
As of June 10, 2009

This Memorandum of Agreement is entered into between the Screen Actors Guild, Inc. (hereinafter referred to as "SAG," "the Union" or "the Guild"), on the one hand, and the Alliance of Motion Picture & Television Producers (hereinafter "the Alliance" or "the AMPTP"), on behalf of the Producers listed on Exhibit 1 attached (each hereinafter respectively referred to as "the Producer" and collectively referred to as "the Producers"), on the other hand.

This Memorandum of Agreement reflects the complete understanding reached between the parties. The language in this Memorandum of Agreement is not contract language, except where the context clearly indicates otherwise. Where contract language is indicated, generally by quotes, new text is underlined and deletions are lined through. In the event of any conflict between the terms of this Memorandum and the contract language, the contract language is controlling.

The provisions of this Memorandum of Agreement represent modifications to the current Agreements between these parties - i.e., the Producer-Screen Actors Guild Codified Basic Agreement of 2005 (hereinafter referred to as "the Basic Agreement") and the 2005 Screen Actors Guild Television Agreement (hereinafter referred to as "the Television Agreement"). (The Basic Agreement and the Television Agreement shall hereinafter be referred to collectively as "the 2005 Agreements.") Except as modified herein, the terms of the current Agreements between these parties shall remain the same, subject to conforming changes. Wherever reference in this Memorandum of Agreement is made to "Schedules," such reference shall mean the Schedules appended to the Basic Agreement.

Except when another date is specified, the provisions of this Memorandum of Agreement shall be effective as of June 10, 2009, the date on which the Union gave notice to the AMPTP of ratification. The date of such notice is sometimes referred to herein as "the date of ratification."

The appropriate provisions herein shall be incorporated in the 2005 Agreements.

The provisions of the 2005 Agreements, other than Section 2 of the General Provisions of the Basic Agreement, "Union Security," Section 9 of the General Provisions of the Basic Agreement, "Arbitration," and Section 50 of the Television Agreement, "Arbitration," shall apply, respectively, to performers employed on theatrical and television motion pictures produced between July 1, 2008 and June 10, 2009 by each of the Producers signatory to the 2005 Agreements. The provisions of Schedule X, Part I or Schedule X, Part II, as applicable, of the Basic Agreement, other than Section 2, "Union Security," and Section 55, "Grievance Procedure," shall apply, respectively, to background actors employed on theatrical and television motion pictures produced between July 1, 2008 and June 10, 2009 by the Producers signatory to the 2005 Agreements.
6. **Major Role Performers**

Revise Section 2(c) of the Television Agreement to provide that a performer employed under a freelance contract to perform a "major role" in an episode of a television series shall be paid no less than an amount equal to the daily minimum rate increased by ten percent (10%), multiplied by the number of days for which the performer is entitled to compensation pursuant to the Agreement.

7. **Background Actors**

A. **Covered Background Actors**

   (i) Increase the number of covered background actors on television programs in the zones covered by Schedule X, Part I from nineteen (19) with one stand-in excluded from the count to twenty (20) with one stand-in excluded from the count.

   (ii) Increase the number of covered background actors on theatrical motion pictures in the zones covered by Schedule X, Part I from fifty (50) (including stand-ins) to:

   1. fifty-three (53) (including stand-ins) effective on June 10, 2009; and

   (iii) Background actors covered by Schedule X, Part I shall be given ten (10) minutes of rest for each four (4) hour work period.

B. **Background Actor Zones**

   Redefine the Las Vegas Zone to cover the area within a fifteen (15) mile radius of the Clark County Courthouse.

8. **Stunt Coordinators**

A. **Residual Payments**

   Stunt coordinators employed on television motion pictures shall participate in revenue-based residual payments with respect to television motion pictures, the principal photography of which commences on or after June 10, 2009.

B. **Rest Period**

   The rest period for Stunt Coordinators under Schedule K, Parts I, II and III shall remain at nine (9) hours and the sunset clauses applicable to these provisions shall be eliminated.

9. **Sideletter re Reuse of Theatrical and Television Motion Pictures in New Media**

Amend the "Sideletter re Exhibition of Motion Pictures Transmitted via the Internet" to read as follows:

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SIDELETTER RE NEW MEDIA REUSE
As of July 1, 2001
Revised as of July 1, 2005
Revised as of June 10, 2009
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David White
Interim National Executive Director
Screen Actors Guild
5757 Wilshire Boulevard
Los Angeles, California  90036
1. **If the Consumer Pays.**

   A. **License for Limited Period or Fixed Number of Exhibitions.**

      When the subscriber pays for the motion picture either on a subscription or per-picture basis, and when the payment is in exchange for the right to view the motion picture for a fixed and limited period of time or a fixed number of exhibitions, the Producer shall pay to the performer(s) an aggregate sum equal to three and six-tenths percent (3.6%) of "Distributor's gross," as defined in Paragraph 4 below, for the right to exhibit such motion picture in New Media.\(^1\)

   B. **Paid Permanent Downloads (aka "Download-to-Own" or "Electronic Sell Through" ("EST")).**

      The following shall apply to motion pictures released on or after June 10, 2009:

      When the consumer pays for an EST copy of a theatrical motion picture, the Producer shall pay residuals at the rate of 5.4% of 20% of "Distributor's gross," as defined in Paragraph 4 below, on the first 50,000 units and, thereafter, at the rate of 9.75% of 20% of "Distributor's gross," as defined in Paragraph 4 below.

