

NEGOTIATING A NEW ARTISTS' MANAGER BASIC AGREEMENT FREQUENTLY ASKED QUESTIONS

Agents are constant and unrelenting advocates for all artists. Forty-three years ago, the Writers Guild of America (WGA) and the Association of Talent Agents (ATA) renewed the Artists' Manager Basic Agreement (AMBA), the contract governing the relationship between guild members and agents who represent them. This agreement provides clarity and operating procedures for the business relationship between agents and writers.

Talent agencies and writers currently are in the process of negotiating a new long-term business agreement. Through this process, ATA member agencies remain committed to protecting and creating the best opportunities for all artists amid seismic shifts in the media landscape and business model that are creating new challenges for artists.

Information on ATA objectives and the process is provided below. This is a fluid situation with many moving parts and daily shifts. This document provides a topline view of the core issues.

Q: HOW IS THE PROCESS UNFOLDING?

Last spring, WGA leadership – without warning – terminated the long-standing AMBA and issued a 27-point [proposal](#) for a new governing agreement. ATA's member agencies immediately asked WGA leadership to start the process of discussing a new agreement and informed WGA that it would consider their proposals in good faith. Our intent has always been and remains to reach a constructive resolution for writers before the April 6, 2019 termination date. For nearly half a year, our repeated efforts to engage in a dialog with WGA over their concerns as embodied in their proposals were rebuffed by WGA leadership.

WGA agreed to begin meeting in early February, finally bringing together ATA, leaders of the talent agencies and Guild leadership – but not allowing much time to thoughtfully navigate these complex issues. Establishing a new, long-term business agreement is – and should be – a complex process. There is no question that this is a complicated, industry-specific objective, and redefining the existing framework will require careful collaboration between the agencies and the writers.

Q: WHAT IS CONTAINED IN WGA'S RECENTLY RELEASED "CODE OF CONDUCT"?

WGA has now announced it will ask its members to vote on a new, so-called "Code of Conduct" on March 25, 2019 that agencies must adopt in order to work with guild writers. The code, which amends and now supersedes the 27-point proposal, can be viewed [here](#).

Essentially, WGA is instructing its members to vote to walk away from their agency and agents if the agencies do not comply with the Guild's unilateral mandates. And make no mistake, once adopted, the Guild can unilaterally amend their Code whenever they want and as they see fit. By way of just one example, there would be nothing whatsoever to stop WGA from prohibiting commission on scale at any point down the road. This self-professed "power grab" is really a sweeping attempt to reorganize the entire entertainment industry, affecting not only writers and agents, but also actors, directors, producers and even studios – it's not about agent conduct.

This announcement took place just one week after ATA's first meeting with the Guild to discuss a new franchise agreement and just a few days after the second meeting, showing a true lack of sincerity to negotiate in good faith.

This is a disappointing but none too surprising negotiation tactic – a move to drive a wedge between agencies. Agencies of all sizes and configurations are united together and united in their mission to support their writers. We believe this approach isn't productive or effective, and most importantly, will bring financial harm to writers and all artists.

Q: WHAT DO AGENCIES HOPE TO ACCOMPLISH IN NEGOTIATION DISCUSSIONS?

ATA wants to work together with WGA on an agreement that reflects the current and future media landscape and provides clarity, certainty and forward-looking operating procedures for our longstanding relationship. Seismic shifts in the media landscape have dramatically changed the business of Hollywood, creating new challenges for writers that agents are best equipped to navigate. It is the job of agents to stay one step ahead to deliver opportunities for the best creative jobs, achieve the highest compensation, and maximize creative control and ownership for their clients.

Unfortunately, WGA leadership appears bent on driving dissent and stoking fear through disinformation rather than negotiating a proper commercial deal. WGA has miscast the agencies in the role of adversary. The agencies are talent's advocates and allies. And that will always remain true. ATA recognizes there are frustrations given this dynamic and swiftly changing landscape, but firmly believes a collaborative approach and constructive dialogue will be most successful in achieving a new agreement that benefits writers and the industry. There is a clear and important role for both agents and the Guild in the life of writers – it shouldn't be a zero-sum game.

