsidised management's house personnel remains responsible for the physical maintenance of the show. The eventual ownership of the physical asset, as dealt with in paragraph 18 above, will clearly feature in this decision.

In the event of transfer, the subsidised management may wish to approve the choice of West End theatre. Specific production circumstances, theatre availability and prevailing market forces will determine the reasonableness of the requirement for such an approval and the resistance it might meet.

## 23 Credit where credit is due

Credit for the charity should be regarded as a non-negotiable item where transfers and tours are concerned. The subsidised management naturally wants to trumpet its own achievement abroad as volubly as possible. The possibility of the production's failure should perhaps temper this bullishness and more importantly the wording of the credit, its prominence and where and when it appears should be in proportion to the charity's degree of 'ownership' of the production.

As the property becomes more widely exploited and potentially further away from home and even though the charity's responsibility for its origination is equally significant, the values of the fifteenth production may have very little to do with that of the first. The form of credit should alter accordingly.

## 24 Tickets, marketing and accounts

Other matters of principle should include the degree of access the charity requires to the producer's accounts and/or the box office statements of the touring theatres or West End house. The significance of such requirements may vary according to the terms of the deal but it is important that the subsidised management – as a sizeable investor in the endeavour – is kept in close contact with business performance. Indeed the producer may find it rather easier to persuade a well-informed charity, which has negotiated open access to the financial information, of the need to *waive*, *reduce* or *defer* its own share of reward in the event of poor box office.

Access to tickets, not only for the production's West End premiere but on a regular basis thereafter, is important for the charity so that it may continue to review the production which bears its name. The manager may also wish to be able to offer tickets to a mailing list or friends' organisation and will almost certainly want to maintain the right to a modest allocation of tickets for premieres of further productions of the property.

The charity may also wish to be consulted about aspects of the production's marketing or publicity. Whilst this may be strenuously resisted by the producing management, which will almost certainly insist on its absolute right (and its duty to its investors) to sell the production as it sees fit, the charity will certainly require approval of any contractual acknowledgement requirements with third parties which it has entered into.

## 25 Financial arrangements

There are no prescribed rules for the methods by which the subsidised management may participate financially in the commercial endeavour. Although precedents exist the subsidised company's manager should remember that every commercial transaction will be unique to the production concerned. A number of examples are cited at Appendix 6 below.

The point at which the producer and manager begin to work together, the risks taken by each in the earlier stages of a production's life including the amount of investment introduced by the producer are all critical to determining the kind of participation the charity may exact from the production once it ceases effectively to take any further risk in the endeavour. It is also important to remember that the charity's participation is proscribed by the scope of rights and options in rights that it has acquired in the property. In the case of work in the public domain, participation must be linked to the production or to any of its successor productions as the clause quoted in Appendix 5 seeks to define them.

Participation may be directly linked to box office income, to the production's profits, to the producer's profits, to income above the weekly *break-even* or to any combination of these. It may consist of a fixed weekly royalty, though this should not be confused with any payment for the show's physical assets or any necessary hiring arrangements. These should be dealt with separately.

The production's physical assets, if they are (able) to be sold to the producer, may be sold for a lump sum or on a form of unsecured hire purchase. The purchase is unsecured only because in the event that the production fails to run the manager is unlikely to receive the full benefit of the sale. The return of the assets in such a situation offers poor compensation. In all cases where consideration is paid for the assets, it should be remembered that whatever agreement the manager and producer may have entered into, the moment they leave the charity's theatre, the charity effectively loses control of the production. While the rights and wrongs of possession may be expensively argued over at length, the production itself may be happily running at a new venue.

An alternative approach sometimes adopted by subsidised managements is to value the production's physical assets (including perhaps an assessment of the workshop staff costs and an appropriate proportion of the producing theatre's overhead) and to argue for the producer to divide his/her share of the profits in an equitable ratio. Examples of such deals are provided in Appendix 6.

Traditionally the charity has enjoyed a royalty from the production, rising on recoupment, with this latter royalty being payable accepted on account of a proportion of profits. Whether these are the production's profits or the producer's (which are worth only four per cent of the production's) is open to negotiation and an assessment by the manager of the producer's post-recoupment schedule.

Tradition has however been established as much by its breaking as by its observance. For example, a production going into the West End for a pre-defined limited season may attract substantially different terms to those quoted. In such cases it would be wise to describe the length of season contractually so that the subsidised management has the

opportunity to benefit from any extension. Similarly a producer may be unwilling to afford the levels of royalty quoted for a show with expensive running costs which is forced to play in a commercial house with a modest capacity.

A fixed royalty may benefit the charity where it has doubts about the business performance of the production or where its own budget would benefit from the security of a fixed weekly income. Such royalties are traditionally not subject to *waiver*, *reduction* or *deferral*, although in straitened circumstances the producer is likely to require flexibility from any inessential cost. The disadvantage of a fixed royalty in the event of a huge success is obvious although profit-sharing or 'participation' (to which any form of royalty should eventually be linked) will diminish any such disadvantage.

Profit participation is essential for the subsidised management to continue to enjoy income which arises as a result of the property's wider exploitation. This may include income from *subsidiary rights* and merchandising rights in which the producer will have an interest (or may indeed have sold his interest outright to other parties). Once again the key to such participation lies in ensuring that the transfer contract reflects the scope of the rights and options contained in the property contract.

## 26 The contract

The terms and conditions of the relationship between the producer and the charity should always be described in a written contract. Providing the play agreement exists then this can be comparatively simple. An agreement covering a relatively complex co-production arrangement is detailed in Appendix 7.

# Appendix 1

## Theatres which are SOLT members and affiliate members, 2003

Theatre	# Seats	Management	Contact
<b>Adelphi</b>	1500	RUT/Ned	RUT
<b>Albery</b>	877	ATG/CM	ATG
<b>Aldwych</b>	1198	Ind/Ned	Michael Codron Ltd
Almeida	321	Ind	Grant-Aided
<b>Apollo</b>	775	RUT	RUT
<b>Apollo Victoria</b>	1832	CCE	CCE
<b>Arts</b>	360	Ind	Edward Snape
Barbican	1162	Ind	Grant-aided
<b>Cambridge</b>	1253	RUT	RUT
Carling Apollo Hammersmith	3271	CCE	CCE
<b>Comedy</b>	798	ATG	ATG
<b>Criterion</b>	600	Ind	Charitable trust
<b>Dominion</b>	2137	CCE/Ned	CCE
<b>Drury Lane TR</b>	2188	RUT	RUT
<b>Duchess</b>	476	RUT	RUT
<b>Duke of York's</b>	586	ATG	ATG
<b>Fortune</b>	432	ATG	ATG
<b>Garrick</b>	724	RUT	RUT
<b>Gielgud</b>	889	RUT/CM	RUT
Greenwich	423	Ind	Grant-aided
Hampstead	325	Ind	Grant-aided

<b>Theatre</b>	<b># Seats</b>	<b>Management</b>	<b>Contact</b>
<b>Haymarket TR</b>	894	Ind	Haymarket Theatre Trust – Arnold Crook
<b>Her Majesty's</b>	1161	RUT	RUT
<b>Lyceum</b>	2107	CCE	CCE
<b>Lyric</b>	916	RUT	RUT
Lyric Hammersmith	550	Ind	Grant-aided
National Theatre (Olivier)	1169	Ind	Grant-aided
National Theatre (Lyttelton)	891	Ind	Grant-aided
National Theatre (Cottesloe)	400	Ind	Grant-aided
<b>New London</b>	915	RUT	RUT
<b>New Ambassadors</b>	410	ATG	ATG
<b>Old Vic</b>	1077	Ind	Charitable trust
Open Air	1187	Ind	New Shakespeare Company
<b>Palace</b>	1390	RUT	RUT
<b>Palladium</b>	2291	RUT	RUT
<b>Peacock</b>	1000	Sadler's Wells	LSE
<b>Phoenix</b>	1020	ATG	ATG
<b>Piccadilly</b>	1200	ATG	ATG
<b>Prince Edward</b>	1625	CM	CM
<b>Prince of Wales</b>	1131	CM	CM
<b>Queen's</b>	990	RUT/CM	RUT/CM
Royal Court	400	Ind	Grant-aided
Sadler's Wells	1560	Ind	Charitable trust
<b>Savoy</b>	1157	SWC	Savoy Hotel Group
<b>St Martin's</b>	546	SWC	SWC
<b>Shaftesbury</b>	1405	Ind	Dit Entertainment

Theatre	# Seats	Management	Contact
Shakespeare's Globe	1500	Ind	International Shakespeare's Globe Centre Ltd
<b>Strand</b>	1052	Ind/CM	CM
Tricycle	230	Ind	Grant-aided
<b>Vaudeville</b>	690	Ind	Max Weizenhoffer
<b>Victoria Palace</b>	1575	SWC	SWC
<b>Whitehall</b>	648	ATG	ATG
<b>Wyndham's</b>	759	ATG/CM	ATG
Young Vic	484	Ind	Young Vic Theatre Company

**Key:**

ATG    Ambassadors Theatre Group  
CCE    Clear Channel Entertainment  
CM     Cameron Mackintosh Ltd  
RUT    Really Useful Theatres  
SWC    Sir Stephen Waley-Cohen  
Ind     Independent  
LSE    London School of Economics  
Ned    James Nederlander

**Theatres in bold type are those traditionally regarded as West End theatres**



# Appendix 2

## Commercial production budget examples

**Any sums quoted should not be used as a practical guideline; budgets are for illustrative purposes only.**

### a) Touring production budget (for illustrative purposes only)

Play touring immediately out of regional producing theatre.

