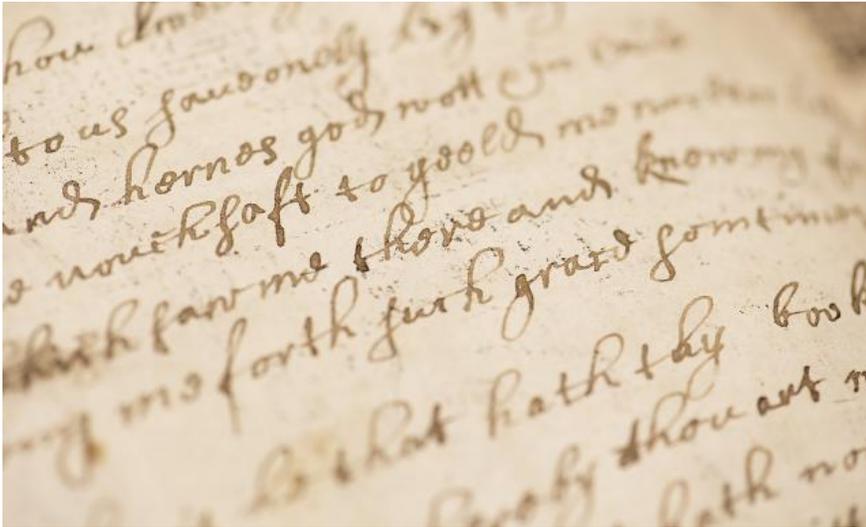


# Who Has the Rights?: On Licensing and Equity



*"We know how disappointing this must be..."*

I'm not sure why, but it had never occurred to me that as theaters were preparing to reopen all over the country, there would be a return to certain processes and procedures that were bound to make us wish we could stay dormant for just a little longer.

One of them being the utter torment known as applying for rights.

If you're a larger company, it's possible your experience with licensing is mostly positive. The licensing companies such as Dramatists and Concord Theatricals (formerly known as Samuel French) are not at all shy about engaging in Pay to Play when it comes to doling out permissions. While they go out of their way to make their decision-making as opaque as possible, their eventual reasoning for why bigger organizations get exclusivity over certain (usually newer) titles is because ... they pay more for it.

It used to be that this was a perk of being an equity theater. These licensing houses would make it seem as though by restricting titles so that only "professional" houses could do them, they were somehow protecting the sanctity of having larger venues produce work first, as though that were some guarantee that the work would receive a higher quality premiere production in a given region. That logic has recently gone down the drain as it's become clear that "professional rights" really just means "more expensive rights" and as long as you're willing to pony up, you can purchase that same exclusivity whether you're a regional powerhouse or just a kid right out of college whose parents can afford to finance a production of the latest Tony Award winner. As far as I can tell, there is no criteria in place to ensure quality, even if that was something a licensing company could do or was even tasked with doing. Send them a big enough check, and they'll make sure you get first crack at a show.

This mixed with the culture of wanting to produce "premieres" of a high-interest titles led to a piranha pool in the pre-pandemic times of theaters being stuck into regions (again, hard to tell which region you're in, because most of the time, the licensing companies will only give you a vague idea of where that is, something akin to artistic gerrymandering), and that means when a larger theater wants to produce a show, nobody else can go anywhere near it for at least one season. While that may be frustrating, it's not nearly as enraging as when a theater puts a "hold" on a title, which means they

might want to produce it, and they're willing to put up some cash while they consider doing it, but if they don't, the licensing company keeps the bulk of the money, the playwrights get a smaller amount than they would if the play were actually produced, and nobody gets to see the work, because it languishes on some mysterious purgatorial list that none of us are allowed to see. Years ago, I was told I couldn't produce a show because a local professional theater was "interested" in it. Having good relationships with the professional theaters in the area, I simply called around and asked about the title, since I couldn't imagine anyone else really intending to produce it. Sure enough, one of the local theaters *had* put a hold on it, but once they read it, they lost interest, and simply forgot to tell the company that held the rights. The company certainly wasn't going to say anything, but had I not gotten the theater to contact them and remove the hold, that work might never have been produced. The reality of producing new shows is that sometimes their luster lies in their "newness." If a title is held back long enough, people forget about it or simply lose interest and look for something else. If you're thinking that based on how the money breaks down when it comes to holding rights versus actually granting them, it might be advantageous for licensing companies to seek out more holds rather than advocate for work to be produced, you're not wrong.