Q: HOW ARE THESE DISCUSSIONS DIFFERENT FROM TRADITIONAL LABOR NEGOTIATIONS?

This is a business relationship and a contract negotiation, not a "labor dispute" and therefore not subject to a collective bargaining process. There will be no "strike" and there will be no "picket lines" to be crossed as some have inferred.

Q: WHAT ARE THE KEY ISSUES THAT AGENCIES ARE DISCUSSING DURING NEGOTIATIONS REGARDING THE CHALLENGES FACING WRITERS IN THE NEW MEDIA LANDSCAPE?

- As tech giants diversify, traditional video production and distribution companies are consolidating to compete, forming a handful of big media powerhouses that hold tremendous control of content production and distribution in today's Hollywood;
- The influx of publicly traded conglomerates from other industries that want to make their own rules about the value of artists' work;
- Globalization of original content with U.S. distribution platforms buying foreign content rather than vice versa;
- Today's entertainment industry is vertically integrated – networks are merging with distributors, studios are owned by networks, networks are insisting that their studios be brought on as co-production partners, and tech companies have operations at every stop along the way – giving all the largest players in Hollywood (both old and new) enormous leverage when negotiating deals with writers;
- Some writers – and their agents – are making less because of new studio practices such as tying writers up exclusively and short orders produced over long periods of time that generate short-term contracts, long hiatus periods, greater uncertainty and a greater emphasis on scale work.

These trends are creating both opportunities (more programming, higher budgets for television programming that do not have to appeal to broad mass audiences, etc.) and challenges (non-existent or limited off-network syndication, shorter or non-existent TV windows for feature films, fewer small and mid-budget feature films for writers and the broader industry, broadcast networks making fewer scripted series without repeats, fewer episodes being produced over longer periods of time, writer rooms are smaller, etc.) for writers.

In this new world, we need more competition to the studios and conglomerates, and strong agencies who can push back against these forces and create new opportunities.

Q: HOW WILL A NEW AGREEMENT ENSURE THAT AGENTS WILL CONTINUE TO BE ABLE TO BE STRONG ADVOCATES FOR WRITERS AND FOSTER THEIR CAREERS?

For more than 60 years, one thing has remained the same about agents: they have remained writers' strongest advocates, and today they are as committed as ever to collaborating with writers to grow and protect their careers.

After identifying new artists, agents invest time, money and resources in expanding industry relationships, contributing creative input, reviewing scripts, carefully helping clients in the evolution of their ideas and providing support throughout the process.

Agents talk daily with studios, streaming companies, media platforms, distributors and broadcasters and know better than anyone how writers benefit creatively and financially from the deals they negotiate and the opportunities they source on behalf of their clients. Agents are constantly using that expertise to inform strategies for approaching new deals and new business models for writers and are on the firing line 24/7 365.

Q. ARE THERE AREAS OF COMMON GROUND THAT ATA AND WGA MAY BE ALIGNED ON?

Within WGA's 27 point proposal, there are plenty of areas of common ground, including greater protection of writers, driving diversity, strategies for increasing writer compensation and support for the payment process, supporting enforcement of AMBA and Guild rules, better communication between ATA and the Guild, and enhancing transparency and providing more information to the Guild (with client consent).

A community of robust agencies can help writers push back against powerful conglomerates and provide counter-leverage. Agents and artists can work together to build independents that offer transparency, fairness and better terms, including more creative control. Working from these foundational areas of agreement will help foster a dialogue regarding some of the broader areas under discussion.

Q: WHAT ARE SOME OF THE NEGATIVE CONSEQUENCES THAT WGA LEADERSHIP'S PROPOSALS WOULD HAVE ON ARTISTS?