<i>Production costs</i>	£	
<b>Fees and associated expenses</b>		
Author's advance	2000	
Director	1750	
Designer	1250	
Lighting designer	750	
Production manager	1500	
Management & creative team travel to first date	550	
Creative team expenses at first date	500	8300
<b>Physical production expenses</b>		
Scenery adaptation	500	
Props and furniture purchase	1000	
Refurbishment	1000	
Costumes	300	
Hardware	150	
Modelbox/plans etc	500	
SM petty cash	200	
Transport to first date	600	4250
<b>Marketing</b>		
Marketing fee	2000	
Design	800	
Photography	1250	
Repros	750	
Print	10000	
Direct mail	1200	
Launch advertising	2800	
Other marketing	1500	20300

**General and administration**

Rights advance/cost	3000	
General management fee	4000	
Office costs	500	
Insurance	2900	
Accountancy incl. audit	600	
Legal	1000	
Bikes/taxis/courier	200	12200

**Other**

Regional theatre payment	10000	
<i>Contingency</i>	4000	
<i>Production reserve</i>	15000	29000
Total production cost and capitalisation	74050	

**Running costs**

£

**Salaries**

	<i>number</i>	<i>basic</i>		
Principals	2	2500	5000	
Sub principals	2	750	1500	
Ensemble	2	400	800	
Understudies	3	400	1200	
Company manager	1	550	550	
Deputy stage manager	1	370	370	
Assistant stage manager	1	280	280	
Wardrobe	1	400	400	
Overtime reserve			300	
National Insurance contribution, holiday pay			2127	12527
Living allowances	13	140		1820
Travel	13	60		780

**Physical production**

Transport	750	
Lighting hire	900	
Wardrobe hire	250	
Miscellaneous hires	250	
Consumables	150	
SM petty cash	250	2550

**Theatre costs**

Advertising contra	2300	
Contra	650	
Get in/out	1300	4250

**Marketing**

Marketing fee	350	
Education expenses	800	
Other marketing	1000	2150

**General and administration**

Accountancy	300	
Insurance	275	
General management	1250	
Office costs	150	1975

Total fixed costs 26052

Ammortised capital 8 weeks  
(excluding reserves and contingency) 6881

Total 32933

**Royalties**

	<i>pre- recoup</i>	<i>post- recoup</i>
Authors	8.00	8.00
Director	1.50	2.00
Set designer	0.75	1.00
Lighting designer	0.50	0.75
Regional theatre	1.50	2.00
Producers	1.50	2.00
Royalty total	13.75	15.75

b) West End musical production budget  
(for illustrative purposes only)

Musical transfer assuming minor recast and one week re-rehearsal

One-week gap between end of regional run and re-rehearsal

<i>Production costs</i>	<i>£</i>	
<b>Fees</b>		
Director	3250	
Choreographer	2250	
Assistant choreographer	1600	
Set designer	2250	
Design assistant	1500	
Costume designer	2000	
Hair/make up designer	1700	
Lighting designer	1750	
Moving light programmer	1000	
Projection/video designer	0	
Sound designer	1750	
Musical supervisor	2000	
Musical arrangements	1500	
Orchestrations	1500	
Copying	1500	
Synthesiser programming	750	
Fight director	0	
Voice coach	1200	
Production manager	5500	
Casting director	2000	
Other fees	0	
Creative team expenses	10000	45000

**Audition/rehearsal costs**

Audition ads	500	
Audition rooms	600	
Audition travel	500	
Auditions: miscellaneous	300	
Rehearsal rooms	800	
Scripts and copying	200	
Modelbox/plans etc	350	
US flights	0	
Travel and transport	1100	
US living allowances	0	
Travel to West End	400	
Orchestra rehearsal costs	4000	
Rehearsal pianist	750	
SM petty cash	500	10000

**Physical production**

Scenery adaptation	4000	
Props and furniture purchase	2000	
Refurbishment	2000	
Costumes	2500	
Wigs and make up	1200	
Lighting advance hire/prep	2800	
Sound advance hire/prep	2000	
LX consumables	100	
Sound consumables	100	
Hardware	200	
Musical instruments advance hire	400	
Transport to West End	3000	
Storage	0	20300

<b>Rehearsal salaries</b>	<i>number</i>	<i>wks</i>	<i>basic</i>		
Principals	2	1	431	862	
Sub principals	6	1	340	2586	
Ensemble	12	1	340	5172	
Understudies	2	1	400	800	
Swings 4	1	400	1600		
Children	0				
Chaperone	0				
Company manager	1	2	750	1500	
Stage manager	1	2	500	1000	
Deputy stage manager	1	1	420	420	
Assistant stage manager	2	1	340	680	
Rehearsal top-up	25	3	80	6000	
Wardrobe	1	2	400	800	
Wigs	1	1	450	450	
Musical director	1	1	750	750	
Sound operator				0	
LX board operator				0	
Overtime reserve				3000	
National Insurance contribution, holiday pay				5300	30920
<b>Theatre costs</b>					
<i>Get-in</i> rent				0	
Theatre crew get-in/get-out				7000	
Additional contra production week			8000		
Production carpenter				740	
Production LX				740	
Get in sound				1200	
Get-in engineers				2800	
Get-in add'l contractors				1000	21480

**Marketing**

Press rep and expenses	6000	
Design	5000	
Promotional video	12000	
Photography	4000	
Front-of-house	12000	
Repros	4000	
Print	25000	
Direct mail	17000	
Launch advertising	70000	
Other marketing	20000	175000

**General and administration**

Rights advance/cost	3000	
General management fee	8000	
Producer's fee	9000	
Office costs	2300	
Insurance	14000	
Accountancy incl. audit	2500	
Legal	5000	
Bikes/taxis/courier	1000	
Opening night party	12000	
Entertainment	2000	
Management travel and hotels	2500	
Miscellaneous	1000	62300

**Other**

Regional theatre payment	175000	
Contingency	30000	
Nursing fund/opening weeks losses	125000	
Marketing reserve	15000	
Theatre deposit	35000	
LTC deposit	115000	495000
Total production and transfer costs and capitalisation		860000

**Running costs**

£

	<i>number</i>	<i>basic</i>		
Salaries				
Principals	2	3000	6000	
Sub principals	6	1000	6000	
Ensemble	12	550	6600	
Understudies	2	400	800	
Swings 4	400	1600		
Children	0			
Chaperone	0			
Company manager	1	700	700	
Stage manager	1	500	500	
Deputy stage manager	1	420	420	
Assistant stage manager	2	340	680	
Musical director	1	750	750	
Musicians	8	600	4800	
Wardrobe	1	400	400	
Wigs	1	450	450	
Sound operator	1	350	350	
LX board operator	1	500	500	
LX board operator	1	500	500	
Resident director			500	
Resident choreographer/dance captain			400	
Overtime reserve			1000	
National Insurance contribution, holiday pay			6590	39540
Living allowances				420
<b>Physical production</b>				
Lighting hire			1650	
Moving light hire			900	
Sound hire			1700	
Musical instruments hire			650	
Wardrobe hire			250	
Miscellaneous hires			250	
Consumables			300	
SM petty cash			500	6200



**Theatre costs**

Rent	11500	
Contra	17000	
Additional running crew	0	28500

**Marketing**

Press rep weekly	600	
Press advertising	8000	
Other marketing	3500	12100
General and administration		
Accountancy	400	
Insurance	700	
Medical	250	
Recast reserve	1000	
General management	2500	
Office costs	400	
Bikes/courier/taxis	200	5450
Total fixed costs		92210

**Royalties**

	<i>pre- recoup</i>	<i>post- recoup</i>	<i>pool/ fixed</i>
Authors	6.00	8.00	2400
Director	1.25	1.75	500
Choreographer	0.75	1.00	300
Set designer	0.60	0.80	240
Costume designer	0.60	0.80	240
Lighting designer	0.40	0.60	160
Sound designer	0.40	0.60	160
Orchestrator	0.25	0.40	100
Regional theatre	0.75	1.00	300
Producers	1.50	2.00	600
Royalty total	12.5	16.95	5000

Total weekly running costs			97210
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# Appendix 3

## Commercial rights licence

### Commercial stage rights licence example

**This document is for illustration only. You are recommended to consult a legal adviser with regard to the preparation and negotiation of any rights licence you wish to create.**

#### Memorandum of agreement

made this ..... day of ..... two thousand and .....

#### between

**John/Jane Smith** of (address)<sup>18</sup>

(hereinafter called 'the author') of the one part and

**the producing management limited** of [address] .....

(hereinafter called 'the producer') of the other part

**concerning** a play written by the author entitled .....

(hereinafter called 'the play') in which the producer wishes to acquire the stage rights

#### Whereby it is agreed:

#### Definitions

**The stage rights** shall mean the sole and exclusive right to produce and perform the play or cause it to be produced and performed on the stage.

**The British territory** shall mean the United Kingdom of Great Britain and Northern Island, the Channel Islands, the Isle of Man and Ire<sup>19</sup>.

**The option period** shall mean a period of eighteen months from the date of this agreement.

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<sup>18</sup> Either John/Jane Smith's address or care of his/her agent.

<sup>19</sup> As national tours often take in venues in the Republic of Ireland, this territory is frequently included in the British territory.

*Qualifying performances* shall mean 21<sup>20</sup> performances in the British territory and the overseas territory; in the American territory it shall be that number of performances which causes the producer to vest as defined in the *approved production contract*.

**Gross box office** receipts shall mean the sums actually received at the box office after the deduction of value added tax and any other tax levied thereon, the *theatre's proprietary seats, library, credit card and charge card* and other sales commissions, sales-stimulating discounts offered at the discretion of the producer in accordance with the producer's established custom and practice for previews, matinees, parties, affinity groups, stand-by sales, the sale of tickets linked to the offer of other goods and services, and such other special discounts unique to the play as may be agreed between the producer and the author for the sale of admissions to each performance of the play.

**Weekly operating costs** shall mean compensation to be paid to the director, the creative team, the cast, stage manager, weekly general and company managers, press agents, orchestra and stage personnel, transportation charges, weekly cash office charge, advertising, press and publicity costs, legal, accounting and auditing expenses, theatre guarantee and expenses, rentals, miscellaneous supplies, booking fees payable to third parties in connection with touring companies, and all other running expenses and losses of whatsoever kind actually incurred by the producer in connection with the operation of the production hereunder from and after the official press opening.