Oftentimes, they'll put it on a playwright or their agents when they refuse a company the right to perform a show, even though I've personally contacted agents and playwrights numerous times after being turned down for rights only to find that the writers had no idea their work was being hoarded by the people they trust to get it on as many stages as possible. In fact, after getting the rights released to three different plays by contacting their writers (all of whom were unbelievably gracious and quite annoyed that their work wasn't being made readily available), I received a letter from the company representing their work that can only be described as mafia-esque. It told me that I needed to stop "bothering" the playwrights. When I forwarded my correspondence with all three to show that, as far as I could tell, no bothering was taking place, I received another email letting me know that the playwrights only have a "minor say" in where their work can be produced, and that if I kept trying to game the system, I would be in jeopardy of not being granted rights to anything moving forward. Because while some of these companies are easier to deal with than others, they all have the habit that most businesses have of mirror bad practices, knowing if they all do it, then they all can get away with it, I had no choice but to back down. One of the playwrights I was in contact with not only assured me that he wasn't bothered, but he described the monopoly-style hold these companies have over rights to be a necessary evil when trying to get produced. He confirmed that, yes, when he wants to put up a fight over letting a small theater do his work, he can sometimes win the argument, more often than not, he's told to back down, and so now he barely ever fights the good fight, and truthfully, I don't blame him.

The Premiere Problem is especially an issue considering how close we are to Boston, where some theaters seem to have "producing whatever was popular in New York" as their sole mission statement. I can't tell you the number of times I've looked at a season in Boston only to see a mishmash of titles that only have their premiere status in common. Boston gets priority over even the biggest theaters in Providence, which means, even though any Rhode Islander will tell you that we're unlikely to drive to Boston to see a play when we can just wait for it to trickle down a few years later to our local stages (again, provided the title doesn't gather too much dust while it sits on the shelf), the priority for those Boston theaters is to say that they're producing the "New England" or the "Regional" Premiere. It used to be exciting enough to say you were doing the state-wide premiere, but I guess as audience numbers in Boston dwindled, the language had to shift to try and make these shows sound more compelling. That meant a stranglehold over anything that wasn't less than five years old.

So why does all this matter?

Because as we begin to get back in the habit of creating theater, we have made promises to do it better than we did before, and while that's admirable, we have not even begun to have a conversation about the adjacent industries that we depend on (and who depend on us) to change along with us. The licensing companies have made no such promises, and it's clear that they intend to go right back to the way they've always done things, despite the glaring inequities in determining who gets to produce what based on resources and finances. It's no wonder most theaters end up producing dated schlock when it sometimes takes weeks to hear back after applying for a title only to find out you've had the door closed in your face, and you're not allowed to ask why.

Shakespeare might be predictable, but at least you don't need to check with his agents if you want to produce *The Tempest*.

While we have to hold ourselves accountable to do better, we also need to hold the people and industries around us accountable. It's not a question of if they *want* to do better, but whether we *mandate* that we do. I understand the logic of wanting to make sure there aren't multiple productions of a title within the same year, but what's wrong with "First come, first served?" It would seem to me that any theater willing to make a commitment to produce a title as early as possible clearly feels passionately about producing that work. I'd even be open to the idea that a theater can only produce a certain number of high-interest titles in a given season. There are all sorts of ways to make this system more equitable, but as of now, there is no movement happening that's looking to change the businesses that are in charge of our most precious commodities-

Our stories.

If we don't put pressure on them to change the way they allow us to produce work, how can the work itself get better? The reality is that as much as I would champion producing brand new plays, smaller companies would benefit the most from being given a popular title to bring in audiences, so why not give them that leg up?

I'm well-aware that this is one of those inside baseball topics that makes people's eyes glaze over once I start ranting about it, but it is most likely the reason you see otherwise exciting companies putting on droll productions and uninspired seasons. It is demoralizing to be at the whim of some imposing behemoth run by people you'll never meet, who have such a large say in the kind of artistic direction you're able to take your company. Many of the artists coming out of the pandemic who are interested in changing the landscape of theater are going to want to do so by producing work of their own, and if this is the kind of red tape and fiscal favoritism they're met with, I can't imagine it'll take long for them to surrender any hope of coming back better.

Like it or not, these companies are our partners in the creative process, and as such, they need to be willing to make the same changes we are, even if we're one of the larger theaters who profit from their current way of doing things. We said we were all committed to a radical reformation not just in terms of the art itself, but the business around the art.

That's the contract we drew up over a year ago.

It's time for them to sign it.