ATA is concerned that some of the proposals prepared by WGA leadership do not reflect the current landscape and are based upon some core misunderstandings of the evolving industry that would lead to negative and unintended consequences for writers, other artists and the entire entertainment ecosystem. Unfortunately, many of WGA leadership's proposals ironically would materially limit their own members' economic and creative opportunities.

Q: WHY IS IT SO IMPORTANT IN TODAY'S NEW MEDIA LANDSCAPE FOR AGENCIES TO BE ABLE TO RAISE FINANCING AND SEEK DISTRIBUTION FOR INDEPENDENT SHOWS AND FILMS?

As traditional studios, networks and content distributors have consolidated, the resulting media conglomerates are no longer willing to finance and disseminate the same volume of shows and movies they once were. To get clients' shows and films made, agencies have had to take on a larger share of the responsibility for raising financing and seeking distribution, and have invested heavily in creating the infrastructure to provide such services. Over the last five years, more than 1,000 independent films have been released with support from agencies – creating great opportunity for writers and the broader industry. Under WGA's proposal, a tremendous percentage of these independent films would never have been produced or released. In turn, thousands of jobs would never have existed for writers and other artists.

Q: WHAT ROLE DO AFFILIATES OF AGENCIES PLAY IN CREATING INCREASED OPPORTUNITIES FOR WRITERS?

In the midst of massive changes in the industry, all artists' interests are best served when there are more buyers in the marketplace who can invest in producing even more content. Affiliates of agencies are generating new project opportunities through an artist-first lens that offer artists greater creative control and better financial terms.

WGA leadership's proposals would abolish this practice, leaving fewer project opportunities in the marketplace for all artists. Less opportunities and less competition do not translate into a benefit to writers. With less competition, studios would have fewer incentives to offer better deal terms – less opportunity for creative control and better financials. Without affiliates in this space, networks, studios and conglomerates gain while artists and writers lose. Writers would live in a vertically integrated world with fewer alternatives to get projects made – fewer jobs and fewer independent alternatives to studios and conglomerates.

Q: WHAT IS PACKAGING AND HOW DOES IT BENEFIT ARTISTS?

Packaging provides tremendous benefits to artists in all lines of work – including directors, producers, actors and writers who each save their 10% commission if their agency is one of the packaging agents on a particular show. And this 10% savings is true throughout the life of the show and irrespective of when the writer or other artists are hired on to the show.

Packaging agencies help assemble a show's creative elements before the show is pitched to potential buyers and continue to service the show during its lifecycle. They continue to help the show find talent, support the show in network negotiations and find new homes for cancelled shows. They also regularly negotiate new and better compensation packages for writer clients—who are typically on two-year deals—over the life of the series, while the package fee remains exactly the same. Packaging enables agencies to help develop, nurture and create environments where artists can maintain the most control of and leverage creative direction and financial value of their work.

Q: IF PACKAGING IS ELIMINATED, WHAT WOULD BE THE NEGATIVE IMPACT ON WRITERS?

If packaging fees are eliminated, the consequence is simple – writers will have to pay more money out of their pockets. Studios, on the other hand, would pay less – they would retain the fee and share of the profits that would otherwise go to the packaging agency, and artists would have to pay the standard 10% commission on their earnings. Contrary to myths being circulated, those packaging fees likely would not be redistributed in any way to talent. The studios would keep the money they pay the agencies now.

The studios likely will have to pay for more development executives or more creative producers, who will have to do the work packaging agents do now. Studios will recoup these costs at writers' expense.

Q. WGA HAS REPEATEDLY STATED THAT PACKAGING AGENCIES ARE PAID 3% OF THE NETWORK LICENSE FEE, 3% DEFERRED UNTIL NET PROFITS, AND 10% OF THE SHOW'S GROSS PROFITS FOR THE LIFE OF THE SHOW. IS THAT TRUE?

No. This is not true.

