

SIDELETTER NO. 15

As of July 1, 2002;
Revised as of July 1, 2008

Jay D. Roth
National Executive Director
Directors Guild of America, Inc.
7920 Sunset Boulevard
Los Angeles, California 90046

Re: Exhibition of Motion Pictures Transmitted via New Media

Dear Jay:

This Sideletter confirms the understanding of the Guild and the Employers (collectively “the parties”) concerning the application of the BA to the exhibition on the Internet, mobile devices (such as cell phones or PDAs) and any other New Media platform known as of July 1, 2008 (hereinafter collectively referred to as “New Media”) of covered theatrical and television motion pictures or programs, the principal photography of which commenced on or after July 1, 1971.

1. License for Limited Period or Fixed Number of Exhibitions.

Where the subscriber pays for the program either on a subscription or per-picture basis, and where 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 Employer shall pay residuals in an aggregate sum equal to one and two-tenths percent (1.2%) of the license fee paid by the licensee for the right to exhibit such picture in New Media.¹

When the Employer’s receipts from the licensing of such exhibition are received from an entity which acts as the exhibitor and in which the Employer has a financial interest, the reasonableness of the fee received by the Employer from the licensing of such exhibition shall be determined by the exhibitor’s license fee payments to unrelated entities for comparable motion pictures.

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.

SIDELETTER NO. 15 (continued)

The parties agree that the residuals due under this Section 1 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 BA provisions (subject to conforming changes as necessary):

- Paragraph 18-103(a) (second and third sentence only) (*pro rata* shares)
- Paragraph 18-103(d) (foreign receipts)
- Paragraph 18-105 (participating employees)
- Paragraph 18-106 (reports and manner of payment; non-returnable advances)
- Paragraph 18-107 (charge for late payment)
- Paragraph 18-108 (exclusion from pension and health requirements)
- Paragraph 18-109 (gross participations)
- Paragraphs 18-110, 18-111, 18-112, 18-113 (transfer and assumption)
- Paragraph 18-117 (continuing obligations); and
- Article 22 (financial responsibility).

2. Paid Permanent Downloads (aka “Download-To-Own” Or “Electronic Sell Through” (“EST”)).

The following shall apply to motion pictures released on or after July 1, 2008:

When the consumer pays for an EST copy of a theatrical motion picture, the Employer shall pay residuals at the rate of 1.8% of 20% of “Employer’s gross” on the first 50,000 units and at the rate of 3.25% of 20% of “Employer’s gross” thereafter.

When the consumer pays for an EST copy of a television motion picture or program, the Employer shall pay residuals at the rate of 1.8% of 20% of “Employer’s gross” on the first 100,000 units and at the rate of 3.5% of 20% of “Employer’s gross” thereafter.

For BA-covered pictures and programs, the above percentages shall be payable as follows: 66.67% to the Director; 5.20% to the Unit Production Manager; 4.93% to the First Assistant Director; 3.20% to the Key Second Assistant Director; and 20% to the DGA-Producer Pension Plan. BA Paragraph 18-105 shall apply.

3. Advertiser-Supported Streaming

The following shall apply to the streaming of theatrical and television motion pictures on a free-to-the-consumer basis on advertiser-supported services transmitted via the Internet or mobile device.

SIDELETTER NO. 15 (continued)

A. Television Motion Pictures

(1) With respect to television motion pictures, the principal photography of which commences on or after July 1, 2008:

(a) The Employer 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 Employer 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 Employer.

(b) If the Employer 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 Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the residual base applicable to the television motion picture² 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 Employer 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 Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the residual base applicable to the television motion picture² for a twenty-six (26) consecutive week period beginning on the first day that the television motion picture is available for streaming during such twenty-six (26) consecutive week period.

(c) During the streaming window, or during either of the twenty-six (26) consecutive week (or shorter) periods described in Paragraph A.(1)(b) above of this Section 3, the Employer 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 the Internet or mobile devices without any additional payment therefor.

² The residual base for programs made for pay television that are of a type generally produced for network prime time shall be the same residual base as is used for network prime time programs.