**Losing week** shall mean any week in which the weekly operating costs exceed the gross box office receipts.

**Production costs** shall mean fees of designers, directors, creative team, the producers (including without limitation the producer), general and company managers; cost of sets, curtains, drapes and costumes; all costs in connection with the recording of music for the play including studio costs; cost of payments on account of properties, furnishings, lighting and electrical equipment; premiums for bonds and insurance; unrecouped

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<sup>20</sup> Whilst this is a relatively standard number of performances for qualification, it is negotiable.

option and advance payments to persons other than the author; rehearsal charges, cash office charge, transportation charges, reasonable legal and accounting expenses, advance advertising, publicity and press expenses and all other expenses and losses actually incurred in connection with the production and presentation of the play up to and including the official press opening.

**Recoupment** shall be deemed to have been reached for each production of the play at the end of the week in which the producer shall have earned from the gross box office receipts of such production (after payment or accrual of all weekly operating expenses (as defined below)) for such production a sum equal to the production expenses (as defined below) (excluding bonds, deposits and other recoverables of such production).

***The mechanical rights*** shall mean the right to make and distribute by any means now known or hereafter to be devised a recording of the play by cinematographic film, video, CD, CD-Rom, DVD or similar, audio or electronic including free and pay television or any other process now known or hereafter to be devised in such a way that the images so recorded are intended to be exhibited to viewers and audiences without the presence of live performers.

**The American agreement** shall mean the agreement referred to in clause 24 hereof.

**The American territory** shall mean the United States of America, its dependencies and the Dominion of Canada.

**Approved production contract** shall mean the agreement entitled *The Approved Production Contract for Plays* approved by the Dramatists Guild Inc. of 234 West 44th Street, New York, NY 10036, USA.

**Overseas territory** shall mean that territory which is not the British nor the American territory

## 1 Author's warranties

The author hereby covenants, warrants and undertakes that:

- a) the play is an original work in copyright in all countries of the world affording copyright protection;
- b) he is the sole owner of the entire copyright in the play free of all charges and encumbrances;
- c) he controls the rights herein licensed to the producer and has not before the date of this agreement assigned, licensed or dealt with the rights granted hereunder;
- d) the rights herein licensed and/or made the subject of options granted to the producer do not infringe any copyright or other right vested in any other party;
- e) the play contains or shall contain no defamatory, obscene or otherwise unlawful matter and (without prejudice to the foregoing) that the play if publicly performed will not to the best of the author's knowledge and belief breach any of the provisions of the Theatres Act 1968;
- f) he will indemnify the producer against any costs claims or damages arising from any breach of these warranties.

## 2 Acquisition of licence and duration

- a) In consideration of the non-returnable advance payment to the author by the producer of £2,500 (two thousand five hundred pounds)<sup>21</sup> upon signature of this agreement the author shall grant the producer the sole and exclusive licence to the stage rights in the play and the producer shall produce the play in the British territory at a first-class theatre in a first-class manner with live actors on the stage in the English language throughout the British territory or cause the play to be so produced.

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<sup>21</sup> The consideration will depend on a number of factors: these may include the reputation of the author and the length of the option period as described in 2 c).

- b) The producer's licence shall continue<sup>22</sup> provided that he gives the qualifying performances and that in any one year from the date of the last performance of the first production of the play at least 50 (fifty)<sup>23</sup> paid public performances of the play (including not more than 7 (seven) paid previews) are given in the British territory<sup>24</sup>.
- c) The play shall be first performed under the terms of this agreement in the British territory within the option period provided the producer shall have the right to extend the option period for two further successive periods of six months each on payment of the non-returnable advance sum of £1000 (one thousand pounds) in respect of each such successive period, such payment to be on or before the expiry of the said initial period of eighteen months or the further six-month period as the case may be.

### 3 Extension of rights

In the event that the producer produces the play or causes it to be produced for the qualifying performances in the British territory he may upon payment to the author the sums referred to in clauses 24 and 25 hereunder acquire the rights referred to in those clauses.

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<sup>22</sup> The author may wish to time-limit the duration of the licence.

<sup>23</sup> The number of performances to be given annually is negotiable.

<sup>24</sup> It is not uncommon to insert an option here for the producer to 'pay or play'. If he/she has failed to produce the required number of performances then his licence may subsist for a further year providing he pays the author a sum equivalent to the royalties he/she would have received for the performances not given. The calculation is made by referring to the royalties received from the previous 50 performances.

#### **4 Non exercise of rights**

- a) The producer shall not be bound to exercise any rights hereby granted to the producer and the author shall have no claim against the producer in respect of any failure to present the play or cause the same to be presented or to exercise any or all of the rights and options hereby granted, except as specifically mentioned in this agreement.
- b) The licence granted to the producer under clause 2 a) hereof shall cease and determine and the rights granted revert to the author should the play not be performed within eighteen months from the acquisition of such rights (or any said extension thereof) or upon the expiry of any twelve-month period from the date of the first paid performance during which fewer than 50 (fifty) performances are given.

#### **5 Copyright**

- a) For the avoidance of doubt, the parties agree that nothing herein contained shall be construed as an assignment or partial assignment of copyright or a part thereof and no rights shall be granted to the producer other than those specified herein.
- b) The author shall not license or assign to a third party any rights in the play or any part thereof in respect of the British territory unless he shall have the producer's prior written consent so to do, such consent not to be unreasonably withheld or delayed.

#### **6 Advances**

The sums paid under the terms of clauses 2a) and 2c) hereof shall be by way of advance on account of royalties due under the terms of clause 7 hereof.

## 7 Royalties

- (a) For each performance of the play in the British territory, the producer shall pay to the author royalties as follows:
- (i) On tour prior to a West End run:  
5 per cent of the gross box office receipts
  - (ii) On tour following a West End run:  
8 per cent of the gross box office receipts
  - (iii) On tour independent of a West End run:  
6 per cent of the gross box office receipts
  - (iv) In the West End:
    - Before recoupment of production costs:  
5 per cent of the gross box office receipts
    - After recoupment of 100 per cent production costs:  
8 per cent of the gross box office receipts (except that in any losing week the royalty shall be 5 per cent)<sup>25</sup>
    - Post recoupment of 150 per cent production costs:  
10 per cent of the gross box office receipts (except that in any losing week the royalty shall be 5 per cent)
- (b) In any week in which weekly operating costs exceed gross box office receipts or in which payment of the full royalty would result in an operating loss, the author agrees to participate in a royalty pool<sup>26</sup> always provided that this operated for all other royalty participants. In the event of a royalty pool coming into operation, the author will receive in any week of performances a minimum payment of £200 per royalty percentage point.

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<sup>25</sup> A provision for royalty reduction is not unusual in these circumstances but may be replaced by a royalty pool structure as outlined in note 12.

<sup>26</sup> Royalty pools invented on Broadway were a means to depress the income of royalty participants either pre-recoupment (to allow productions a better chance of recouping their production costs) and in post-recoupment weeks to staunch the losses of any losing weeks. There are any number of pool models. Royalty participants are however generally guaranteed a minimum sum per percentage royalty point but above the weekly break-even would be compensated by sharing a 'pool' representing first surpluses above weekly operating costs. In theory the value of the pool should exceed the aggregate value of the royalties due at the same level of box office income.



## 8 Returns and accounts

- a) The producer shall furnish the author with certified nightly returns. These returns together with the payment of any sums shown thereby to be due under clause 7 hereof shall be forwarded to the author's agent not later than two weeks following the last day of each week in which performances of the play have been given under this agreement in the West End and not later than four weeks following the last day of each week in which returns have been received by the producer in respect of performances of the play given under this agreement outside the West End.
- b) The producer shall use his best endeavours and shall adopt normal accounting practices to collect and account for all monies payable to the author by virtue of this agreement.
- c) The producer shall supply to the author at the same time as to investors copies of documents and accounts necessary to identify the week in which the production costs are recouped and also copies of weekly operating costs certified by an accountant identifying the break-even point in relation to recoupment.

## 9 VAT

All payments detailed herein are exclusive of VAT and accordingly the author will, if registered for VAT, supply the producer with appropriate VAT invoice(s).

## 10 Credits and publicity, press and programme

- a) The producer shall announce on all programmes, posters and advertising matter under its direct control connected with the play (except in classified newspaper advertisements) that the play is by John Smith. The name of the author shall be not less than 25 per cent<sup>27</sup> of the size and prominence of the title and the name of the director of the play shall never be larger in size of type and degree of boldness than the name of the author.

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<sup>27</sup> This is negotiable and will depend on the reputation and marketability of the author.

- b) The producer shall publish a biography and/or photograph of the author wherever biographical notes and/or photographs of either the cast or the director or the producer appear in programmes within the direct control of the producer and the producer shall submit any such biography and/or photograph for the author's approval prior to publication.
- c) The author shall supply to the producer, at the author's own expense, a minimum of four black and white head shot photographs of himself for the producer's publicity or programme purposes only.
- d) The producer shall consult the author about programmes and all publicity material relating directly to the play that is under the control of the producer, provided he is reasonably available therefore and 'reasonably available' shall in this instance only mean available within not more than three days' notification.
- e) Subject to his availability, the author agrees to cooperate with the press and publicity campaign and agrees to give press and media interviews.
- f) The producer shall include in all programmes confirmation of the date on which the play was first performed in English and of the copyright agent.
- g) In the event of a future production of the play not under the producer's management, or in the event of the play being published, the author shall ensure that acknowledgement is made to the producer as the company that first presented the play on stage. The author further agrees to include as a contractual condition of any sale and/or lease of the mechanical rights that the exhibitor or transmitter includes a credit of not less than three seconds' duration as follows:  
  
'the play was first presented on stage by the producer' or such other wording as is mutually agreed.