- The first “3%” of a package is, in reality, a smaller amount—generally about 1.5% of a license fee. This fee shifts the commission burden from the clients to the studio, as agency clients are relieved of the burden of paying commission on packaged shows. Even on a successful series, this upfront fee is often less than the agency would make from simply commissioning the talent on the show. Package fees are capped. And fees are often split between agencies, reducing this fee to 0.5% or 0.75%. For shows that run four seasons or less, they virtually never hit backend, and these upfront fees are all the money the agency makes on the show. The clients keep their full salary and pay no commission to the agents.
- The second “3%” is illusory. It is formally eliminated in most streaming contracts, and generally is not paid in most other situations, because very, very few television programs—even those that run for many seasons—reach the “net profits” stage that would provide such a payment.
- As for that final 10%, agencies are never paid 10% of gross profits. Rather, they are paid a percentage—sometimes 10%, sometimes 7.5%, and frequently half that or less due to splits between agencies—of modified adjusted gross profits based on the highest-participating client’s definition. What does that mean? It means that agencies do not participate in profits until their client does. It is simply not true that agencies “often” earn “far more than their show’s creator.” In those instances where a show hits backend, the agency’s clients who created the show typically make far more than the agency does—and they take home the same backend amount they would have had the show been simply commissioned.

It is also important to note that while packaging has existed for more than 50 years and package fees have remained fairly constant in broadcast TV for the past two decades, we do not believe there is any connection between packaging and writers’ current concerns with their overscale compensation. If packaging fees are eliminated those fees will go back to the studio, which will not give the savings back to artists. Additionally, studios will have to incur the costs of more development executives to do the work packaging agents do now, and will likely have to make up this cost at the expense of writers and other artists.

Q. WHAT WILL HAPPEN IF ATA AND WGA ARE UNABLE TO REACH A NEGOTIATED AGREEMENT?

ATA and agencies are committed to finding common ground and charting new solutions for the challenges that writers now face. Our objective is to stay at the table and work through these issues collaboratively, recognizing this is a complex and fluid process. We hope that Guild

leadership will ultimately come to the same realization – otherwise the reality and landscape look bleak for both writers and agents.

The agencies stand ready to engage proactively and productively during these discussions and have proposed a series of additional meetings, diving into specific issue areas, prior to the agreement's expiration.

The vast majority of WGA's working members are represented by ATA member agencies whose agents have long-standing relationships with their clients starting from the beginning of their careers. To ask writers to leave their agents in the middle of staffing season and be placed with another agent who has little background knowledge or understanding of their previous deals is misguided and could be extremely harmful to writers from both a financial and career perspective.

Q: DO AGENCIES HAVE UPDATED AGREEMENTS WITH OTHER GUILDS?

The Screen Actors Guild (SAG) Agency Regulations expired in 2002, but ATA agencies continue to represent union actors under ATA state-approved agency contracts. ATA currently has franchise agreements in place with the Directors Guild of America (DGA) and Actors' Equity Association (AEA). Since 1937, ATA agencies have worked in partnership with artists and their guilds to make sure that creative artists are protected in their business relationships and negotiated agreements.

Q: HOW IS THE WRITER/AGENT RELATIONSHIP GOVERNED IN CALIFORNIA? NEW YORK?

ATA agents are licensed and strictly regulated by state and local government agencies in California and New York. In California, ATA agents are licensed by the State Labor Commissioner and subject to annual review. Artists' contracts are also approved by the State Labor Commissioner. In New York, talent agency companies are licensed under the Employment Agency Law of Article 11 of the New York General Business Law.

Q: WHAT IS ATA?

Since 1937, ATA has been the official trade association of talent agencies across the United States, responsible for legislation, advocacy and negotiating agency franchise agreements with the major entertainment guilds, including SAG, AFTRA (SAG-AFTRA), WGA, DGA and AEA. ATA's collective voice provides strong and effective advocacy for its members in all matters relating to the talent-agency business. The association's one-hundred-plus agency members represent more than 90% of working artists. ATA provides its member agencies with best practices, a voice in legislation, educational seminars, networking events, conferences, news bulletins, expert opinions and day-to-day support.

For more information, please visit www.agentassociation.com.