

SIDELETTER NO. 15

As of July 1, 2002;
Revised as of July 1, 2008;
Revised as of July 1, 2011

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.

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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):

1. Paragraph 18-103(a) (other than the first sentence of the first paragraph) (*pro rata* shares)
2. Paragraph 18-103(d) (foreign receipts)
3. Paragraph 18-105 (participating employees)
4. Paragraph 18-106 (reports and manner of payment; non-returnable advances)
5. Paragraph 18-107 (charge for late payment)
6. Paragraph 18-108 (exclusion from pension and health requirements)
7. Paragraph 18-109 (gross participations)
8. Paragraphs 18-110, 18-111, 18-112, 18-113 (transfer and assumption)
9. Paragraph 18-117 (continuing obligations); and
10. 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.

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A. Television Motion Pictures

(1) With respect to television motion pictures, the principal photography of which commences on or after July 1, 2011:

(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 and one-half percent (3.5%) 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 and one-half percent (3.5%) 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.

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(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) With respect to television motion pictures, the principal photography of which commenced before July 1, 2011, upon expiration of the one (1) year period following expiration of the streaming window, when applicable, if the Employer desires to stream any television motion picture 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. 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.

(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 one and two-tenths percent (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 in New Media

A. In addition to the use of excerpts permitted in Paragraph A.(1)(c) of Section 3 above, Employer may use an excerpt or excerpts from a television motion picture (other than a long-form television motion picture) for promotional purposes in New Media, provided that such excerpt(s) does not exceed five (5) minutes in length. Employer may use an excerpt or excerpts from a long-form television motion picture, from a motion picture made for the home video market or from a theatrical motion picture for promotional purposes in New Media, provided that such excerpt(s) does not exceed ten (10) minutes in length.

B. The following uses of an excerpt or excerpts in New Media shall be considered "promotional" and shall require no payment, whether or not the Employer receives revenue in connection therewith:

(1) For promotion of the exhibition of a theatrical or television motion picture or series or a motion picture made for home video on free television, basic cable, or pay television, the use of an excerpt shall not require compensation if the excerpt promotes the exhibition 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 motion picture, 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.

(2) For promotion of 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 home video, the use of an excerpt shall not require compensation if the excerpt promotes the home video release and references the availability of the picture in home video.³

³ It is understood that the "special edition" provision allows the Employer to promote a motion picture in home video in connection with the theatrical exhibition of a sequel to that motion picture. For example, Warner Bros. is entitled to promote sales in home video of *Harry Potter and the Sorcerer's Stone* (the first of the *Harry Potter* movies) in connection with the theatrical exhibition of *Harry Potter and the Deathly Hallows* (the seventh of the *Harry Potter* movies).

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(3) For promotion of the theatrical exhibition of a motion picture, the use of an excerpt shall not require compensation if the excerpt promotes the exhibition and includes reference to the theatrical release. Reference to the theatrical release shall be unnecessary if the excerpt(s) is used as part of a "teaser" advertising campaign.

(4) For promotion in New Media of the exhibition of a theatrical or television motion picture or series or a motion picture made for home video, the use of an excerpt shall not require compensation if the excerpt promotes the New Media exhibition and includes instructions for renting, purchasing, or streaming an electronic copy of the motion picture 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 motion picture or series can be rented, purchased or 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.

(5) For "viral" promotion in New Media of any use or exhibition of a theatrical or television motion picture or series or a motion picture made for home video, no payment is required if the excerpt is circulated non-commercially to multiple websites or made available for individuals to circulate. The fact that the viral excerpt is exhibited on a revenue-generating site owned by or affiliated with the Employer shall not render this exception inapplicable, provided that the excerpt is released without payment to other sites.

C. The use of excerpts shall not be considered "promotional" within the meaning of subparagraph B. above if the excerpts are used on a New Media site which archives the contents of several prior seasons of the series and is designed to enable the viewer to search the archives using a sophisticated search engine, as distinguished from a New Media site which offers excerpts from several prior seasons of a series that are intended as a recap of the events that transpired during those prior seasons or that are intended to promote the exhibition or sale of full episodes of the series from which the excerpts are taken.