## **11 Moral rights**

The producer recognises the moral rights of the author to be identified as provided in Chapter IV of the Copyright, Designs, and Patents Act 1988 or any modification thereof for the time being in force provided that such right shall be deemed satisfied by the producer's fulfilment of its obligations to grant the author credit as author of the play under the terms of this agreement.

## **12 Textual changes**

The producer shall not make or allow to be made any alterations in the text of the play without the consent of the author. Should it not be possible to submit to the author in person a proposal for a change in the text the said proposal shall be communicated to the author's agent and authorised representative whose response shall not be unreasonably delayed. Any change of any kind in the manuscript, presentation or performance of the play made by anyone shall be deemed to be part of the play and the copyright therein shall belong (as far as the same constitutes intellectual property) to the author and the author shall not be obliged to make payment to any person suggesting or making such changes unless he has entered into a legally enforceable agreement to do so.

## **13 Approvals**

The author shall have the right to approve the producer's choice of director and designer for the first production of the play, such approval not to be unreasonably withheld or delayed. The author shall be consulted about the choice of leading actors and such consultation shall be meaningful.

## **14 Rehearsals**

- a) The author shall be notified of casting sessions and rehearsals and have the right to attend any such.
- b) The producer agrees to reimburse the author's reasonable travel and living expenses to attend casting sessions and rehearsals

## **15 Tickets**

- a) The producer shall provide the author free of charge with four seats for the official opening performance of the play.
- b) The producer shall hold to the author's order one pair of top-price seats for each performance of the play in the West End theatre for purchase by the author at any time until 6.00 pm for a performance on the following day.
- c) The author in person may attend any performance of the play free of charge, being seated subject to the availability of seats.

## **16 Expenses**

Subject to the author submitting all appropriate accounts, the producer agrees to pay such reasonable and legitimate out-of-pocket expenses (including but not limited to travel and accommodation but excluding alcoholic drinks) as shall have been mutually agreed for attending rehearsals and previews of the play and in engaging in other production-related work and in carrying out research for the play at the producer's request (which requests shall not be unreasonably refused by the author).

## **17 Prompt script**

The producer shall, if so required by the author, furnish the author within one month of the first performance of the play with a copy of the prompt script prepared for the initial run of the play.

## **18 Mechanical rights**

- a) The producer and the author will use their best endeavours to conclude in good faith and within customary industry parameters an appropriate agreement for the mechanical rights in the play within 45 days following receipt of a proposal by the producer, failing which the producer shall be entitled to match any third party offer for the mechanical rights.

- b) If the producer should not acquire the mechanical rights under the terms of clause 18a) hereof:
- i. the author shall not sell, license, assign or dispose of such right in any part of the world other than at a price negotiated in good faith having regard to the financial and artistic interests of both the producer and the author;
  - ii. in respect of the sale of screen rights it is hereby agreed by the author that the author shall not receive more for the creation of any film script or scripts based on the play than he shall receive for the sale of the said rights.
  - iii. if the author should dispose of the mechanical rights and should any product of the disposal of such rights be made for transmission, broadcast sale or rental, which is substantially the same as the producer's production of the play, the author shall keep the producer fully informed of the details of such mechanical production and the personnel involved so that the producer may negotiate for itself an appropriate payment in respect of any elements of the producer's production which may be used in such mechanical production.

### **19 Broadcasting excerpts**

The producer shall have the right at any time during the run of the play in the territories to authorise the televising or sound broadcasting of excerpts from performances of the play given by the producer or a management with which the producer is associated or which the producer has sub-licensed for the purposes of publicity or promotion of the said production, provided that no such excerpts shall exceed ten minutes total running time.

### **20 Archive recording**

At any time during the continuance of this licence the producer shall have the right to make or license the making of a film, video tape, sound recording or other mechanical recording of its own production of the play, provided that such mechanical and/or sound recording may be used for the producer's own library purposes only except by prior agreement with the author and the copyright in the text remains the unencumbered property of the author.

## **21 Merchandise**

In the event that the producer should produce and sell to the general public any merchandise connected directly with the play, the producer shall pay to the author 10 per cent of the producer's share of any profits of such sales, but excluding the sale of programmes and educational resource packs. Payment shall be made within 6 (six) months end of the final performance of the play in any territory. Payments shall be accompanied by a statement of expenditure and income certified by the producer.

## **22 Agency**

The author hereby appoints David Brown of Jones and Jones, 16 Smith Street, London W1 as his agent and authorises the said agent to collect and receive all sums of money due to the author under the terms of this agreement and declares that the receipt of the said agent shall be a good and valid discharge of all sums due to the author hereunder and the author further authorises and empowers the producer to treat with the said agent on the author's behalf in all matters concerning this agreement.

## **23 Participation rights**

- a) Provided the producer produces the play or causes it to be produced for the qualifying performances in the British territory the producer shall be entitled to receive 20 per cent (twenty per cent) participation in the author's gross revenue (after deduction of agency commission paid or payable not exceeding 10 per cent) from the sale, licence, assignment or other exploitation of the mechanical rights in the play for the term of the producer's licence in the play and for ten years thereafter.
- b) Provided the producer produces the play or causes it to be produced for the qualifying performances in the British territory, the overseas territory or the American territory the producer shall be entitled to receive 33.3 per cent (thirty three point three per cent) participation in the author's gross revenue (after deduction of agency commission paid or payable not exceeding 10 per cent) from the professional stage rights in the English language in the relevant territory for the period of copyright.

- c) Provided the producer produces the play or causes it to be produced for the qualifying performances and also presents the play or causes it to be presented in any other territory under the terms of this agreement, the producer shall be entitled to receive for the period of its first run of the play and for ten years thereafter participation in the author's gross revenue (after deduction of agency commission paid or payable not exceeding 10 per cent) from the sale, licence, assignment or other exploitation of the foreign-language professional stage rights in the play at the rate of 20 per cent (twenty per cent).
- d) Where under the terms of an option to present the play in the USA, the producer may qualify for a share of the subsidiary rights in excess of those granted hereunder, then the author shall hold any such excess in trust for the producer until it is determined whether the producer has qualified or not.
- e) The author undertakes to procure that his agent shall collect all royalties and other sums due hereunder and render within 28 (twenty-eight) days of the receipt by the author such proportional payments directly to each party, together with a statement giving full particulars of how such payments are calculated and with such supporting documents as the producer shall reasonably require.

#### **24 American territory**

- a) Provided the producer has produced the play or caused it to be produced for the qualifying performances he shall be entitled within 13 weeks from the date of the official opening performance of the play in the British territory, on payment to the author the non-returnable sum of US\$10,000 (ten thousand US dollars) on account of royalties, to acquire the sole and exclusive stage rights to produce the play on the first class professional stage in the American territory on terms to be negotiated in good faith. The terms of the American agreement shall be no less favourable than those contained in the approved production contract excluding those parts which refer to the British territory or to Australia or

New Zealand or to foreign or English language rights or to motion picture rights or television rights all of which shall continue to be governed exclusively by the provisions contained in this agreement and subject further to the following provisions.

- b) The date of opening in a Broadway or off-Broadway<sup>28</sup> theatre in New York shall not be later than 18 months after the date of payment of the advance specified in clause 24a) above.
- c) The author shall have approval regarding the choice of director and designers (and acknowledge as approved all those hitherto involved in these capacities) and consultation regarding the choice of cast (including all replacements) of the play under the American agreement and such consultation shall be meaningful.
- d) If the producer fails to enter into the American agreement as provided in clause 24 hereof within the said period and if such failure is not attributable to any material default or intentional delay on the part of the author, then this option shall lapse and all rights of the presentation of the play in the USA and Canada shall remain with the author.
- e) If the play is produced in the City of New York, and if the author does not reside in New York at that time and if the author is available the producer shall pay or procure to be paid the author's return transportation to New York together with the author's first-class hotel costs and living expenses of a minimum of \$150 per day for the casting and rehearsal sessions and the official opening of the play in New York City.

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<sup>28</sup> 'off-Broadway' refers to theatres with between 100 and 499 seats.



- f) (i) If the play is produced under the terms of this agreement and has run for the number of performances in the USA stipulated in the American agreement and subject to the payment of the full royalties under such American agreement the author shall pay to the producer a further 20 per cent (twenty per cent) of the author's net receipts from any sale, lease or other disposition of the mechanical rights in the play effected during a period ending five years from the last performance of the first continuous run of the play in a Broadway or off-Broadway theatre provided always that the producer shall not be entitled to any participation under this sub-clause if the mechanical rights are disposed of to the producer.
- (ii) In the event of a sale, lease or other disposition of the mechanical rights being made after the play has run for the qualifying period in the West End of London and before exercise by the producer of the option contained in this clause 24 the 20 per cent (twenty per cent) of the net receipts arising from such sale, lease or disposition shall be retained by the author but shall become payable to the producer if the producer becomes entitled to it by entering into the American agreement and fulfilling the conditions in it. If the play is not presented under the provisions of the American agreement or fails to reach the required number of performances then the author shall be released from any obligations by virtue of this paragraph.

## **25 Overseas territory**

- a) Provided the producer has produced the play or caused it to be produced for the qualifying performances he shall be entitled within twelve weeks from the date of the official opening performance of the play in the British territory on payment to the author the non-returnable sum of £3,000 (three thousand pounds) on account of royalties, to acquire the sole and exclusive stage rights in each country throughout the world and such right shall continue for so long as 35 (thirty-five) paid public performances are given in any year in the Overseas territory from the date of last performance of the first production of the play in the Overseas territory.

- b) The producer shall produce the play or cause it to be produced within 18 (eighteen) months from the date of acquisition as provided for above and should the producer not present or authorise the presentation of the play within this time, the rights granted in clause 25a) hereof shall revert to the author absolutely.
- c) For each performance of the play in the Overseas territory the producer shall pay to the author:
  - (i) If the play is produced or co-produced by the producer 8 per cent of the gross box office receipts
  - (ii) If the play is not produced or co-produced by the producer 66.6 per cent (sixty six point six per cent) of any advance and royalties received by the producer in respect of the rights in the play.
- d) The author shall not without first alerting and consulting with the producer sell or license the foreign-language stage rights in the play to a third party during the option period granted to the producer under clause 25 a) or thereafter during the producer's licence should the producer exercise the option.

