

ATA 6-7-19 PROPOSAL - TERM

Overview – A new agreement should provide stability and enable the parties to renew a full and cooperative relationship. Both sides should be required to act in good faith with one another, and to work cooperatively in a *real* negotiation should there be disagreements. An ongoing committee should work to resolve issues in real-time, so problems don't fester and trust remains strong.

Details –

- Term shall be five years and continue thereafter unless terminated by either WGA or ATA.
- After the term ends, either side may terminate on 12 months' notice.
- Parties must negotiate in good faith for a successor agreement. Neither party may act to undermine the other while good faith negotiations are ongoing.
- There will be a standing committee composed of equal numbers of WGA and ATA members to address any issues that come up during the term.

ATA 6-7-19 PROPOSAL – ARBITRATION

Overview – Disputes should be subject to a reasonable, efficient arbitration process that is fair to all parties. For serious disputes, there should be an option to appeal.

Details –

- Disputes between or among WGA, ATA, writers, and agencies/agents shall be subject to arbitration.
- Claims must be brought within 12 months from the date the complainant learned of the basis for the claim, but no later than 2 years from the date of the occurrence of the facts upon which the claim is based.
- All claims will be heard by a single arbitrator. The arbitrator will be required to have substantial experience in the entertainment industry, and will either be mutually agreed by the parties or, if the parties are unable to agree, selected through a process where each side lists five names, and each party may strike (1) name and rank the remaining candidates in order of preference. The remaining arbitrator with the highest composite score shall be appointed as the trial arbitrator.
- Claims seeking less than \$250,000 or solely non-monetary relief (other than removal of subscription status) shall use streamlined procedures in accordance with JAMS' Streamlined Arbitration Rules and Procedures. Other claims will use comprehensive procedures in accordance with JAMS' Comprehensive Arbitration Rules and Procedures.
- Claims subject to comprehensive procedures shall be appealable to a three-arbitrator panel in accordance with JAMS Optional Arbitration Appeal Procedure. Appeal

arbitrators must be retired state or federal judges with at least ten years' substantial experience in the entertainment industry.

- Exemplary/punitive damages may be awarded, but are capped at \$500,000. Such damages must be proved by clear and convincing evidence, just like in court.
- In the event the WGA seeks to remove an agent or agency's subscription status, it can do so only if the arbitrator determines, by clear and convincing evidence, that the agent or agency has committed multiple and substantial violations of the agreement, including serious breaches of fiduciary duty or acts of moral turpitude, and that no lesser discipline would accomplish justice. A talent agency who is a subscribing agency may retain its subscription status despite such a finding if and only if it (a) pays all damages awarded in connection with the violation; and (b) terminates the employment of all individuals determined to have engaged in such violations.
- Unless the arbitrator determines that a permanent ban is warranted, an agent or agency who is removed from the list of subscribing agents can reapply for admission two (2) years after payment of all damages and completion of any other conditions required for reinstatement.

ATA 6-7-19 PROPOSAL – INFORMATION SHARING

Overview – ATA and its member agencies will work with the WGA to share information that will better enable the WGA to enforce contracts, negotiate collective bargaining agreements, and understand industry trends—while also protecting client confidentiality and the fiduciary relationship between clients and their agents.

Details –

- Agencies shall provide WGA with copies of all agency representation agreements with writer clients.
- Agencies shall provide the WGA with all executed contracts exclusively for writer services, promptly after receiving those contracts, unless the writer client expressly instructs the agent not to provide them.
- ATA will work with the WGA to develop a mechanism to timely provide agencies' booking data for writer services, with the goal to automate the process and provide the data promptly upon entry, unless the writer client expressly instructs the agent not to provide that information.
- The writer client's consent to (or opt out of) the above sharing of confidential information will be part of the standard writer representation agreement (Rider W).
- Agencies will provide any other writer client information/documents to the WGA upon client request.
- The above information sharing will take into account the more limited resources of smaller agencies.

