

Q&A: Am I in Trouble if I'm Optioning a Book That Includes a Character That Has Already Been Optioned?

By [Jesse Saivar](#) on January 20, 2012



Q: I've been negotiating an option on a book for a few weeks and we're about to the point where we're going to sign the paperwork. The book is a pretty standard detective novel. The other day the author happened to mention that he had already sold one of his books to a studio. It turns out that the book he already sold shares the main character (the detective) with the book I'm interested in. If the plots are completely different between the two books, does this even matter?

A: Unfortunately, it likely does matter. Generally, when a studio or producer acquires "movie" rights to a book, it acquires "character" rights. In other words, in your case, the author likely granted to the studio, among other things, the exclusive right to make movies containing the characters in that book. Therefore, you may infringe upon the studio's rights if you make a movie based on the book you're optioning, because it will contain the character the studio already exclusively "owns."

Now there is a question as to extent of the rights a party can own in a character that's contained in a novel (i.e., not a character that has been graphically represented). This is a somewhat complex legal analysis that essentially tries to determine how well delineated the characteristics of the character are; the more delineated the character (think of the book version of James Bond), the stronger an owner's rights are in that character. However, we won't be going into this analysis here because regardless of your legal arguments, in practice, you would not want to move forward with a movie that contains a character over which a studio may be able to claim rights. The last thing you want is to be involved in a legal dispute with a studio.

There are two lessons to learn from this. First, when you're interested in optioning a book, one of the first things you should do is find out if that book shares any characters with other books written by the author. You can probably find this by an internet search and by asking the author. If there is another book containing shared characters, you'd then want to determine if the movie rights to any of those other books have already been optioned or sold to third parties. Again, you may be able to discover this by simply asking the author. It's



also important to order copyright search reports covering each book that shares characters with the book in which you're interested.

I doubt the author realized that he legally could not give you rights to the character in this book due to his prior deal with the studio regarding his other book. This is a somewhat unique legal issue that is not exactly obvious. To help you avoid this in the future, I recommend that you add language to your standard book option agreement that the author represents and warrants that the book you're optioning does not share any characters with any other book or work. This will not only give you recourse in the event this turns out not to be true, but during your negotiations, it will likely cause the author to divulge any other problematic deals into which he's entered (even if he doesn't realize they're problematic).

This blog was originally published as part of Legal Ease, Film Independent's weekly column on legal matters pertaining to the entertainment industry. To see other LEGAL EASE columns please [click here](#).