## **26 Restriction of rights**

The author reserves to himself with full freedom of use all rights not specifically provided for in this agreement but agrees that he will not release the amateur stage rights in the play nor permit the release of any film, television or radio version of the play in any of the territories during the subsistence of the producer's options or the currency of the producer's licences under such of the said options as the producer shall have exercised without the prior written consent of the producer, such consent not to be unreasonably withheld.

## **27 Assignment**

The producer shall not assign this agreement nor any part thereof without the express written consent of the author but may grant customary sub-licences provided that nothing in this clause shall be deemed to relieve the producer of his responsibility towards the author.

## 28 The agreement

- a) Nothing in this agreement shall be deemed to constitute a partnership, joint venture, employer-employee or principal-agent relationship between the parties hereto.
- b) This agreement is binding upon the heirs, executors, administrators, lawful assigns and successors of the parties hereto.
- c) This agreement constitutes the entire agreement of the parties hereto and may not be modified, altered, amended or changed unless in writing signed by the parties hereto.
- d) This agreement shall be construed and carried into effect in accordance with English law and the author will submit to the jurisdiction of the English courts.

### **For the author**

Signed by

In the presence of

Profession/occupation

Address

### **For the producer**

Signed by

In the presence of

Profession/occupation

Address

## Appendix 4

### Extract from SOLT/Equity agreement for West End theatre performers and stage management

#### ‘2.2.2. Transfers

- 2.2.2.1 Where the offer of a non-West End Contract for a production is conditional on an Artist’s either entering into a West End Contract or entering into an option arrangement for such production, the Manager shall pay the Artist in respect of a maximum period of 3 weeks (4 weeks musicals) a sum equal to the balance (if any) between the relevant West End minimum salary and the salary paid to the Artists for the rehearsal period under the non-West End Contract when the transfer has actually taken place. Such sum shall be paid with the salary due for the first week of under the West End Contract.
- 2.2.2.2 If the Artist when engaged on a non-West Contract rehearses for a West End production after the opening of the non-West End production, the Manager shall pay the Artist not less than one-sixth of the relevant West End minimum salary per day (or part thereof) of such rehearsal.
- 2.2.2.3 The Manager shall pay the Artist not less than his/her salary subject to the ceiling prescribed in 3.1.1.2 as a retainer for the weeks (not exceeding two) following the last performance of the play under the West End Contract prior to the first week of rehearsals for the West End engagement.’

# Appendix 5

## Two examples of wording used in creative team member's contract:

### Example 1:

A For a director

Should the play as directed by the **director** for the manager subsequently be presented by a commercial producer under licence from or in association with the manager or in another medium the manager shall require:

- (i) that in respect of any presentation by any such producer in the live theatre the director shall be given the right of first refusal to direct the play;
- (ii) that any such producer with which the manager deals shall make additional payment to the director to be negotiated in good faith with the director or the director's agent or duly authorised representative.

Should the director be invited by another management to accept an engagement to direct a production of the play which might be or might tend to be the same as or based upon or derived from or which might bear any recognisable similarity to or to any element of the physical and/or conceptual production of the play as directed by the director for the manager during this engagement the director shall before accepting such an engagement first require any management with which the director negotiates to contract with the manager for the right to re-produce all or any part of the manager physical and/or conceptual production of the play.

Notwithstanding the provisions of the above clauses the manager shall be entitled to authorise excerpts from the play to be filmed strictly for the purpose of promotion or publicity in broadcast media provided no such excerpt shall exceed fifteen minutes' duration and provided that the director shall receive a fee for each excerpt of which the transmitted time exceeds five minutes' duration.

## B For a designer

Should the set and costumes as designed by the **designer** for the play subsequently be used in a presentation of the play presented by a commercial producer under licence from or in association with the manager or in another medium the manager shall require any such producer with which it deals to make additional payment to the designer to be negotiated in good faith with him or his agent or duly authorised representative.

Should the designer be invited by another management to accept an engagement to design the play in a production which might be or might tend to be the same as or based upon or derived from or which might bear any recognisable similarity to any element of the physical and/or conceptual production of the play as produced by the manager the designer shall before accepting such an engagement first require any management with which the designer negotiates to contract with the manager for the right to reproduce all or any part of the manager's physical and/or conceptual production of the play.

Notwithstanding the provisions of the above clauses the manager shall be entitled to authorise excerpts from the play to be filmed strictly for the purpose of promotion or publicity in broadcast media provided no excerpt shall exceed fifteen minutes' duration and provided that the designer shall receive a fee for each excerpt of which the transmitted time exceeds five minutes' duration.

### Example 2:

'Reproduction' means any first-class live stage production of the show which substantially reproduces or incorporates the major elements of the stage directions the choreography and musical staging and the designs of the costumes stage scenery and properties (all such elements being taken as a whole) created exclusively for the production at the ..... theatre.

#### A Future use of the stage directions

In the event of the producer presenting the production and utilising the **stage directions** therein for not less than 21 performances on consecutive days (excluding Sundays and public holidays if there are no performances on those days) the lender hereby grants to the producer the sole and exclusive perpetual licence to use the stage directions in any other reproduction (including but not limited to the West End transfer) or in any other exploitation of the show in any and all media in any and all territories for the full period of copyright in any and all jurisdictions throughout the universe but subject to the provisions as to the payment of royalties and options for engagement as director and deputy approval rights and other terms hereinafter contained. Subject as aforesaid all copyright (if any) in the stage directions is reserved to the lender.

#### B Future use of the designs

In the event of the producer presenting the production and utilising the **designs** therein for not less than 21 performances on consecutive days (excluding Sundays and public holidays if there are no performances on those days) the designer hereby grants to the producer the sole and exclusive perpetual licence to use the designs in any other live stage production of the show (including but not limited to the West End transfer) or in any other exploitation of the show in any and all media in any and all territories for the full period of copyright in any and all jurisdictions throughout the universe but subject to the provisions as to the payment of royalties and options for engagement as designer and deputy approval rights and other terms hereinafter contained. Subject as aforesaid all copyright (if any) in the stage directions is reserved to the designer.

# Appendix 6

## Examples of the terms of commercial transactions

### Example 1

A co-production deal at a regional theatre between a manager and producer for a musical for which the producer holds the rights, intended for the West End.

The manager agrees with the producer a production budget for the show (including its running cost) at the regional theatre. This budget is exclusive of workshop and wardrobe staff costs. The creative team is introduced by the producer though employed by the manager.

The producer contributes the difference between the total production and running cost of the show less the box office income set at a level guaranteed by the manager. The producer takes responsibility for cost overruns other than those caused by the manager's negligence or omission. Any income in excess of the guaranteed box office target is divided equally between the manager and the producer.

The charity receives a royalty of 1 per cent rising to 1.5 per cent on recoupment. Additionally the charity receives 5 per cent of the producer's profit. (This element of participation continues for all subsequent presentations of the production). Additionally the manager's valuation of the workshop and wardrobe staff costs is treated by the producer as an investment 'in kind' in the production and an appropriate proportion of profits on this investment are distributed to the manager.

### Comment

The charity's risk (which is based on an assessment of how well the show will attract at the regional theatre) may be further decreased by either:

- a) not offering a guaranteed level of box office income but proposing that all of it is used in the offset calculation to reduce the producer's contribution



- b) offering a *first call* of 'offset' up to an agreed box office target but making the producer responsible for any deficiency

The manager's exposure may be further limited by

- a) including a contribution to the theatre's running cost in the show's running budget
- b) including the workshop and wardrobe staff costs in the running budget

### Example 2

An outer London subsidised theatre co-produces a play with a subsidised regional touring theatre. Both managements have commercial trading companies which together wish to produce the play in the West End.

The production cost of the initial non-West End production is divided equally between the subsidised managements. Each is responsible for its own running costs and entitled to all the income from the respective runs at their own theatres.

The West End rights are assigned by the manager of whichever theatre had originally purchased them to the benefit of both parties.

An independent producer is appointed to act as general manager on the production in the West End.

The production's West End capitalisation is £270,000 and responsibility for raising the money is divided equally between the two trading companies. Each charity receives £10,000 from the commercial venture plus a guarantee of £400 per week against a royalty pool in which each holds one point.

Different methods obtain for transferring any profits made on the venture from each commercial vehicle to the respective charity but importantly such profits are wholly dedicated for the charity's benefit.

### **Comment**

Few subsidised managements have trading companies capable of raising such high levels of investment. The need to build a substantial contingency into the capitalisation (as in the event of failure it is unlikely that any other source of funds will be available to meet liabilities) may make this a less attractive prospect for potential investors. Employing a West End general manager is a necessity.

### **Example 3**

A regional theatre produces a production of a standard classical work. Viewed by a producer in the show's closing week an offer is made to transfer the production to the West End for a limited ten-week season, on the following terms:

The producer agrees to pay £10,000 towards the cost of the original production and to provide the manager with 10 per cent of his/her profits from the season.

### **Comment**

A 'quick kill' West End season by an astute producer may provide the charity with an unexpected reward. The profits however, from a ten-week season (given a West End production budget which includes an appropriate marketing spend and the charity's £10,000 ) are unlikely to be substantial and 10 per cent of the producer's 40 per cent share may not approach a four-figure sum. Nevertheless, the unexpected windfall ...

### **Example 4**

A co-production deal at a regional theatre between a charity manager and a commercial producer for a new play for which the producer holds the rights. The production precedes a regional tour.

The creative team is jointly appointed and a production and running budget agreed by both parties. The manager takes responsibility for delivering the production on budget and makes no charge for workshop and wardrobe staff or any overhead contribution in the estimates. The manager guarantees the box office at a particular level and the producer therefore contributes a fixed sum towards the show.