D. If the use of an excerpt or excerpts in New Media is not within one of the promotional provisions in subparagraph B. above, or if the excerpt(s) used exceeds the length limitations set forth in subparagraph A. above:

(1) On a free-to-the-consumer platform, there shall be no payment for the use of excerpts from a television motion picture during the streaming window. Further, 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.

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(2) On a free-to-the-consumer platform, if the excerpt is from a television motion picture that is used outside the streaming window, but within one (1) year following expiration of the streaming window,⁴ and the use of the excerpt of the television motion picture is not otherwise permitted or paid for under Paragraph A.(1)(c) of Section 3 above, the Employer shall pay for such use as follows:

(i) For an excerpt(s) up to two (2) minutes in length, the lesser of \$50 or the “applicable New Media program fee.”⁵

(ii) For an excerpt(s) in excess of two (2) minutes in length but not more than four (4) minutes in length, the lesser of \$157.50 or the “applicable New Media program fee.”

(iii) For an excerpt in excess of four (4) minutes in length, the “applicable New Media program fee.”

(3) On a free-to-the-consumer platform, if the excerpt is from a television motion picture and is used more than one (1) year following the expiration of the streaming window,⁶ the Employer shall pay two percent (2%) of “Employer’s gross,” as defined in Section 5 of this Sideletter.

(4) On a free-to-the-consumer platform, if the excerpt is from a theatrical motion picture or a motion picture made for home video, the Employer shall pay one and two-tenths percent (1.2%) of “Employer’s gross,” as defined in Section 5 of this Sideletter.

(5) On a “consumer pay” platform, if an excerpt(s) from a theatrical or television motion picture is used, and the use is not within one of the promotional provisions in subparagraph B. above, Employer shall pay one and two-tenths percent (1.2%) of “Employer’s gross,” as defined in Section 5 of this Sideletter, for theatrical and television motion pictures.

⁴ 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 payment required by Paragraph D.(2) of Section 4 of this Sideletter shall apply until one (1) year after initial exhibition of the television motion picture on television.

⁵ The “applicable New Media program fee” for television motion pictures 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.

⁶ 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 payment under this Paragraph D.(3) of Section 4 of this Sideletter shall apply beginning one (1) year after initial exhibition of the television motion picture on television.

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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 incorporated in "Employer's gross."

(6) All payments for the use of excerpts in New Media during the term of this Agreement shall be made to the DGA-Producer Health Plan without attribution to any individual(s).

E. Notwithstanding the foregoing:

(1) If excerpts from the current season of a series and excerpts from past seasons of the series are used together on an ad-supported, free-to-the-consumer basis and the use is not within one of the promotional provisions in subparagraph B. above and payment is otherwise due, then the Employer shall pay two percent (2%) of "Employer's gross," as defined in Section 5 of this Sideletter, for all such excerpts.

(2) No payment shall be required for the free-to-the-consumer "non-commercial" promotional use of excerpts in excess of the length limitations set forth in subparagraph A. above 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.

(3) It is understood that the use of an excerpt from a theatrical motion picture, a television motion picture or a motion picture made for home video shall not require any payment hereunder if the use would not require a payment under the theatrical or television excerpt provisions, as applicable, of the BA or FLTTA.

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).⁷

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'

⁷ For sake of clarity, "Employer's gross" specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.

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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 semi-annual basis commencing July 1, 2011, 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 access⁸ to all unredacted license, distribution, and other agreements pertaining to New Media exploitation of covered pictures that were entered into during the immediately preceding inspection period. In any subsequent semi-annual 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." The DGA and the Employer shall discuss and agree upon a method of making available to the DGA the information required by this Paragraph C.

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.

⁸ Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents.

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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.

E. 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 2011 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. Reservation of Rights

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,

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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

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ACCEPTED AND AGREED:

Jay D. Roth