      When the consumer pays for an EST copy of a television motion picture, the Producer shall pay residuals at the rate of 5.4% of 20% of "Distributor's gross," as defined in Paragraph 4 below, on the first 100,000 units and, thereafter, at the rate of 10.5% of 20% of "Distributor's gross," as defined in Paragraph 4 below.

      Such payments shall be for the benefit of all performers on the motion picture. For theatrical motion pictures, such payments shall be distributed to the performers on the basis of the formula set forth in Section 5.2B. of the General Provisions of the Producer - Screen Actors Guild Codified Basic Agreement (hereinafter "the Codified Basic Agreement"); for television motion pictures, such payments shall be distributed on the basis of the formula set forth in Section 18.2 of the SAG Television Agreement (hereinafter "the Television Agreement").

2. **If the Consumer Does Not Pay.**

   The following shall apply to the streaming of television motion pictures on a free-to-the-consumer basis on advertiser-supported services transmitted via New Media.

   A. **With respect to television motion pictures, the principal photography of which commences on or after June 10, 2009:**

\(^1\) As bargaining history, this language is based upon the following model: studio licenses to Moviefly the right to transmit the motion picture on the Internet to the viewer who pays Moviefly on a subscription or per-picture basis. Such payment would enable the viewer to view the motion picture for a fixed and limited period of time or limited number of exhibitions. For example, if Columbia Pictures, through Columbia-TriStar Home Entertainment, licenses to Moviefly the right to exhibit a Columbia Pictures film, the residuals shall be based upon 100% of the license fee paid by Moviefly to Columbia-TriStar Home Entertainment for such picture.
The Producer shall be entitled to a "streaming window" for a twenty-four (24) consecutive day period for the first season of a television series or for any one-time television motion picture and a seventeen (17) consecutive day period for the second and all subsequent seasons of a television series. During the streaming window, the Producer may make a television motion picture available for streaming without payment for such use. The streaming window may be divided between the period immediately prior to and immediately following the initial exhibition of the motion picture on television in any ratio determined by the Producer.

If the Producer desires to stream the television motion picture outside the streaming window, but within one (1) year of the expiration of the streaming window, then the Producer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective June 10, 2011) of the "total applicable minimum," as defined in Section 18(b)(4)(b) of the Television Agreement, as consideration for a twenty-six (26) consecutive week period beginning on the first day that the television motion picture is available for streaming following the expiration of the streaming window.

If the Producer desires to stream the television motion picture for all or any part of the twenty-six (26) consecutive week period immediately following the twenty-six (26) consecutive week period described in the preceding paragraph, but within one (1) year of the expiration of the streaming window, then the Producer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective June 10, 2011) of the "total applicable minimum," as defined in Section 18(b)(4)(b) of the Television Agreement.

Neither of the aforementioned twenty-six (26) consecutive week periods shall cover a period that is more than one (1) year after the expiration of the streaming window. In the event that streaming of the television motion picture is commenced on a date that does not allow for the full twenty-six (26) consecutive week period of use within one (1) year of the expiration of the streaming window, then the payment for that period shall be prorated in weekly units to cover the shorter use period.

For example, suppose that the Producer streams a television motion picture during the window and then does not stream the program again until thirty-nine (39) weeks after the expiration of the window period. Since only thirteen (13) weeks remain within the one (1) year period, a payment of one-half of the payment that would otherwise be due for the twenty-six (26) consecutive week streaming period would be payable for streaming during the thirteen (13) consecutive week period.

During the streaming window, or during either of the twenty-six (26) consecutive week periods described in Paragraph 2A.(2) above, the Producer may allow excerpts of those television motion pictures that are being streamed to be used on free-to-the-consumer, advertiser-supported services transmitted via New Media without any additional payment therefor.

Upon expiration of the one (1) year period following expiration of the streaming window, if the Producer desires to stream the television motion picture, then it shall pay residuals at the rate of six percent (6%) of "Distributor's gross," as that term is defined in Paragraph 4 below.
B. If the Producer should desire to stream any television program, the production of which commenced prior to June 10, 2009, as to which free television residuals are still payable, then the Producer shall pay residuals at the rate of six percent (6%) of "Distributor's gross," as that term is defined in Paragraph 4 below.

C. Revenues derived from foreign streaming shall be included in "Distributor's Foreign Gross," as provided in Section 18(c) of the Television Agreement.

D. If the Producer should desire to stream a theatrical motion picture, the principal photography of which commenced on or after July 1, 1971, then the Producer shall pay residuals at the rate of 3.6% of "Distributor's Gross," as defined in Section 4 of this Sideletter.