- The WGA shall make reasonable efforts consistent with applicable privacy laws to protect writers' confidential information provided by the agencies, at least as much as it uses to protect its own confidential information.
- ATA members and WGA will form a standing committee to meet regularly to share trends in writer contracts, including information regarding new forms of agreements, studio practices, and similar issues of mutual concern, and to address any matters of concern regarding enforcement of the MBA.

ATA 6-7-19 PROPOSAL – CONTENT AFFILIATES

Overview – The agencies with content affiliates are prepared to agree to robust protections for their writer clients to mitigate conflicts of interest (real or perceived), and have those protections enforced through binding arbitration. To date, the affiliates have offered industry leading benefits for writers and other artists. Though deals may differ from content affiliate to content affiliate, these benefits have included increased span protection, giving artists greater shares of modified adjusted gross receipts, and (as the WGA has acknowledged) materially better overall economics. Nonetheless, because affiliates and agencies are legally separate entities, the agencies cannot make substantive offers in these areas on behalf of their affiliates. However, the agencies strongly encourage the WGA to meet with the content affiliates to demystify their business practices and negotiate directly with the content affiliates, potentially formalizing some of these benefits, and others, like healthcare contributions.

Details –

- No writer client shall ever be required (formally or informally) to work with an agency's content affiliates. It will be the writer's choice. If a writer client chooses not to work with content affiliates, that choice will be fully respected and honored.
- An agency must at all times have separate day-to-day operations and management from any content affiliate. No talent agency or agent shall have any creative approvals, or any ability to make hiring and firing decisions related to writer services or sales of rights.
- All client confidential information must be maintained separately by the agency, and be protected from disclosure to third parties (including content affiliates), in the same way and to the same degree that the agency protects its own confidential information.
- Before offering a writer client's work or services to a content affiliate, the agency must disclose the content affiliate relationship. The agency must advise the writer client that s/he is not obligated to work with the content affiliate, the choice is theirs, and that the client should be represented by independent counsel in deciding whether and how to do so. ATA reaffirms all aspects of its prior offers to WGA in these areas.
- If an agency submits a writer client's intellectual property to a content affiliate, the agency must also submit the property at the same time to at least three additional parties in which the agency has no affiliation, and must timely present any offers received to the writer client and any of his/her other independent professional representatives.
- Any breach of the foregoing will be subject to binding arbitration.

- ATA and WGA will engage in a two-year study with respect to the practices and performance of content affiliates, and a standing committee comprised of WGA and ATA members will make any needed recommendations.
- If, after two years, the WGA continues to have concerns about affiliates, the parties will agree to reopen negotiations on that issue.

ATA 6-7-19 PROPOSAL – FILM FINANCE

Overview – As the Guild has recognized, agencies provide valuable services in the independent film and distribution space, and should continue to provide these services. ATA supports writers having full information and a choice about when and how to participate in films where agencies are providing distribution or sales services. However, an arbitrary budget limit by which agencies need Guild permission to provide services to non-Guild members is unfair, and also fails to take into account the realities of independent film, where budgets change constantly, and where films touch the studio system at various points in the production and distribution process.

Details –

- Agencies shall be permitted to perform motion picture consulting, financing, and sales services and receive fixed and/or contingent compensation therefrom.
- In the event a writer client retains an agency to perform these services, the agency shall fully disclose the relevant fees prior to commencing such services, and the writer client may choose whether to proceed with the agency's performance of services.
 - On a quarterly basis, agency shall provide the Guild with a list of motion pictures, if any, where a writer client has engaged the agency to provide these services.
- In instances where someone other than a writer client (e.g., a third-party producer, financier, production company, or another writer) retains the agency, and the writer client has not yet been engaged on the project, the agency shall fully disclose, prior to a writer client's engagement:
 - the existence of the relationship
- the fees payable to the agency.
- In instances where someone other than a writer client retains the agency, and the agency represents a writer client as an attached element—for example, where a writer client is attached to adapt pre-existing intellectual property—and the agency is taking the project to market before the writer client commences work, the agency shall fully disclose:
 - the existence of the relationship

- the fees payable to the agency.