The manager receives a royalty of 1.5 per cent, rising to 2.5 per cent on recoupment from the tour where the production's life ends.

### **Comment**

The commercial rewards from touring plays are comparatively small and subsidised managements may well take the approach that they are being presented with an opportunity to present otherwise unaffordable new work. Care should be taken to ensure an ongoing interest in the event that the work has a longer life than originally envisaged.

### **Example 5**

A co-production deal between a subsidised regional theatre manager and a producer for a new one-man play for which the producer holds the rights. The production is intended to tour after its initial run at the subsidised theatre and have other commercial presentations thereafter.

The manager pays for the production in its totality but only to contribute a pre-agreed budgeted sum towards the physical production costs.

The producer engages the creative team and their fees are reimbursed by the manager in the ratio of the length of run at the theatre *pro rata* to the length of run of the initial tour. The manager pays the producer a royalty of 10 per cent of the theatre's box office income and retains a first call of the next 45 per cent. The producer receives a second call of 15 per cent and thereafter box office receipts are divided 70/30 in the manager's favour.

A royalty of 1 per cent rising to 1½ per cent is payable to the manager for the duration of the producer's rights in the play.

### **Comment**

The relative rewards between the parties at the manager's theatre are unfavourable to the manager. The manager's risk is however compensated for by the name value of the star introduced by the producer and the potential future exploitation value of the production providing the manager with a comparatively lengthy ongoing income stream on a production whose capital cost is small and where recoupment is likely to be swift.

# Appendix 7

## Transfer contract example

This agreement is made the ..... day of ..... 20 ..... between the subsidised management limited of ..... (hereinafter called 'the manager') (1) and the commercial management of ..... (hereinafter called 'the producer') (2)

whereas

- 1 The producer controls the stage rights to the play/musical play entitled '.....' written by the author.
- 2 The producer wishes the play to be presented at the theatre and the theatre has agreed to assist in arranging the production of the play at the theatre on the terms hereinafter set out.

Now this agreement witnesseth as follows:–

### Definitions

- 1 In this agreement the following expressions shall have the following meanings:-
  - a) 'The theatre' shall mean the manager's theatre known as xxxxx at xxxxx
  - b) 'The play' shall mean the dramatic work/musico-dramatic work entitled '.....' and written by the author;
  - c) 'The author' shall mean .....
  - d) 'Box office receipts' shall mean the gross weekly sums received from the sale of tickets and admissions during any week or part week in respect of performances of the play after deduction of
    - (i) agency commissions and library discounts
    - (ii) party or group sales discount
    - (iii) discounts allowable to off-premises box offices
    - (iv) value added tax or any similar tax

- (v) entertainment tax (if any)
- (vi) any local tax directly chargeable on the sale of tickets or admissions;
- e) 'The theatre's presentation' shall mean the presentation of the play at the theatre pursuant to this agreement;
- f) References to 'production of the play by the producer' shall include any production or presentation of the play under licence from or by arrangement with the producer;
- g) 'The producer shall mean the second party hereto and his or its successors in title licensees or assigns;
- h) 'Certified production costs' shall mean a statement of production costs prepared in accordance with normal accounting practice in relation to the theatre industry and certified by a chartered accountant (or the local equivalent) experienced in theatrical accounting;
- i) 'Producer's contribution' shall mean the budget shortfall as provided in clause 2(a).

## **Budget**

- 2**
- a) The parties hereto have agreed a budget for the theatre's presentation a copy of which is attached hereto as Appendix X which budget shows a budget shortfall of ...
  - b) The producer shall pay to the manager the producer's contribution by payments as follows:–
    - (i) on signature hereof the sum of ...
    - (ii) four weeks prior to the start of rehearsals the balance of ... .
  - c) Any excess of production costs incurred by the theatre's presentation other than through any act or omission by the manager shall be for the account of or the responsibility of the producer and the producer shall indemnify the manager against any such excess production costs unless otherwise mutually agreed in writing.

### Approvals

- 3 a) The producer shall have the right of approval of the following production elements for the theatre's presentation:–
- (i) the director
  - (ii) the designer
  - (iii) the lighting designer
  - (iv) the choreographer (if any)
  - (v) the sound designer (if any) but the contracts for the services of the aforementioned personnel shall be entered into by the manager.
- b) The casting of the theatre's presentation shall be subject to the approval of the producer but the manager shall enter into the contracts for the engagement of the cast for the theatre's presentation.

### Delay of approvals

- 4 a) Any approvals by the producer shall not be unreasonably withheld or delayed and if the same shall be unreasonably withheld or delayed the manager shall be entitled to enter into the contract concerned notwithstanding that the producer's consent shall not have been given.

### Physical production

- 5 a) The manager shall be responsible for the construction of or provision of the physical production including the sets, costumes, wigs, properties, special lighting and sound effects as required for the theatre's presentation all in accordance with the budget.
- b) The elements in the budget for the provision of the physical production are calculated at the manager's basic hourly rates and unless otherwise specifically provided for in the budget shall not include overtime or other enhanced rates which shall be the responsibility of the producer if any such payments shall become due.

- c) In the event that pursuant to any union agreement any payment shall become due to the staff of the manager by reason of a subsequent presentation of the play in the West End of London or elsewhere such payments shall be the responsibility of the producer.
- d) After the theatre's presentation the manager shall make available to the producer the entire physical production and subject to payment of all sums due from the producer to the manager hereunder the ownership of the physical production shall pass to the producer after the close of the theatre's presentation provided always that the ownership of the physical production and the physical possession thereof shall remain vested in the manager until all payments due to the manager from the producer pursuant to this agreement (other than payments in respect of subsequent presentations of the play) shall have been paid.
- e) The get-out costs of the theatre's presentation shall be the responsibility of the producer.

#### **Box office revenue**

- 6 a) The manager shall pay to the producer ..... per cent of all box office receipts from the theatre's presentation in excess of ....
- b) Save as provided by paragraph (a) all box office receipts shall belong to the manager.
- c) The price of admission to the theatre's presentation shall be determined by the manager who shall however consult the producer before fixing such prices.

#### **Author's entitlement**

- 7 All payments due to the author in respect of the theatre's presentation shall be paid by the manager provided such payments do not exceed ..... per cent of the box office receipts and any excess royalty due to the author shall be paid by the producer.

## Investment

- 8 In the event that the manager shall agree to bear any amount of the production costs in excess of the budget (which save in the case of express agreement in writing the manager shall be under no obligation to do) the producer shall procure that the amount of such excess is treated as an investment by the manager in the subsequent presentation of the play by the producer in the West End of London or elsewhere in the United Kingdom such investment to rank *pari passu* with all other persons providing production finance for such further presentation.
- 9 The producer shall pay or procure the payment to the manager of a royalty for each and every production of the play within the United Kingdom or elsewhere in the world by the producer equal to ..... per cent of the box office receipts from each such production rising to ..... per cent after recoupment of production costs all to be calculated on a production by production basis and in addition the producer shall pay or procure the payment to the manager of a sum or sums equal to ..... per cent of 100 per cent of the profits of any such production until the amount of such profit shall be equal to 100 per cent of the certified production costs of the production and thereafter ..... per cent of profits.

## Ancillary income

- 10 In addition to all payments to the manager hereinbefore mentioned the producer shall pay or procure the payment to the manager of sums equal to ..... per cent of any income received by the producer or any corporation or any production entity in which the producer shall have an interest from television, (broadcast narrowcast satellite cable) sound radio video and sound recording exploitation of the play.



**Credit**

**11 a)** The producer shall procure that the manager is accorded billing in all posters, playbills and other similar advertising or promotional material and in all programmes for productions of the play by the producer as follows:–

‘..... by arrangement with the manager presents  
.....’

such billing to be no less than ... per cent of the title of the play and such that the producer’s name is no larger and no less prominent than that of the manager provided always that the producer’s name may precede or be above that of the manager.

b) in addition to the aforementioned credit the producer shall procure in programmes for productions additional credits as shown in Appendix Y.

c) in relation to the theatre’s presentation the billing on posters playbills and other similar advertising or promotional material shall be as in paragraph (a) of this clause and in the programmes the credit shall be as follows:–

(i) title page: billing as in paragraph (a);

(ii) production credits: sets and properties built by the manager’s workshops; costumes by the manager’s wardrobe department;

(iii) an ‘article’ on the manager (as attached);

(iv) billing ‘for the Subsidised Management Ltd’ shall be

Chairman: .....

Vice-chairman: .....

General manager: .....

Artistic director: .....

Production and technical manager: .....

### **Producer's warranty**

**12** The producer hereby warrants to the manager that he/she is fully entitled to all rights necessary to present the play for the theatre's presentation and that he/she is fully entitled to enter into this agreement free of any claim from any third party and the producer shall indemnify the manager against all claims demands proceedings costs and liabilities whatsoever which may arise by reason of the presentation of the play at the theatre or by any breach or non-compliance with the aforesaid warranty.

### **Accounting**

- 13** a) Following the end of the theatre's presentation the manager shall render to the producer a final accounting within 14 days and in the event that such accounting shall show that any sum is payable to the producer in respect of the theatre's presentation such accounting shall be accompanied by a remittance of such amount due to the producer.
- b) In respect of each subsequent production of the play by the producer the producer shall procure that copies of all weekly box office returns are sent to the manager within 7 days after the end of the week for which the returns are made and that within 14 days after production costs have been recouped or after the close of the production (whichever is earlier) there is sent to the manager a certified statement of production costs of the production concerned.
- c) The manager shall be entitled through its accountant or other professional advisor subject to prior reasonable notice in writing to inspect and take extracts from or copies of the producer's books of account and other accounting records relating to each production of the play by the producer.
- d) As soon as is reasonably practicable but in any event within 21 days after any agreement shall have been entered into by the producer for the subsequent production of the play the producer shall give or procure that there is given to the manager notice in writing of such agreement with details of the other contracting

party and of the production and management accountants and reasonable production information (but not confidential business terms) so as to enable the manager adequately to protect its rights in relation to such production.