3. Sideletter re Reuse of Photography or Sound Track in New Media

The following shall govern the use in new media of photography or sound track of a performer from any theatrical or television motion picture, or motion picture made for the home video market, regardless of when such picture was produced:

A. Producer may use photography or sound track from a television motion picture (other than a television motion picture ninety (90) minutes or more in length) in new media for the purpose of promoting the picture or series, provided that such photography or sound track does not exceed five (5) minutes in length. Producer may use photography or sound track in new media from a theatrical motion picture, from a television motion picture ninety (90) minutes or more in length or from a motion picture made for the home video market in new media for the purpose of promoting the picture or series, provided that such photography or sound track does not exceed ten (10) minutes in length.

B. The following uses of photography or sound track in new media shall be considered to promote the picture and shall require no payment, whether or not the Company receives revenue in connection therewith:

1. The photography or sound track promotes the exhibition of a theatrical or television motion picture or series on free television, basic cable or pay television and includes "tune-in" information. "Tune-in" information for promotional purposes is sufficient when it informs the consumer where he or she can view the picture or series from which the excerpt is taken. The tune-in information may appear on-screen or in a "click-through" format — i.e., accessible through links. It is agreed that the network channel or station "bug" alone does not suffice. It is also understood that the Producer is not required to provide the same level of "tune-in" information as is commonly provided in traditional network television promotional announcements.

2. The photography or sound track promotes the traditional home video release or any "special edition" home video release of a theatrical or television motion picture or series or a motion picture made for the home video market and references the availability of the picture or series in home video.

\footnote{The parties agree that the uses of photography or sound track in new media described in Section B.(1) through (6) below are examples of "exploitation," as that term is used in Section 22 of the General Provisions of the Producer — Screen Actors Guild Codified Basic Agreement and in Section 38 of the Screen Actors Guild Television Agreement. It is understood and agreed that no inference shall be drawn from the parties' agreement on these examples as to whether any or all of the described uses of photography or sound track in traditional media constitute "exploitation" or whether uses not mentioned in Section B.(1) through (6) constitute "exploitation."}
The photography or sound track promotes the exhibition of a picture in
theatrical markets and includes reference to the theatrical release. Reference
to the theatrical release shall be unnecessary if the photography
or sound track is used as part of a "teaser" advertising campaign.

The photography or sound track promotes the new media exhibition of a
theatrical or television motion picture or series or a motion picture made
for the home video market and includes instructions for renting, purchasing, or
streaming an electronic copy of the picture or series from the website or
other new media platform on which the photography or sound track appears
or is heard, or a direct link to another website or new media platform where
an electronic copy of the motion picture or series can be rented, purchased,
streamed, and occurs in conjunction with the availability of an electronic
copy of the motion picture or series for rental, purchase, or ad-supported
streaming via the internet or other new media platform.

The photography or sound track is used for "viral" promotion in new media
of a theatrical or television motion picture or series or a motion picture made
for the home video market and is circulated non-commercially to multiple
websites or made available for individuals to circulate. The fact that the
photography or sound track used in the "viral" promotion is exhibited on a
revenue-generating site owned by or affiliated with the Producer shall not
render this exception inapplicable, provided that the photography or sound
track is released without payment to other sites.

The photography or sound track is made available for consumer-generated
viral promotion of theatrical or television motion pictures or series or a
motion picture made for the home video market to new media sites where
end users have the ability to share such photography or sound track with
other end users (such as Facebook, YouTube, MySpace or Crackle).

C. If the use of photography or sound track in new media is not within any of the
provisions in Section B. above, or the use is within the provisions of Section B.
above, but exceeds the length limitations set forth in Section A. above, then the
following shall apply:

(1) **Current Product**

Photography or sound track from a theatrical or television motion picture,
the principal photography of which commenced on or after June 10, 2009
("current product"), shall be governed by the following:

(a) Except as provided in subsection (c) below, Producer shall obtain
the consent of the performer prior to using photography or sound
track in new media. Except as provided in subsection (b) below,
such consent may be obtained at the time of employment.

Such consent shall not in any manner waive the performer's rights
(including rights of the performer's estate) to pursue claims against
third parties arising from the use of excerpts that are outside the
scope of the authorization given by the Producer.³

³ It is understood by the parties that such rights of the performer may include, for example, an action for violation of right of
publicity, right of privacy, defamation, false light, etc.
(b) Consent for the following uses must be obtained separately from the performer's employment contract:

(i) for the reuse of nude photography;

(ii) for the reuse of a "bloop" excerpt which was not included in the theatrical or television motion picture as originally exhibited; except that consent for use of deleted or alternative scenes that cannot be characterized as a "bloop" may be obtained at the time of employment; and

(iii) for the reuse of photography or sound track in a commercial (i.e., an advertisement for goods or services), except that consent for use of excerpts for promotional purposes (e.g., commercial or promotional tie-ins and cross-promotions) in new media or for the purpose of advertising or promoting the service on which the excerpts are available or the service on which the theatrical or television motion picture or series from which the excerpt was taken appears, may be obtained at the time of employment. It is understood that the reuse of photography or sound track on a website with a single commercial sponsor does not constitute use in a commercial.

