

Life Story Rights

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Caveat: The following is provided as a matter of general interest only. The evaluation of life story rights and their acquisition should be referred to experienced legal counsel.

1. "Life story rights" are a nebulous collection of real and imagined rights held by living individuals. Life Story rights are commonly considered to include rights related to privacy, publicity and defamation.
2. Production companies may pay money for life story rights. Payments are made to avoid future litigation. That does not necessarily mean that significant rights always exist.
3. The term "life story rights" does not have a standard clearly defined definition.
4. Life story rights agreements often include cooperation agreements whereby the person selling life story rights agrees to cooperate in providing additional information, cooperation, additional materials and securing or helping to secure releases from third parties. Sometimes, per diem fees are given.
5. Agreements are often in the form of options. An option is an agreement whereby life story rights may be acquired in the future by exercising the option including the payment of certain sums. The option generally gives the producer a period of time in which to try to develop a property associated with the life story rights before having to pay the full purchase price.
6. Generally a smaller payment is made on signing an option agreement. For example 10% of the so-called "purchase price" might be paid on signing an option to acquire life story rights. The option agreement may provide that \$2,500 is to be paid now for an option to purchase life story rights for \$25,000 within one year from the date of the option agreement. Often, the initial option payment is credited against the "purchase price."
7. The term "purchase price" is in quotes since often additional payments may be made contingent on certain events occurring in the future. For example, production of certain types of works such as a television movie or theatrical motion picture may trigger additional payments.
8. An option usually must be exercised in exactly the manner stated in the option agreement in order to actually acquire the life story rights. Option agreements commonly state that the option is exercised by giving notice in a particular manner accompanied by a payment of the purchase price of the option. Additional funds may be required to be paid at later times, but this step of exercising the option may be the important step of acquisition of the rights.
9. Not all life story rights agreements warrant substantial fees.
10. Not all productions pay for life story rights.
11. The First Amendment may allow works to be created without acquisition of any life story rights. Certain materials may be considered to be in the public domain, such as from newspaper articles or court transcripts.
12. There may be less incentive to pay life story rights if the story being told is reasonably accurate and timely.

13. The right of privacy has various forms. It includes the right to be left alone, free from intrusiveness. It includes the right not to be portrayed in a false light. It includes the right to not bring to light embarrassing facts which may have been buried and unknown to the public for a lengthy period of time. And it includes an economic right generally referred to as the right of publicity.

14. Claims of defamation, either libel or slander generally may be present for false statements concerning matters of reputation. Libel generally refers to defamation that has some permanence, such as in a book or motion picture. Defamation tends to be ephemeral, such as the live spoken but not necessarily. The differences between libel and slander may affect the type and extent of damages that might be available to a claimant in a lawsuit.

15. There are various guideposts to help determine what life story rights are worth, if anything. For example:

- Can the project be made simply from stories in public domain materials such as court transcripts and newspaper articles?
- Are the persons who are depicted alive?
- How important is the person whose life story rights are being acquired to the story being told?
- Is the story fiction, drama or docudrama?
- How offensive will the project be to the person whose life story is being told?
- How potentially damaging to the persons reputation is the story being told?
- Does the telling of the story put the person in danger?
- Is the person a public figure?
- Is the individual a subject of public interest?

None of these factors are necessarily conclusive, but can be useful in determining the value and importance of obtaining life story rights.

16. Sometimes small payments may be given for releases for individuals and characters surrounding a main character in a work, and those individuals may hold out for more compensation thinking that their role has greater importance.

17. It may be important to acquire a release from others such as relative. It may be worthwhile to sign a "life story rights agreement" if that will bring together the other elements to be able to tell the full story.

18. Acquiring life story rights on an exclusive basis may have value in the right circumstances.

19. Unlike copyright, the legal basis for life story rights are not necessarily the same bundle of rights which are infinitely divisible as is copyright. Once the right of privacy is exposed, it may not be protectable thereafter. The courts may take differing approaches, but the general concert is that once someone gives permission, the privacy right disappears.

20. Rights of privacy as well as claims of defamation generally disappear on the death of an individual. Thus, it is not a right which may be assigned or passed on by will. That may not be true for the right of publicity depending on the particular jurisdiction, as some jurisdictions have "post mortem" rights of publicity.

21. The right of publicity may not be a right at all when one seeks to do a production about a celebrity. For example, Elizabeth Taylor was unable to stop an unauthorized television biography of

her life. A story about a person who does not have a public persona, however, may violate that person's rights of privacy.

22. It is often not so clear whether a claim for invasion of privacy, violation of the right of publicity, defamation or other claims might be present if a work were produced and distributed. That uncertainty in the law may be the very reason why money may change hands to purchase life story rights.

23. Life story rights agreements may divide out and parcel life story rights for example, as to exclusivity, duration, particular projects, particular media and particular territories. However, not all such carving and dividing may be supported on a legal basis. For example, some courts have said that the right of privacy may no longer exist once one has given up the right. Thus, a license of that right for one motion picture may extinguish that right completely. That is unlike copyright which, at least in the United States, may be divided up, carved out, licensed and assigned as much as much as one desires.

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