### **Partnership**

- 14** Nothing in this agreement shall be deemed to constitute a partnership between the parties and neither party shall be entitled to pledge the credit of the other in relation to the theatre's presentation or otherwise.

### **Notices**

- 15** Any notice to be given hereunder shall be sent to the party concerned at their address hereinbefore contained or at such other address or addresses as may from time to time have been designated in writing for that purpose.

### **Law of the contract and jurisdiction**

- 16** This agreement shall be governed by and construed in accordance with the laws of England and the English courts shall have jurisdiction save that in the event of any dispute concerning the provisions of clause 4 the issue shall be determined by an arbitrator appointed on the application of either party by the president for the time being of the Theatrical Management Association Limited in accordance with the Arbitration Act 1950 as amended.

As witness the hands of the duly authorised officers of the parties the day and year first before written.

signed by .....

for and on behalf of the Subsidised Management Ltd

in the presence of .....

Signed by .....

for and on behalf of the Commercial Management Ltd

in the presence of .....

Here add: Appendix X – budget

Appendix Y – credits

# Appendix 8

## Some professional advisers

(This list is not comprehensive – for others see *British Theatre Directory*)

### Solicitors

**Campbell Hooper**

35 Old Queen Street  
London SW1H 9JD  
Tel: 020 7222 9070

**Clintons**

55 Drury Lane  
London WC2B 5SQ  
Tel: 020 7379 6080

**Davenport Lyons**

(Inc. Wright Webb Syrett)  
1 Old Burlington Street  
London W1S 3NL  
Tel: 020 7468 2600

**Denton Hall**

Cliffords Inn, 5 Chancery Lane  
London EC4A 1BU  
Tel: 020 7242 1212

**Goodman Derrick**

20 Fetter Lane  
London EC4A 1PT  
Tel: 020 7404 0606

**Harbottle & Lewis**

Hanover House  
14 Hanover Square  
London W1R 0BE  
Tel: 020 7667 5000

**Mishcon De Reya**

Summit House  
12 Red Lion Square  
London WC1R 4QD  
Tel: 020 7440 7000

**Olswang**

90 Long Acre  
London WC2E 9TT  
Tel: 020 7208 8888

**Barry Shaw**

13 Blackheath Village  
London SE3 9LA  
Tel: 020 8297 8899

**The Simkins Partnership**

45–51 Whitfield Street  
London W1T 4HB  
Tel: 020 7907 3000

**Tarlo Lyons**

Watchmaker Court  
33 St. John's Lane  
London EC1M 4DB  
Tel: 020 7405 2000

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## Accountants

### **Baker Tilly**

2 Bloomsbury Street  
London WC1B 3ST  
Tel: 020 7413 5100  
www.bakertilly.co.uk

### **Blinkhorns**

14–16 Great Portland Street  
London W1N 6BL  
Tel. 020 7636 3702

### **Breckman & Company**

49 South Molton Street  
London W1Y 2LH  
Tel: 020 7499 2292

### **Buzzacotts**

12–14 New Fetter Lane  
London EC4A  
Tel: 020 7556 1200

### **Jon Catty & Co.**

118 Wardour Street  
London W1V 3TD  
Tel: 020 7439 9078

### **Collins & Company**

116 College Road  
Harrow  
Middx HA2 1BQ  
Tel: 020 8427 1888

### **Cecil Halpern & Co.**

19–29 Woburn Place  
London WC1H 0XF  
Tel: 020 7833 4155

### **Nyman Libson Paul**

124 Finchley Road  
London NW3 5JS  
Tel: 020 7433 2400

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# Glossary

## Advances

Any sums paid by the producer by way of advance fees or royalties (say to the writer or to the creative team) prior to the production period but which are recoverable against royalties or fees eventually payable.

## Angels

Investors who contribute funds to a production. Their liability is generally limited to the sum they introduce although they may have agreed to introduce further funds as an *overcall* (see definition below). Any return they receive from the production will consist initially of a reimbursement of their capital followed by a dividend based on a share with the producer (generally in the ratio of 60/40) of the proportion their contribution bore to the production's capitalisation.

## Approved production contract or APC

This is the agreement entitled, *The Approved Production Contract for Plays* approved by the Dramatists Guild Inc. – the playwrights' trade union in the USA. Its terms, which are fixed and not minimum, are frequently incorporated into play contracts for productions in the United States.

## Bond

Cash deposits placed by commercial managements (which are non-deposit members of SOLT or non-TMA members) with the London Theatre Council in the case of a West End season or the Theatre Council in the case of a tour. The deposits are equal to all Equity members (including directors and designers) fees, rehearsal salaries and three weeks of playing salaries plus appropriate holiday pay, employer's National Insurance contributions on such salaries and any VAT if applicable. In the event that the producer either abandons the production during rehearsal or is unable to meet his/her obligation to pay Equity members their two-week notice entitlement the relevant council may fulfil the management's obligation on its behalf.

## Box office receipts – gross and net

These terms encompass minefields of misunderstanding. Wherever used they should be first defined.

'Gross' may mean the total receipts before any deductions are made for taxes, agency and credit card discounts but is more commonly used to mean the income derived by the theatre from patrons net of all such charges.

'Net' is often used in conjunction with the charge on the gross box office receipts which cause them to be so netted. Thus 'the gross box office receipts net of royalty payments' may thereafter be referred to as net box office receipts.

In the US 'net box office receipts' is often used to refer to the weekly income derived by the production after the deduction of its running costs. In the UK we more commonly refer to this as a 'surplus', prior to recoupment and 'profit' after recoupment.

### **Break-even**

The point at which the gross box office receipts equal the weekly running costs of a production.

### **Capitalisation**

The total sum required to finance a production including all advances, bonds, reserves and deposits the presentation may require.

### **Contingency**

This budget item is generally intended to allow for possible cost overruns.

### **Contra (or theatre contra)**

Literally charges made by a theatre which are deducted from (or 'against') the box office income to which the producer is entitled. These charges vary

considerably both between the West End and the regional touring houses and there are any number of variations within each of these categories of theatre. For example, it is common practice in the West End to contra all staff costs against the box office income. Whereas in touring houses, certain staff will be regarded as part of the theatre's establishment and only overtime directly incurred by such individuals as a direct result of the producer's show will be 'contra'd'. Similarly in the West End the producer will generally be expected to pay for, amongst other items, the theatre's consumption of gas and electricity, the cost of council tax (and even pest control) for the producer's period of occupancy. Thus West End houses are often technically provided on a four-walls cost basis where the producer pays for all charges to do with occupancy of the building. 'Fent' in these circumstances tends to mean what it says and compensates the owner for the purchase of the building and its ongoing upkeep.

### **Creative team**

A production's author, composer, lyricist, director, set designer, costume designer, lighting designer, sound designer, choreographer, fight director,



musical director, and possibly also including their assistants. The term does not normally include performers.

### **Deposits**

See bonds. The West End theatre might normally refer to the cash sum (or bank guarantee) it requires from the producer as a deposit, rather than a bond.

### **Doors**

Box office takings received on the day for the same day's performance.

### **Development fee and cost**

A production expense relating to the commercial producer's expenses in initiating and developing the property and or the production before it went into rehearsal.

### **Endeavour, endeavourer, co-endeavour, co-endeavourer**

A term often used to describe the enterprise of attempting to mount or transfer a production and the party/ies involved in such activity.

### **First call**

Literally the right to the first receipts of the box office of a specified sum. In touring deals where guaranteed fees are not provided, first calls are often regarded as a second-best alternative.

### **Fit-up**

Fit-up refers to the period of time in putting up the set, mounting the lighting on flying bars and any other work associated with preparing the stage for the production. In budgets the term refers to the manpower costs of these activities.

### **General manager**

An employee (of the producer or of the production) whose function is to coordinate and order all practical, financial, contractual and business affairs of the production. Though essentially the producer's right-hand, the person must be capable of providing the producer(s) with advice based on the best interests of the production. Such advice may not always coincide with the producer's viewpoint and general managers may find their position of critical importance, to decision-making particularly where a number of co-producers are involved in an endeavour.

### **General partner**

The term is used frequently in the United States to describe a commercial endeavourer whose profits and liabilities in a venture are unlimited. In the UK producers and co-producers are normally though not always general partners.

### **Get-in, getting in, get-out**

These terms refer to the removal of a show's physical effects into and out of the theatre. They are also used indiscriminately to refer to the particular entry point for such items in a theatre building. In budgets the items refer to the manpower costs of these activities.

### **Independent Theatre Council/ITC**

The Independent Theatre Council is a body working with a variety of performing arts organisations many of whom are not building-based and which work on the middle- or small-scale.

### **Library**

In a theatrical context this means ticket agency or agent.

### **Limited partner**

This term is used in the US to describe a (generally substantial) investor whose financial participation in a production's profits may be limited. Their liabilities, in the event of failure, will have a similar limitation and they will generally be liable for no further contribution than their original stake. They may be credited on programmes and posters in the same way as a general partner although there will generally be some

qualification such as 'in association with', 'with', 'and' or 'by arrangement with' preceding their credit.

### **London Theatre Council and Theatre Council**

They are independent bodies jointly constituted by Equity on the one hand and SOLT and TMA respectively on the other. Their principal purpose is to provide a mechanism for the quick and informal resolution of disputes between Equity members and producing managements over the terms of individual contracts without the need for recourse to law. Through the deposit system they provide a guarantee that Equity members will be paid their contractual notice pay on termination should a producer for whatever reason be unable to do so.

### **Losing week**

Literally a week in which the gross box office receipts fail to achieve the level of the weekly running cost.

### **Management fee**

The fee drawn by the producer from the production's weekly income as payment for his/her services. The fee may be paid for a short period prior to any rehearsal period to recognise the

work involved in pre-production administration and organisation and may also be paid at the end to recognise the winding up of the production's affairs.