SIDELETTER NO. 15 (continued)

(d) None 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 Employer 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 amount that would otherwise be due for the twenty-six (26) week streaming period would be payable for streaming during the thirteen (13) week period.

(e) Upon expiration of the one (1) year period following expiration of the streaming window, if the Employer desires to stream the television motion picture, then it shall pay residuals at the rate of two percent (2%) of "Employer's gross," as defined in Section 5 of this Sideletter. Notwithstanding the foregoing, if the television motion picture has not been streamed during the one (1) year period following initial exhibition on television, or if it has been streamed only during the streaming window, then the foregoing payment shall apply beginning one (1) year after initial exhibition of the television motion picture on television.

(2) If the Employer should desire to stream any television motion picture, the principal photography of which commenced prior to July 1, 2008, as to which free television residuals are still payable, then the Employer shall pay residuals at the rate of two percent (2%) of "Employer's gross," as defined in Section 5 of this Sideletter.

(3) Revenues derived from foreign streaming shall be included in "Distributor's Foreign Gross," as provided in Paragraph 11-102 of the BA.

B. Theatrical Motion Pictures

If the Employer should desire to stream a theatrical motion picture, the principal photography of which commenced on or after July 1, 1971, then the Employer shall pay residuals at the rate of 1.2% of "Employer's gross," as defined in Section 5 of this Sideletter.

One-half of such residual shall be paid to the Director, or if there is more than one Director, on a *pro rata* allocation to each Director; the remaining one-half shall be paid to the DGA-Producer Pension Plans.

4. Use Of Excerpts

A. Excerpts From Television Motion Pictures³

(1) No payment shall be due for the promotional use of an excerpt from a television motion picture in New Media. The “promotional use” of an excerpt from a free television motion picture in New Media means any use of excerpts within the applicable length limits set forth in Basic Agreement 11-207 that:

(a) is for the purpose of advertising or promoting the viewing or rental or purchase of the program or series; and

(b) (i) includes tune-in information⁴ for the television network or channel on which the program or series currently is, or will be, telecast and occurs before a telecast of the program or series; or

(ii) references the availability of the program or series or a “special edition” of the program or series in the traditional home video market or in a separate home video format and occurs during the time period beginning sixty (60) days before and ending sixty (60) days after such release; or

³ The provisions of this Paragraph 4.A.(1) do not apply to long-form television motion pictures, which are addressed in Paragraph B. below.

⁴ In New Media, tune-in information for promotional purposes is sufficient when it informs the consumer where he or she can view the program 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 Employer is not required to provide the same level of tune-in information as is commonly provided in traditional network television promotional announcements.

SIDELETTER NO. 15 (continued)

(iii) includes instructions for renting, purchasing or streaming an electronic copy of the program or series from the website or other New Media platform on which the excerpt appears or a direct link to another website or New Media platform where an electronic copy of the program or series can be rented, purchased or streamed, and occurs in conjunction with the availability of an electronic copy of the program or series for rental, purchase or ad-supported streaming via the Internet or other New Media platform.

(c) The receipt of revenue in connection with the uses set forth in Paragraphs A.(1) and (2) above of this Section 4 shall not preclude them from being considered for the purpose of “advertising or promoting” the program or series.

(2) Except as provided in Paragraph A.(1) above and in Paragraph A.(7) below of this Section 4, uses of excerpts from television programs in New Media during the first year of the telecast, but outside the streaming window covered by initial compensation pursuant to Paragraph A.(1)(a) of Section 3 of this Sideletter, are subject to the following excerpt fee provisions:

(a) For less than two (2) minutes of excerpts, the Employer shall pay \$50 or the “applicable New Media program fee,⁵” whichever is less;

(b) For two (2) minutes or more, but not more than four (4) minutes, of excerpts, the Employer shall pay \$150 (\$157.50 as of July 1, 2010) or the “applicable New Media program fee,” whichever is less; and

(c) For more than four (4) minutes of excerpts, the Employer shall pay the “applicable New Media program fee.”

(3) Use of excerpts from “library product,” as defined in Paragraph A.(4) below of this Section 4, shall be paid pursuant to the percentage formula under Paragraph A.(2) of Section 3 of this Sideletter when revenue is generated.