(c) Notwithstanding the foregoing, the Producer shall not be required to obtain consent of a performer for the use of an excerpt(s) in new media under the following circumstances:

(i) When there would be no such obligation if the Producer used the excerpt in traditional media; however, the Producer shall be obligated to comply with the provisions of Section C.(1)(a) above as to any use of stunt footage, other than a use which would not require consent if it were of non-stunt footage;

(ii) If the Producer had previously bargained for such excerpt uses in a manner permitted under the "Reuse of Photography or Sound Track" provisions of the Codified Basic Agreement or the Television Agreement, as applicable; or

(iii) For use of excerpts during the streaming window, or during either of the twenty-six (26) week periods described in Paragraph 2.A.(2) above for which the Producer makes payment as provided therein.

(d) Producer shall make payment for the use of photography or sound track from current product in new media in accordance with the provisions set forth below.

(i) For Reuse of Photography or Sound Track From Television Motion Pictures on Free-to-the-Consumer, Advertiser-Supported Platforms.
(A) No payment shall be required for the use of photography or sound track from a television motion picture on free-to-the-consumer, advertiser-supported platforms during the streaming window. Further, if the Producer pays the “new media program fee” for the use of the entire television motion picture in new media, such payment shall also constitute payment for the free-to-the-consumer, advertiser-supported use of any portion thereof in new media during the corresponding time period.

(B) If the photography or sound track is from a television motion picture and is used outside the streaming window, but within one year following expiration of the streaming window, and the use is not otherwise covered by the payment referred to in the second sentence of subsection C.(1)(d)(i)(A) above, the Producer shall pay for such use as follows:

1. For photography or sound track up to two (2) minutes in length, the lesser of $30 or the applicable “new media program fee;”

2. For photography or sound track in excess of two (2) minutes in length, but not more than four (4) minutes in length, the lesser of $60 or the applicable “new media program fee;”

3. For photography or sound track in excess of four (4) minutes in length, the applicable “new media program fee.”

The “new media program fee” for reuse of photography or sound track from television motion pictures on free-to-the-consumer, advertiser-supported platforms is three percent (3%) (three and one-half percent (3.5%) effective June 10, 2011) of “total applicable minimum salary,” as defined in Section 18(b)(4)(b) of the Television Agreement.

(C) For any other use of photography or sound track from a television motion picture on a free-to-the-consumer, advertiser-supported platform, including the reuse of photography or sound track from a television motion picture produced prior to June 10, 2009, the Producer shall pay six percent (6%) of “Distributor’s gross.”

(D) If photography or sound track from the current season of a series is used together with photography or sound track from past seasons of the series on an ad-supported, free-to-the-consumer basis, and payment would otherwise be
due for such uses, then the percentage of "Distributor's gross" payment set forth in subsection C.(1)(d)(i)(C) above shall apply to all such excerpts.

(ii) For Reuse of Photography or Sound Track From Theatrical Motion Pictures on Free-to-the-Consumer, Advertiser-Supported Platforms

For any use of photography or sound track from a theatrical motion picture on a free-to-the-consumer, advertiser-supported platform, including the reuse of photography or sound track from a theatrical motion picture, the principal photography of which commenced prior to June 10, 2009, the Producer shall pay three and six-tenths percent (3.6%) of "Distributor's gross."

(iii) For Reuse on "Consumer Pay" Platforms

If photography or sound track from a theatrical or television motion picture is used on a "consumer pay" platform, whether to "promote" the picture or series or not, the Producer shall pay 3.6% of "Distributor's gross" for such use. This formula shall apply to a "hybrid" use where the consumer pays for the photography or sound track and advertising revenues are also derived by the Producer from such use. Such revenues shall be incorporated in "Distributor's gross."

(e) (i) If Producer neither seeks nor obtains the consent of the performer for use of photography or sound track as required in this Section C.(1), the performer shall be entitled to damages for such unauthorized use, equivalent to three (3) times the amount originally paid the performer for the number of days of work covered by the material used. If the Producer is unable to find the performer, it shall notify SAG, and if SAG is unable to find the performer within a reasonable time, the Producer may use the photography or sound track without penalty.

(ii) If Producer seeks, but fails to obtain, the consent of the performer as required in this Section C.(1), Producer shall be prohibited from making such reuse of the material, and in case of violation, the performer shall be entitled, at his option, to either accept damages as provided in subsection (e)(i) above, or to arbitrate his claim hereunder, or to take legal proceedings in a court of competent jurisdiction.

(2) Library Product

Photography or sound track from a theatrical or television motion picture, the principal photography of which commenced prior to June 10, 2009 ("library product"), shall be governed by the following:
(a) In those instances in which the Codified Basic Agreement or Television Agreement, as applicable, requires that the Producer bargain with the performer and reach agreement before using photography or sound track, the Producer shall either:

(i) bargain and reach agreement as required under the aforementioned Agreements: or

(ii) obtain consent in accordance with the procedure developed under subsection (b) below and make the payments required under subsection (c) below.

(b) The Producers and Guild commit to develop jointly a streamlined and expedited process for obtaining general consent of performers to the non-promotional use of photography or sound track in new media. The parties agree that they shall complete this process within ninety (90) days after ratification.