### **Mechanical rights**

The right to make and distribute by recording a play by cinematographic film, video, CD, CD-ROM, DVD or similar, audio or electronic including free and pay television or any other process now known or hereafter to be devised in such a way that the images so recorded are intended to be exhibited to viewers and audiences without the presence of live performers.

### **No.1 theatre**

There is no standard definition of this term but it is generally used to refer to regional receiving theatres with capacities of around 1000 seats. However qualitative judgements about the theatre/s in question may further qualify the use of the phrase. If in doubt, don't use it!

### **Nurse and nursing fund**

A reserve fund which may be used to help (or nurse) a production in the West End through an opening period when it suffers any *losing weeks*. The fund could be used if the box office advance figures demonstrate that there is an

encouraging long-term future for the production even though it may be failing to generate adequate immediate income to pay its running costs.

### **Office costs**

A charge which may be levied by the commercial producer either as a regular weekly or as a direct reimbursement of the costs (or some of the costs) of running the producer's office.

### **Option**

Acquiring an option means literally what it says: that you are acquiring the rights or a licence offering you the possibility (but not the obligation) of producing a property under certain terms and conditions.

### **Overcall**

The sum, often expressed as a percentage of the original contribution, to be subscribed by an investor in the event that a producer requires further funding for the production. Thus a unit of investment may cost £1,000 but be subject to an overcall of 25 per cent. In the event that the producer requires further funding because they have overspent the budget, because the show requires further 'nursing' or because it has closed with insufficient capital to meet its

liabilities, the investor may be required to contribute up to a further £250 to the show's funds.

### **Pari passu**

From the Latin meaning with equal speed or progress. The term is often used in investment agreements to indicate that investors will be paid at the same time as each other.

### **Partner**

See General partner, and Limited partner

### **Private Property seats**

See Theatre proprietary seats

### **Producer**

The individual or corporate body taking responsibility for raising the funds and managing a production in the commercial arena. The term may on occasion be synonymous with 'management'. If the producer is the managing partner of such an endeavour they may have one or more co-producers who share financial (and sometimes managerial and creative) responsibility.

### **Producer's share**

Though producers may often contribute directly to the capitalisation of the show themselves (and receive 100 per cent of the profits on such contribution), the producer's share

is generally taken to mean the 40 per cent profits which remain after distributing 60 per cent to the investors.

### **Production costs**

This means the fees of designers, directors, creative team, the producers (including without limitation the producer), general and company managers; cost of sets, curtains, drapes and costumes; all costs in connection with the recording of music for the play including studio costs; cost of payments on account of properties, furnishings, lighting and electrical equipment; premiums for bonds and insurance; unrecouped option and advance payments to persons other than the author; rehearsal costs, transportation charges, reasonable legal and accounting expenses, advance advertising, publicity and press expenses and all other expenses and losses actually incurred in connection with the production and presentation of the play up to and including the first performance before the paying public.

### **Production reserve**

A reserve fund held in the production's account and not distributed to investors until the production has closed. It is held

against any failure of the box office or accident involving unforeseen cost. The *nursing fund* may effectively become the reserve fund once the production has established itself. Without the existence of such a fund as part of the capitalisation the production might be forced to close because of a temporary dip in box office income.

### **Property**

In law this has a very specific meaning but is used more loosely in the theatre to denote a play or a musical and sometimes the right to exploit or use such a work.

### **Pro rata**

From the Latin, meaning 'in proportion to': frequently used in investment agreements relating the ratio of profit to the amount of investment.

### **Qualifying performances**

The number of performances in a given territory which the producer must produce or in order that his/her rights in a property may subsist or that may entitle him/her to acquire other rights (hence 'qualify').

### **Recoupment, pre- and post-**

The recovery of the production costs of a production or the point in time at which these have been recovered. Thus it is common to talk about pre-recoupment and post-recoupment to indicate periods in the business life of a production. Expressions such as 125 per cent recoupment, double-recoupment or recoupment plus 50 per cent are also not uncommon. Such recovery and profit dates in the life of a production may be used to trigger alternative financial arrangements between contracting parties. For example royalty payments to members of the creative team may rise on recoupment.

### **Royalty and royalty pool**

Remuneration for an individual contributing to a production whereby payment is made as a percentage of the weekly box office receipts or as a fixed weekly sum (often known as 'a fixed royalty').

A royalty pool refers to the practice whereby all royalty participants agree to waive their full royalty entitlement until the box office achieves a specific level of income each week. There may be any number of

different formulae which may apply thereafter. The specific level of income may for example equate to the production's running cost or to the running cost plus a sum to be returned towards recovering the production cost. Above this figure it may be that the royalty holders will divide a further call on the box office income (or a share of it) between them in the ratio that their royalty bears to the aggregate of all the royalties.

Where royalty pools are incorporated into contracts it is standard practice for the royalty holders to receive a guaranteed fee based on a percentage points system. Each percentage point will be valued at a fixed sum and the royalty holder entitled to the fixed sum multiplied by the number of points to which his royalty is equivalent. Royalty pools are less common *post-recoupment* though they may be employed as a mechanism for helping to cope with losing weeks.

### **Society of London Theatre (SOLT)**

The Society of London Theatre (formerly known as SWET and formally the West End Theatre Managers Limited) is the trade association for London theatre owners, managers and producers.

### **SOLT**

see Society of London Theatre

### **Subsidiary rights**

This generally refers to the range of participatory rights to which the producer becomes entitled by virtue of qualifying but may be used to refer to rights other than the British and American territories.

### **Territory**

For the purposes of defining exclusive areas of stage rights exploitation the world is commonly divided into three territories:

The British territory (or UK territory) which comprises the United Kingdom and Northern Ireland, the Channel Islands, the Isle of Man and Ere

The American territory comprising the United States of America including Puerto Rico and Canada

And the 'overseas territory' which includes the rest of the world excluding the American and British territories.

Other political divisions and uses of language may sometimes be referred to as territorial definitions. Thus 'English-speaking' and 'Commonwealth' are still sometimes used to define territorial areas of exploitation.

### **Theatre Council**

See London Theatre Council

### **Theatre Investment Fund (TIF)**

The Theatre Investment Fund is a registered charity whose principal aim is to support, advise and assist commercial theatre producers. It shares an address with SOLT. As well as investing in productions, it also runs a bursary scheme for new producers; workshops for new producers; and publishes *So you wanna be a producer* – a guide for new producers.

### **Theatrical Management Association (TMA)**

The Theatrical Management Association is the trade association for theatre managers and producers operating outside London although some London (principally producing) theatres are members. It shares an address with SOLT.

### **Theatres National Committee (TNC)**

The body which negotiates authors' contracts on behalf of the Royal Court, Royal Shakespeare Company and Royal National Theatre.

### **Theatre proprietary seats**

Private property (or P P seats) seats in a theatre, the income derived from which passes directly to the owner. This is common practice in

the West End and amongst some commercial and charitably owned touring theatres. The income so derived is generally exempt from the terms of the deal between producer and the theatre and forms no part of the receipts on which royalties are levied.

### **TIF**

see Theatre Investment Fund

### **TIF levy**

The TIF (Theatre Investment Fund) voluntary levy is an amount paid weekly equal to an agreed number (one to four pairs, depending on the theatre's seating capacity) of tickets per week for productions in SOLT theatres. The cost is usually shared equally between the theatre owner and the producer.

### **TMA**

see Theatrical Management Association

### **Unit(s) of investment**

The division of the capitalisation into a number of equal shares or units is intended to create a share structure providing investment at a cost attractive to 'angels'. Thus for example, a £300,000 capital could be divided into 150 x £2,000 units or 200 x £1,500 units. The description of the terms of any investor profit share are generally based on the unit price.

Thus a £1,500 unit in a £300,000 production would attract profits of 0.3 per cent ( $1.5/300 \times 60\%$ ).

### **Waiver, reduction and deferral**

In the event that a production cannot afford to pay its running costs the producer may ask royalty participants to waive or reduce their royalty (or a part of it) for a specific period of time. Alternatively they may ask participants to defer their royalty and have it paid when the production is once able to afford it. In all cases it is unusual for individual participants to accept any such arrangement without its acceptance by all royalty holders and by an indication from the producer that they are all sharing in the sacrifice.

### **Weekly running/operating costs**

This means the compensation to be paid to the director, the creative team, the cast, stage manager, weekly general and company managers, press agents, orchestra and stage personnel, transportation charges, advertising, press and publicity costs, legal, accounting and auditing expenses, theatre guarantee and expenses, rentals, miscellaneous supplies, booking fees payable to third parties in connection with touring

companies, and all other running expenses and losses of whatsoever kind actually incurred by the producer in connection with the operation of the production once it is presented to the paying public.

### **Wrap**

A term referring either to the daily or weekly takings (hence 'daily wrap' or 'weekly wrap') including both those taken for advance dates as well as for doors bookings.



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## About the author

Robert Cogo-Fawcett has worked in both the subsidised and commercial theatre for over 30 years, as a management and artistic consultant, and as an independent theatrical producer.

His clients have included the Barbican Centre (where he was executive producer for the first BITE Festival), the Ambassadors Theatre Group and Edinburgh City Council. He has been director of the Theatre Royal Bath, administrative director of both Riverside Studios and the Lyric Theatre Hammersmith, and finance director of the Royal Exchange Theatre Manchester.

Current commitments include: Arts Council England lead advisor on touring; chairman of the Bridewell Theatre; trustee of the Gardner Arts Centre; a director of the Society of London Theatre; artistic advisor to the Old Vic and Criterion Theatres; business development consultant for Clear Channel Entertainment; executive producer for Lyric Hammersmith Productions; producer for Made in Brighton Ltd.

Arts Council England  
14 Great Peter Street  
London SW1P 3NQ  
Phone: 0845 300 6200  
Fax: 020 7973 6590  
Textphone: 020 7973 6564  
enquiries@artscouncil.org.uk  
[www.artscouncil.org.uk](http://www.artscouncil.org.uk)

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