(4) If excerpts from the current season of a series and excerpts from past seasons of the series, *i.e.*, “library product,” are used together on an ad-supported, free-to-the-consumer basis, then the percentage of “Employer’s gross” payment for library product shall apply to all such excerpts.

⁵ The “applicable New Media program fee” is the applicable fee for the use of the entire program in New Media as provided in Paragraph A.(1)(b) of Section 3 of this Sideletter.

SIDELETTER NO. 15 (continued)

(5) Viral excerpts (excerpts containing no attributions or tune-in information) containing one (1) or more scenes may be used in New Media without payment if the viral excerpt(s) are free to the consumer and "non-commercial,"⁶ and the viral excerpts are distributed across multiple websites, in addition to, or other than, the Employer's own or affiliated sites. Such uses shall be considered "non-commercial" even if the Employer's own or affiliated websites contain advertising or sponsorships as long as there is no advertisement or sponsorship specifically tied to the viral excerpts.

(6) For all uses of excerpts for which the consumer pays, whether on a paid download, paid streaming, subscription, or other pay basis, the Employer shall pay 1.2% of "Employer's gross," as defined in Section 5 of this Sideletter.⁷

(7) There shall be no payment for free-to-the-consumer use of excerpts during the streaming window. If the Employer pays the "New Media program fee" pursuant to Paragraph A.(1)(b) of Section 3 of this Sideletter, then payment for the use of the entire program in New Media shall also constitute payment for the free-to-the-consumer use of any portion thereof in New Media during the corresponding time period.

(8) All payments for the use of television program excerpts in New Media during the term of this Agreement shall be made to the DGA-Producer Basic Pension Plan.

(9) Except as provided above, all other uses of excerpts from television programs are subject to the excerpt provisions of the BA. Notwithstanding anything herein to the contrary, it is understood that the use of an excerpt from a television program in New Media shall not require any payment if the use would not require a payment under the television excerpt provisions of the BA.

B. Excerpts From Theatrical Motion Pictures, Made For Home Video Motion Pictures, And Long-Form Television Motion Pictures

(1) The length of excerpts from a theatrical motion picture that may be used for the purpose of advertising or exploiting the picture "shall not exceed the equivalent of 400 feet of 35mm film containing one or more scenes"; additionally, the length of excerpts from a theatrical motion picture that may be used for the purpose of advertising or exploiting the

⁶ A "non-commercial" use is a use from which the Employer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.

⁷ This formula shall apply to a "hybrid" use where the consumer pays for the excerpt and advertising revenues are also derived by the Employer from such use. Such revenues shall be included in "Employer's gross."

SIDELETTER NO. 15 (continued)

picture during the time period prior to and up to sixty (60) days after the initial theatrical release of the picture shall not exceed ten minutes.⁸ DGA agrees to freely grant waivers extending the sixty (60) day limit for motion pictures that are still in *bona fide* theatrical exhibition more than sixty (60) days after their initial theatrical release.

(2) Excerpts not exceeding ten (10) minutes from motion pictures made for home video may be used for the purpose of advertising or promoting such picture prior to its release and up to sixty (60) days thereafter.

(3) Excerpts not exceeding ten (10) minutes from long-form television motion pictures may be used for the purpose of advertising or promoting such picture prior to its telecast and up to sixty (60) days thereafter.

(4) If the Employer accords any personal credit in connection with any use of excerpts exceeding the equivalent of 400 feet of 35mm film containing one or more scenes, then it also shall accord credit to the Director.⁹ If the Employer accords more than two (2) corporate credits in connection with any use of excerpts exceeding the equivalent of 400 feet of 35mm film containing one (1) or more scenes, then it also shall accord credit to the Director.

(5) After the expiration of the sixty (60) day period referenced in Paragraph B.(1) above of this Section 4, the promotional use of excerpts from a theatrical motion picture, made for home video motion picture, or long-form television motion picture in New Media means any use of up to the equivalent of four hundred (400) feet of 35mm film containing one (1) or more scenes, that:

(a) is for the purpose of advertising or exploiting the viewing, rental or purchase of the motion picture; and

(b) (i) includes tune-in information¹⁰ for the television network, channel, or service on which the motion picture is currently or will be telecast and occurs during the time period thirty (30) days before the exhibition of the motion picture on free

⁸ The parties recognize that release dates for domestic and foreign exhibition may differ. Therefore, the time periods for free use of excerpts may differ.