The parties agree that the following restrictions shall apply in connection with any consent obtained through the procedure described in the preceding paragraph:

(i) Such consent shall be subject to any different restrictions on the use of excerpts contained in the performer’s individual employment contract with Producer;

(ii) Such consent shall not in any manner waive the performer’s rights (including rights of the performer’s estate) to pursue claims against third parties arising from the use of excerpts that are outside the scope of the authorization given by the Producer.\(^4\)

(iii) Such consent shall expire June 30, 2011, provided that any license of the material by Producer entered into on or after January 1, 2011 shall expire not later than June 30, 2012. Further, with respect to use of an excerpt from July 1, 2011 through June 30, 2012, Producer shall be obligated to pay the performer the reuse compensation which may be negotiated by the Guild in the collective bargaining agreement with Producer which commences July 1, 2011.

(iv) Unless the specific written consent of the performer is obtained separately from the procedure developed under this subsection (b), the Producer may not authorize:

(A) reuse of excerpts containing nude photography;

(B) reuse of an excerpt in conjunction with other material that would constitute an endorsement by performer or a commercial tie-in for such other material, except that performer’s consent shall not be required for use of excerpts for promotional purposes (e.g., commercial or promotional tie-ins

\(^4\) It is understood by the parties that such rights of the performer may include, for example, an action for violation of right of publicity, right of privacy, defamation, false light, etc.
and cross-promotions) in new media where the performer's individual employment contract specifically permits such use in traditional media or for the purpose of advertising or promoting the service on which the excerpts are available or the service on which the theatrical or television motion picture or series from which the excerpt was taken appears;

(C) reuse of an excerpt in a manner which would defame the performer;

(D) reuse of a "bloop" excerpt which was not included in the theatrical or television motion picture as originally exhibited; provided that it is not necessary to obtain consent in accordance with the procedure set forth in Section C.(2)(b)(iv) above for the use of deleted or alternative scenes that cannot be characterized as a "bloop;" or

(E) reuse of an excerpt which, together with other material, constitutes an episodic length derivative program which is exploited by Producer to generate revenue.

(v) The Producer shall not be relieved of its obligations under the "Reuse of Photography or Sound Track" provisions of the Codified Basic Agreement or Television Agreement, as applicable, in connection with the use of excerpts in other than new media, even when the excerpt was first used in new media.

(vi) Notwithstanding the foregoing, the Producer shall not be required to bargain and reach agreement with a performer for the use of an excerpt(s) in new media under the following circumstances:

(A) When there would be no such obligation if the Producer used the excerpt in traditional media, except that the Producer shall be obligated to comply with the provisions of Section C.(2)(a) above as to any use of stunt footage, other than a use which would not require bargaining and reaching agreement if it were of non-stunt footage; or

(B) If the Producer had previously bargained for such excerpt uses in a manner permitted under the "Reuse of Photography or Sound Track" provisions of the Codified Basic Agreement or Television Agreement, as applicable.
(c) Payment shall be due for the use of photography or sound track in new media in accordance with the provisions set forth below.

(i) For Reuse on Free-to-the-Consumer, Advertiser-Supported Platforms

(A) For use of photography or sound track from a television motion picture on a free-to-the-consumer, advertiser-supported platform, the Producer shall pay six percent (6%) of "Distributor's gross."

(B) If photography or sound track from the current season of a series is used together with photography or sound track from past seasons of the series on an ad-supported, free-to-the-consumer basis, and payment would otherwise be due for such uses, then the percentage of "Distributor's gross" payment set forth in Section C.(2)(c)(i)(A) above shall apply to all such excerpts.

(C) For use of photography or sound track from a theatrical motion picture on a free-to-the-consumer, advertiser-supported platform, the Producer shall pay three and six-tenths percent (3.6%) of "Distributor's Gross."

(ii) For Reuse on "Consumer Pay" Platforms

If photography or sound track from a theatrical or television motion picture is used on a "consumer pay" platform, whether to "promote" the picture or series or not, the Producer shall pay 3.6% of "Distributor's gross" for such use. This formula shall apply to a "hybrid" use where the consumer pays for the photography or sound track and advertising revenues are also derived by the Producer from such use. Such revenues shall be incorporated in "Distributor's gross."

(d) (i) If Producer has neither bargained and reached agreement with the performer for reuse of photography or sound track as required under the Codified Basic Agreement or the Television Agreement, as applicable, nor sought the consent of the performer for use of photography or sound track as required in Section C.(2)(a)(ii) above, the performer shall be entitled to damages for such unauthorized use, equivalent to three (3) times the amount originally paid the performer for the number of days of work covered by the material used. If the Producer is unable to find the performer, it shall notify SAG, and if SAG is unable to find the performer within a reasonable time, the Producer may use the photography or sound track without penalty.
(ii) If Producer has not bargained and reached agreement with the performer for reuse of photography or sound track as required under the Codified Basic Agreement or the Television Agreement, as applicable, but has sought and failed to obtain the consent of the performer as required in this Section C.(2)(a)(ii), Producer shall be prohibited from making such reuse of the material, and in case of violation, the performer shall be entitled, at his option, to either accept damages as provided in subsection (d)(i) above, or to arbitrate his claim hereunder, or to take legal proceedings in a court of competent jurisdiction.

