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MEMORANDUM

VIA EMAIL

To: Karen Stuart
Date: May 20, 2019
Subject: Verve Code of Conduct

Dear Karen,

You asked us to review the updated WGA agreement signed by Verve Talent & Literary Agency (“Verve”). As discussed, the Verve agreement continues to include a number of concerning provisions, separate and apart from packaging and affiliates. These provisions, which could substantially and negatively affect both writer income and writer privacy, should be of serious concern to agencies of all sizes and, more important, their writer clients. We summarize some of these problems below.

Restrictions Which Harm Writers’ Economic Interests

- The agreement continues to require that an agent’s representation of one writer shall not be “influenced by its representation of any other Writers.” On its face, this ***prohibits agents from pairing writer clients with one another*** (e.g., showrunner and staff writer) to their mutual benefit. *See* § 3.A.2.
- The agreement bars agencies from accepting any “money or thing of value from the employer of a Writer.” This sweeping language bars agencies from representing producers who employ writers. *See* § 3.B.4. This is confirmed by section 3.B.5.b, a new section which bars agencies from representing a producer who employs or purchases literary material from a writer on the project. This means that ***agencies cannot pair writer clients with producer clients*** on a given project.
- The agreement continues to require Guild approval to provide film finance and distribution services on all projects over a \$20 million budget—***effectively giving the Guild a veto right over artists’ work***. *See* § 3.C.2.c.

Restrictions Which Harm Writers’ Privacy Interests

- Under the agreement, agents are required to disclose all other writers being ***submitted to*** a project for employment, even if those submissions are not public. *See* § 3.B.5.a. This is a significant intrusion into writers’ privacy.

- Under the agreement, agents are required to submit both deal terms and signed contracts for writer deals to the Guild, *regardless of whether the clients agree*. See § 3.D.1.

Guild Power Grabs

- The agreement grants the Guild authority to “specify the terms under which an agent may be delegated to perform certain representational duties.” See § 1. The *Guild will use this concession as grounds to impose whatever terms it wants*—similar to the sports context where players’ unions set strict limits on commissions and impose other restrictions.
- The agreement continues to include a vague and broad prohibition against “apparent” conflicts of interests with writers, which the *Guild can use to target any action it decides is objectionable* at any time. See § 3.B.2.

Unfair Arbitration Requirements

- The agreement requires arbitration with a preselected list of arbitrators who can award damages (including punitive damages), injunctions, declaratory relief, and attorneys’ fees, with *no limits on amount*. See § 5.
- There is *no appeal right* except for loss of franchise. See § 5.C.
- The arbitrator has no power to strike down or modify the Agreement. See Arb Rules. § 6.B.
- After the initial term, there are only one-year terms and there is *no requirement to negotiate in good faith* for a new deal. See § 7.