ATA 6-7-19 PROPOSAL - PACKAGING

Overview – This updated packaging proposal more than doubles our prior revenue sharing offer, allowing emerging and middle class writers to participate in the show’s profits. It also includes new protections to give each and every writer client full choice as to whether they want to be included in a package, and to ensure that no writer is packaged without their informed consent. And we will state clearly the type of services that we perform as packaging agents, above and beyond procuring and negotiating a writer’s deal.

Details –

- Agencies will share 2% of the backend revenue derived from the agency’s package, on a pro rata basis, with all writers on a packaged television show not already receiving backend. The intent in this proposal is to – for the first time – provide emerging and middle class writers with profit participation in the shows on which they work. These writers, to date, have never had the opportunity to share in profits.
 - The agencies will commit to pay for an industry-wide inclusion fund, as previously proposed, but will do so outside of this negotiation. The inclusion fund will have a minimum \$6M commitment over three years. Its purpose will be to support and create opportunities for historically underrepresented persons, and it is anticipated that it will fund programs, education, internships, and similar opportunities.
- All writer clients will have the choice of whether to participate in television packaging, and no client will be packaged or staffed on a packaged show without their consent.
 - Each writer client will be given the option, in writing, to opt into or out of: (1) being considered as a packageable element; and (2) being staffed on a packaged show.
 - The writer can choose, at the time they sign with an agency, whether to have a blanket preference applicable to all deals or to consider each potential package on a case-by-case basis.
- A writer client shall have the right to know all facts known by the agency that are reasonably necessary for the writer client to make an informed choice as to whether to participate in a packaged television program.
- If a writer client consents to package on a project where the writer client is a packageable element, the agency will notify a designated third party representative (lawyer or manager) of the client’s choice, and will provide the names of the other packageable elements and the economics of the package (to the best of agent’s then-current information).
 - If the writer client does not have a designated representative, the writer client will have the opportunity to use a designated negotiator, through the agency-funded WGA negotiator’s fund, in lieu of a third party representative.

- No writer client's agreement or pitch will be delayed due to agency package negotiations.
- Packaging agents shall perform packaging services on all packaged shows. These services may include, by way of example:
 - Working with a showrunner on a show's budget after it is ordered to production, including interfacing with the studio and supporting the showrunner in negotiating for a higher initial writer budget, and for budget increases.
 - Bringing to a writer client books, formats, articles and other intellectual property for development as a TV show.
 - Introducing a writer client to available producers, actors, directors, or other writers to collaborate with on a television idea.
 - Collaborating with other agencies to introduce writer to individuals or properties represented by such other talent agencies for packaging.
 - Assisting the showrunner in the following ways:
 - Providing lists of available writers to staff the show
 - Helping cast the show with actors
 - Helping find series and episodic directors
 - In each case, the packaging agent will provide lists of writers, actors, and directors represented by other agencies as well as its own
 - Offering to help the studio negotiate its license fee with the broadcaster, or if the broadcaster and studio are one company, assisting the showrunner and other profit participants to negotiate a higher imputed license fee.
 - Providing the following to the writer and/or the show:
 - Research and social media support.
 - Publicity and marketing assistance.
 - Programming and scheduling assistance.
 - Offering to help the studio with off network sales.
 - If the show is canceled by the initial network, offering to help set up the project at a new network or platform.
 - Assisting in the audit process with respect to backend participation

JUNE 7, 2019 STATEMENT OF COMPROMISE AND NON-WAIVER

The proposals offered by ATA represent an attempt to determine whether a compromise of the parties' ongoing dispute is possible.

ATA acknowledges that there are substantial differences in opinion between WGA and the ATA regarding the scope of the WGA's legal authority to regulate agents, including in subjects covered by the proposals offered by ATA. By offering to negotiate over these issues, the ATA is endeavoring to avoid further legal conflict and disruption in the industry, for the benefit of its members and their writer clients. ATA is not conceding any legal position and reserves all legal rights. Similarly, the ATA will not consider the WGA negotiating in response to ATA's proposals to be any legal concession on its part.

ATA hopes the WGA shares its goal of having a full and free discussion over a possible compromise that will resolve the dispute between the parties, and lead to a new agreement which benefits all.