D. Notwithstanding the foregoing:

(1) No payment shall be required for the free-to-the-consumer "non-commercial" promotional use of photography or sound track more than five (5) minutes in length from television motion pictures less than ninety (90) minutes in length or more than ten (10) minutes in length from theatrical motion pictures, from television motion pictures ninety (90) minutes or more in length or from motion pictures made for the home video market containing one (1) or more scenes. A "non-commercial" use is a use from which the Producer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.

(2) It is understood that the reuse of photography or sound track from any theatrical or television motion picture shall not require any payment hereunder if the use would not require a payment under the "Reuse of Photography or Sound Track" provisions of the Codified Basic Agreement or the Television Agreement.

(3) If photography or sound track is used to promote the sale or rental of a theatrical or television motion picture or series in home video, other than in connection with the traditional home video release or any "special edition" home video release as described in Section B.(2) above, and references the availability of the picture or series in home video, then the Producer's only obligation shall be to pay six percent (6%) of "Distributor's gross" for such use if the Producer receives revenue in connection therewith.

(4) If the Producer receives revenue in connection with the use of photography or sound track under Section B.(6) above, Producer shall pay six percent (6%) of "Distributor's gross" for such use.

E. (1) The obligations specified herein shall apply only if the performer is recognizable and, as to stunts, only if the stunt is identifiable.

(2) Payments for reuse of stunts shall only apply to stunt performers whom the Union can identify and establish as having performed the stunt in question. The Producer may rely upon the Union's designation of any stunt performer as the person who performed such stunt and payment by the Producer to such stunt performer shall be final and conclusive and shall relieve the Producer of any further obligations for the reuse of such stunt as herein provided.

(3) Nothing herein shall limit the Producer's right to use photography or sound track in exploiting the picture.
F. New Media Committee: Moratorium on Grievances and Arbitration Claims

Given the novelty and complexity of the issues regarding the promotional versus non-promotional and commercial versus non-commercial use of photography or sound track in New Media, the parties agree to establish a Committee to review, discuss and categorize instances of such use in New Media to assist them in refining their mutual understanding of such uses and the Guild agrees not to file any grievances or arbitration claims arising out of or relating to a dispute over the use of photography or sound track in New Media that occurs during the first six months after the terms and conditions of this Sideletter become effective, provided that all payments as to which there is no bona fide dispute are timely made.

4. "Distributor's Gross"

A. Definition

The term "Distributor's gross," for purposes of all re-uses in new media of theatrical and television motion pictures made for traditional media and of Original and Derivative New Media Productions (each hereinafter referred to as "such Picture"), shall be as defined in Section 5.2.E. of the General Provisions of the SAG Codified Basic Agreement.¹

When the "Distributor's gross" derived from new media exploitation is received from a related or affiliated entity that acts as the exhibitor/retailer of such Picture, then the "Distributor's gross" received by the Producer from the licensing of such rights shall be measured by the exhibitor/retailer's payments to unrelated and unaffiliated entities in arms' length transactions for comparable pictures, or, if none, then the amounts received by the Producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions for comparable pictures, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable pictures.

The parties agree that the residuals due to performers under Paragraph 1 of this Sideletter shall be payable in the same manner and to the same extent as applicable to pay television and pay-per-view as provided in the following provisions in the Codified Basic Agreement or Television Agreement, as applicable (subject to conforming changes as necessary):

- 5.2.E.(4)(d), 5.2.E.(5) and 5.2.E.(7) of the Codified Basic Agreement Section and Sections 20(b)(3)d and 20(b)(5) of the Television Agreement (with respect to supplemental markets exhibition of motion pictures, the principal photography of which commenced after 7/1/52, but prior to 7/21/59) (foreign receipts and non-returnable advances);
- Section 5.2.B. of the Codified Basic Agreement (allocation among performers);
- Sections 5.2.G. and 5.2.I. of the Codified Basic Agreement (time of payment, payment requirements and reporting);
- Section 5.2.H. of the Codified Basic Agreement (gross participation);

¹ For sake of clarity, "Distributor's gross" specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.
• Sections 8.A., 9.E., 6.C., 6.H. and 6.I. of the Codified Basic Agreement and Section 21 of the Television Agreement (financial responsibility); and

• Section 5.1 of the Codified Basic Agreement (supplemental markets distribution of motion pictures, the principal photography of which commenced after 6/30/71 but prior to 7/21/80), to the extent it refers to 5.2.E.(4)(d), 5.2.E.(5), and 5.2.E.(7) of the Codified Basic Agreement and Section 20.1 of the Television Agreement (supplemental markets distribution of programs produced on or after 10/6/80), to the extent it refers to the provisions of Section 5.2 of the Codified Basic Agreement set forth above.