⁹ The Creative Rights Committee shall determine whether to establish an exception to this rule for credits to not more than two starring actors in connection with such use.

¹⁰ In New Media, tune-in information for promotional purposes is sufficient when it informs the consumer where he or she can view the motion picture 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 Employer is not required to provide the same level of tune-in information as is commonly provided in traditional network television promotional announcements.

SIDELETTER NO. 15 (continued)

television or basic cable television or during the time period beginning thirty (30) days before and ending forty-five (45) days after the initial exhibition of the motion picture on any pay television service; or

(ii) references the initial release of the motion picture or a “special edition” of the motion picture in the traditional home video market or in a separate home video format and occurs during the time period beginning sixty (60) days before and ending sixty (60) days after such release; or

(iii) includes instructions for renting, purchasing or streaming an electronic copy of the motion picture from the website or other New Media platform on which the excerpt appears or a direct link to another website or New Media platform where an electronic copy of the motion picture can be rented, purchased or streamed, and occurs in conjunction with the availability of an electronic copy of the motion picture for rental, purchase or ad-supported streaming via the Internet or other new media platform.

(c) The receipt of revenue in connection with the uses set forth in Paragraphs B.(1) through (5) above of this Section 4 shall not preclude them from being considered for the purpose of “advertising or exploiting” the motion picture.

(6) All other uses of excerpts from theatrical motion pictures, made for home video motion pictures, and long-form television motion pictures in New Media are subject to the following excerpt fee provisions:

(a) For less than two (2) minutes of excerpts, the Employer shall pay \$50 or 1.2% of “Employer’s gross,” whichever is less, for theatrical motion pictures and \$50 or the “applicable New Media program fee,” whichever is less, for made for home video motion pictures and long-form television motion pictures;

(b) For two (2) minutes or more, but less than four (4) minutes, of excerpts, the Employer shall pay \$150 (\$157.50 as of July 1, 2010) or 1.2% of “Employer’s gross,” whichever is less, for theatrical motion pictures and \$150 (\$157.50 as of July 1, 2010) or the “applicable New Media program fee,” whichever is less, for made for home video motion pictures and long-form television motion pictures; and

(c) For more than four (4) minutes of excerpts, the Employer shall pay 1.2% of “Employer’s gross” for theatrical motion pictures and the “applicable New Media program fee” for made for home video motion pictures and long-form television motion pictures.

SIDELETTER NO. 15 (continued)

(d) No payment shall be required for the free-to-the-consumer “non-commercial” promotional use of excerpts in excess of the equivalent of four hundred (400) feet of 35mm film containing one (1) or more scenes if the Director is credited. A “non-commercial” use is a use from which the Employer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.

(e) Viral excerpts (excerpts containing no attributions or tune-in information) in excess of the equivalent of four hundred (400) feet of 35mm film containing one (1) or more scenes may be used in New Media without payment if the viral excerpt(s) are free-to-the-consumer and “non-commercial,” and the viral excerpts are distributed across multiple websites, in addition to, or other than, the Employer's own or affiliated sites. Such uses shall be considered “non-commercial” even if the Employer's own or affiliated websites contain advertising or sponsorships as long as there is no advertisement or sponsorship specifically tied to the viral excerpts.

(f) For all uses of excerpts for which the consumer pays, whether on a paid download, paid streaming, subscription, or other pay basis, the Employer shall pay 1.2% of “Employer’s gross,” as defined in Section 5 of this Sideletter.¹¹

(g) All payments for the use of motion picture excerpts in New Media during the term of this Agreement shall be made to the DGA–Producer Basic Pension Plan.

(h) Payment for the use of the entire made for home video motion picture or long-form television motion picture in New Media shall also constitute payment for the use of any portion thereof in New Media during the corresponding time period.