B. Agreements and Data

On a quarterly basis commencing October 1, 2009, within ten (10) business days after such request, the Producer shall provide for inspection by the Guild’s designated employee(s) or auditor(s), at Producer’s premises where such data is kept, full access\(^6\) to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered pictures that were entered into during the immediately preceding quarter.\(^7\) In any subsequent quarterly inspection, the Guild’s designated employee(s) or auditor(s) may re-inspect any agreements previously inspected and inspect any agreements not previously inspected.

Upon request, in a manner to be mutually agreed upon in good faith, the Producer shall expeditiously provide, or make available, to the Guild data in its possession or control, or the possession or control of its related distribution entities, regarding the new media exploitation of covered pictures, such as number of downloads or streams by source and ad rates.

C. Recordkeeping and Reporting

Payment for exploitation of covered pictures in new media shall be due sixty (60) days after the end of the quarter in which the “Distributor’s gross” from such exploitation is received. The Producer shall accompany such payments with reports regarding the “Distributor’s gross” derived from such exploitation, which shall be specified by medium and source whenever reasonably possible and will be separated from revenues derived from exploitation of such Pictures in traditional media. Along with such payments, the Producer shall provide the Guild with unredacted copies of all corollary distributor’s, subdistributor’s, and exhibitor’s statements relating to the reported “Distributor’s gross.”

Where the Producer allocates revenues between new media rights and other rights in any such Picture, among new media rights in multiple such Pictures, or otherwise, it shall specify such allocation.

D. Confidentiality

The information provided to the Guild by the Producer will be treated as confidential and appropriate arrangements will be made to safeguard the confidentiality of that information.

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\(^6\) Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibit, addenda, and other ancillary documents.

\(^7\) In the initial quarter, the Producer shall also provide the Guild with access to all said agreements that were entered into between January 1, 2006 and June 30, 2009.
E. Reservation of Rights

With respect to theatrical and television motion pictures, the Producer has agreed to
a separate payment for these uses in new media because new media exhibition is at
this time outside the primary market. The Producer reserves the right in future
negotiations to contend that the pattern of release has changed so that these uses
constitute or are a part of the primary market of distribution of theatrical or television
motion pictures and that, therefore, no additional payment should be made with
respect to the exhibition of theatrical or television motion pictures (including those
covered by this Agreement) in new media. The Guild reserves the right in future
negotiations to contend to the contrary, and further to assert that regardless of
whether other exhibitions are or have become part of the primary market, residual
provisions for theatrical or television motion pictures so exhibited should be
improved.

F. Other Terms and Conditions

Except as expressly provided herein, all other terms and conditions of the Codified
Basic Agreement or Television Agreement, as applicable, including but not limited to
Section 50 of the Television Agreement, shall apply; in the event of a conflict, the
terms and condition of this Sideletter shall control.

5. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business
models and patterns of usage of theatrical and television motion pictures in new media are in
the process of exploration, experimentation and innovation. Therefore, all provisions of this
Sideletter expire on the termination date of the 2009 SAG Codified Basic Agreement and the
2009 SAG Television Agreement and will be of no force and effect thereafter. No later than
sixty (60) days before that expiration date, the parties will meet to negotiate new terms and
conditions for reuse of theatrical motion pictures and television programs in new media to be
in effect thereafter.

The parties further acknowledge that conditions in this area are changing rapidly and that the
negotiation for the successor agreements will be based on the conditions that exist and
reasonably can be forecast at that time. For example, the parties acknowledge that with
respect to the formula in Paragraph 1 for the electronic sell-through of theatrical and
television motion pictures, the growth of electronic sell-through could adversely impact
traditional home video sales. In future negotiations, the parties agree that the criteria to be
considered in good faith in determining whether the electronic sell-through residual should be
increased or decreased include patterns of cannibalization of the home video market and
changes in the wholesale price.

6. All payments hereunder made as a percentage of "Distributor's gross" are aggregate
payments for all performers who have traditionally been entitled to residuals under the
Codified Basic Agreement or the Television Agreement, as applicable.

10. Exhibitor/Distributor Sideletter

Add an unpublished Sideletter to the Codified Basic Agreement to read as follows:

"During the negotiation of the 2009 SAG Codified Basic Agreement and the 2009 SAG Television
Agreement, the Guild and the Producers discussed the nature of distribution via new media. In
particular, the Producers compared new media to basic cable distribution. The Producers stressed
that a new media exhibitor might work with a third party in the same way that a cable network, such as
FX, works with MSOs to exhibit programs. The Guild acknowledged that it considers new media
exhibitors such as hulu.com to be exhibitors, and not distributors, and that situations analogous to the one in basic cable would be treated the same – namely, that the third party would be considered an exhibitor and would not make the initial exhibitor a distributor.

"In addition, the parties agree the language in Paragraph 1.A. of the Sideletter re Exhibition of Motion Pictures Transmitted via New Media, which was changed in the 2008-9 negotiations, is not a substantive change from the corresponding language that appeared in the same sideletter in the 2005 and 2001 Agreements."

11. Committee on Alternative Digital Broadcast Channels

Add a Sideletter to read as follows:

"During the negotiation of the 2009 SAG Codified Basic Agreement and 2009 SAG Television Agreement, the parties discussed their concerns regarding the reuse of television motion pictures on alternative digital broadcast and cable channels. Following negotiations, the parties will establish an Alternative Digital Broadcast and Cable Channel Committee to address issues related to the reuse of television motion pictures on alternative digital broadcast and cable channels."

12. Programs Made for New Media

Revise the Sideletter re "Programs Made for the Internet" to read as follows:

SIDELETTER RE PROGRAMS MADE FOR NEW MEDIA

As of July 1, 2001
Revised as of July 1, 2005
Revised as of June 10, 2009

David White
Interim National Executive Director
Screen Actors Guild
5757 Wilshire Boulevard
Los Angeles, California 90036

Re: Programs Made for New Media

This Sideletter confirms the understanding of the Screen Actors Guild ("the Guild") and the Producers (collectively "the parties") concerning the application of the 2009 Producer – Screen Actors Guild Codified Basic Agreement (hereinafter "the Codified Basic Agreement") and Screen Actors Guild Television Agreement (hereinafter "the Television Agreement") to audio-visual entertainment programs that are made for the Internet, mobile devices or any other new media platform known as of June 10, 2009 (hereinafter collectively referred to as "New Media"). With respect to programs intended for initial use in New Media, the parties agree as follows:

A. Coverage and Scope

The provisions of this Sideletter shall be applicable to performers and background actors employed on programs made for "New Media," as that term is defined above, to the extent that such programs are covered by the Codified Basic Agreement or Television Agreement.1

1 During negotiations, the parties expressed their disagreement as to the proper interpretation of the recognition and scope provisions of the Codified Basic and Television Agreements, the jurisdiction of SAG and AFTRA with respect to New Media Productions and the applicability of the SAG Codified Basic Agreement and Television Agreement to such New Media Productions. Pursuant to Paragraph H. below, the parties reserve all of their respective positions on these issues. Nothing in this provision is intended to expand or contract the scope of SAG's jurisdiction over New Media Productions. Rather, this provision establishes terms and conditions of employment applicable to those New Media Productions to which the Codified Basic and Television Agreements otherwise apply.
sentence. If the Producer elects to terminate said employment by reason of the illness of any other
member of the cast or of the director, then the Producer shall also be obligated to pay the performer
one (1) week's compensation. In the event of such termination, Producer shall have the right to recall
the performer, without compensation for intervening time, in the event of the resumption of production
as and when the Producer may request and at the same rate as previously applicable, unless the
performer is otherwise employed, but if otherwise employed, the performer will cooperate to the fullest
extent in trying to make his services available to Producer. In the event of the resumption of
production, the Producer will not use force majeure or illness as an excuse for not recalling the
performer in the absence of supervening circumstances or conditions which make the continuation of
his role impracticable."

20. **Reuse of Photography or Sound Track** (Sections 18 and 22, General Provisions, Basic Agreement;
Sections 35 and 36, Television Agreement)

A. Revise Sections 18.A.(5) and Section 22.J. of the General Provisions of the Codified Basic
Agreement by replacing the references to "four hundred (400) feet of 35mm film containing
not less than two (2) scenes or two hundred (200) feet of 35mm film containing one (1) scene
or the equivalent in running time if another recording medium is used" with "ten (10) minutes
containing one (1) or more scenes" for theatrical motion pictures.

Revise Sections 35(i) and 36(i) of the Television Agreement by replacing the references to
"four hundred (400) feet of 35mm film containing not less than two (2) scenes or two hundred
(200) feet of 35mm film containing one (1) scene or the equivalent in running time if another
recording medium [or 16mm film] is used" with "five (5) minutes containing one (1) or more
scenes" for television motion pictures less than ninety (90) minutes in length and with "ten
(10) minutes containing one (1) or more scenes" for television motion pictures 90 minutes or
more in length and for motion pictures made for the home video market.

B. **Revise the penultimate sentence in the third paragraph of Section 36(a) of the Television
Agreement to read as follows:**

"In addition, Producer shall have the right to use photography or sound track for the purpose
of recapping the story to date upon payment of the day performer rate to each performer
appearing or heard in such photography or sound track who would otherwise be entitled to
negotiate or to payment under the provisions of this Section 36, provided that the
photography or sound track is used in the same season in which the performer is employed
or in the season immediately following the season in which the performer was employed and,
provided further, that the recap shall not exceed ninety (90) seconds in length when used in a
program up to and including sixty (60) minutes, or exceed three (3) minutes in length when
used in a program in excess of sixty (60) minutes in total length."

21. **Meal Periods and Meals**

The Producers withdraw their proposal regarding "French hours" in light of the Union's confirmation
that it will continue to grant waivers for use of "French hours" consistent with its past practice.

22. **Late Payments**

Revise the late payment provisions in the Agreements to provide that late payments are not required if
the performer or background actor fails to provide the Producer with completed forms and
documentation required for employment and/or payment (i.e., I-9s, vouchers, W-4s or start paperwork
indicating the correct name, address, Social Security Number or tax identification number [for loan-
outs] of the performer or background actor), provided that the Producer supplies the forms to the
performer and makes reasonable efforts to collect those forms by notifying the performer that forms
are incomplete or missing.