(7) All other uses of excerpts from theatrical motion pictures, made for home video motion pictures, and long-form television motion pictures in New Media are subject to the excerpt provisions of the BA. Notwithstanding anything herein to the contrary, it is understood that the use of an excerpt from a theatrical motion picture, a made for home video motion picture or a long-form television motion picture shall not require any payment if the use would not require a payment under the theatrical or television excerpt provisions, as applicable, of the BA.

¹¹ This formula shall apply to a “hybrid” use where the consumer pays for the excerpt and advertising revenues are also derived by the Employer from such use. Such revenues shall be included in “Employer’s gross.”

C. New Media Excerpt Use 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 excerpts 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 DGA agrees not to file any grievances or arbitration claims arising out of or relating to a dispute over the use of excerpts in New Media that occurs during the period July 1, 2008 through December 31, 2008, provided that all payments as to which there is no *bona fide* dispute are timely made.

5. “Employer’s Gross”

A. Definition

The term “Employer’s gross,” for purposes of all reuses in New Media of motion pictures and television programs made for traditional media and of Original and Derivative New Media Productions (each hereinafter referred to as “such Picture”), shall be as defined in BA Paragraph 18-103(b).¹²

When the “Employer’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 “Employer’s gross” received by the Employer 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 Employer 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.

B. Agreements and Data

On a quarterly basis commencing September 30, 2008, within ten (10) business days after such request, the Employer shall provide for inspection by DGA’s designated employee or auditor, at Employer’s premises in Los Angeles, full access¹³ to all unredacted

¹² For sake of clarity, “Employer’s gross” specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.

¹³ Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents.

SIDELETTER NO. 15 (continued)

license, distribution, and other agreements pertaining to New Media exploitation of covered pictures that were entered into during the immediately preceding quarter.¹⁴ In any subsequent quarterly inspection, the DGA's designated employee or auditor 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 Employer shall expeditiously provide, or make available, to DGA 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 "Employer's gross" from such exploitation is received. The Employer shall accompany such payments with reports regarding the "Employer'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 Employer shall provide DGA with unredacted copies of all corollary distributor's, sub-distributor's, and exhibitor's statements relating to the reported "Employer's gross."

Where the Employer 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 DGA by the Employer will be treated as confidential pursuant to BA Section 17-400 and appropriate arrangements will be made to safeguard the confidentiality of that information.

¹⁴ In the initial quarter, the Employer shall also provide DGA with access to all said agreements that were entered into between January 1, 2006 and June 30, 2008.

SIDELETTER NO. 15 (continued)

E. Reservation of Rights

With respect to theatrical motion pictures and television programs, the Employer has agreed to a separate payment for this use in New Media because exhibition in New Media is at this time outside the primary market. The Employer reserves the right in future negotiations to contend that the pattern of release has changed so that this use constitutes or is a part of the primary market of distribution of theatrical motion pictures or television programs and that, therefore, no additional payment should be made with respect to the exhibition of theatrical motion pictures or television programs (including those covered by this Agreement) in New Media. DGA 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 motion pictures or television programs so exhibited should be improved.

F. Other Terms and Conditions

Except as expressly provided herein, all other terms and conditions of the BA, including, but not limited to BA Article 2 and BA Section 17-400, shall apply; in the event of a conflict, the terms and condition of this Sideletter shall control.

6. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of motion pictures and other productions in New Media are in the process of exploration, experimentation and innovation. Therefore, Sections 2, 3, 4 and 5 of this Sideletter expire on the termination date of the 2008 BA 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 Made for New Media Productions and of 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 agreement 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 Section 2 for the electronic sell-through of motion pictures and television programs, 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.

7. Reservations

With respect to theatrical motion pictures and television motion pictures or programs, the Employer has agreed to a separate payment for this use because New Media exhibition is at this time outside the primary market. The Employer reserves the right in future negotiations to contend that the pattern of release has changed so that this use constitutes or is a part of the primary market of distribution of theatrical and television motion pictures, and that, therefore, no additional payment pursuant hereto should be made with respect to the exhibition of theatrical or television motion pictures (including those covered by the 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 exhibitors are or have become part of the primary market, residual provisions for motion pictures so exhibited should be improved.

Sincerely,

Carol A. Lombardini

CAL:rh

ACCEPTED AND AGREED:

Jay D. Roth