

SIDELETTER NO. 1

As of July 1, 2017

Russell Hollander
National Executive Director
Directors Guild of America, Inc.
7920 Sunset Boulevard
Los Angeles, California

Re: Virtual MVPDs

Dear Mr. Hollander:

During the course of the 2017 negotiations, the parties discussed how the landscape of the free television marketplace has evolved from the past – when the exhibition of a given television program was only available to the viewer in the home on a television set on a linear channel at a specific scheduled time – to the current marketplace, commonly referred to as “TV everywhere” where the viewing public, in addition to viewing a program on a linear channel at a scheduled time, is also provided the time-shifted option to view the same program on a variety of digital devices on a video-on-demand (“VOD”) basis. In addition, in the past, the bargaining parties agreed that television exhibitions on a linear channel provided through an MVPD, whether such channel was a free broadcast channel or a basic cable channel, were considered exploitation of free television rights even through the consumer paid a monthly fee to access such programming.

Consistent with the above, the bargaining parties agree that with respect to new internet-delivered “virtual MVPD” services, such as Sling TV and Sony’s PlayStation Vue, and other like services, such as CBS All Access, (collectively referred to hereafter as “vMVPD Services”), any VOD rights which are associated with exhibition of the program on a linear channel on the vMVPD Service (commonly referred to as “stacking rights”) shall be considered exploitation of free television rights and not a form of pay or subscription television. Such “stacking rights” shall be treated the same as if such programs were exhibited on traditional MVPDs.

Under this framework, the parties clarified the treatment of covered television motion pictures¹ on vMVPD Services as follows:

¹ It is understood by the parties that the provisions set forth herein apply to television motion pictures, the principal photography of which commenced on or after July 1, 1971, whether produced under the 2017 BA or FLTTA or any prior BA or FLTTA, as to which free television residuals are still payable.

1. When the License for Linear Channel Exhibition of the Covered Television Motion Picture or Series on the vMVPD Service Includes On-Demand Availability
 - a. When a linear channel on an MVPD is also offered on an vMVPD Service (such as when ABC is offered on Sling TV), no additional payment is required for the linear channel availability on the vMVPD Service.
 - b. When a covered television motion picture is available on demand on the vMVPD Service pursuant to a license agreement with a channel or network that includes the right to exhibit the covered television motion picture or other episodes of the same series on a linear channel on the vMVPD Service, the same free streaming windows and residual formulas that apply to the on-demand availability of a covered television motion picture on an MVPD are applicable. (See Section 3.A. of Sideletter No. 15 to the Basic Agreement and the analogous provisions of Sideletter No. 14 to the FLTTA re: Exhibition of Motion Pictures Transmitted via New Media.)
 - c. The use of excerpts from a covered television motion picture on the vMVPD Service pursuant to a license agreement with a channel or network that includes the right to exhibit the covered television motion picture or other episodes of the same series on a linear channel on the vMVPD Service shall likewise be governed by the provisions of Sections 3.A.(3), (5) and 4 of Sideletter No. 15 to the Basic Agreement and the analogous provisions of Sideletter No. 14 to the FLTTA re: Exhibition of Motion Pictures Transmitted via New Media.
 - d. The fixed residual payment applicable under Section 3.A.(4) of Sideletter No. 15 to the Basic Agreement (and the analogous provisions of Sideletter No. 14 to the FLTTA) covers on-demand availability on a free-to-the-consumer, advertiser-supported new media service and on an MVPD (or any similar service that exists or may hereafter be developed) and vMVPD Service.
 - e. The on-demand availability provisions under Section 3.A. of Sideletter No. 15 to the Basic Agreement and the analogous provisions of Sideletter No. 14 to the FLTTA re: Exhibition of Motion Pictures Transmitted via New Media apply regardless of whether there are advertisements.
 - f. When the Employer directly licenses the right to exhibit a covered television motion picture on a linear channel available only on an MVPD Service(s), the supplemental exhibition on such channel, as well as any associated stacking rights and the use of excerpts, shall be treated in the same manner as a license of a free television motion picture to basic cable. The exhibition rights on the linear channel shall be subject to a residual formula of two percent (2%) of Employer's gross (as defined in Paragraph 18-103(b)), and the stacking rights and use of

excerpts shall be subject to the same free streaming windows and residual formulas that apply to the on-demand availability and use of excerpts of a covered television motion picture on an MVPD. (See Sections 3.A. and 4 of Sideletter No. 15 to the Basic Agreement and the analogous provisions of Sideletter No. 14 to the FLTTA re: Exhibition of Motion Pictures Transmitted via New Media.

2. When the License Is for On-Demand Availability on the vMVPD Service

By contrast, when the Employer licenses the right to exhibit a covered television motion picture, or one or more episodes of a covered television series, on an on-demand basis on the vMVPD Service, and such rights are not associated with the right to exhibit the motion picture or episodes of the series on a linear channel on the vMVPD Service, the parties agree that Section 1 of Sideletter No. 15 to the Basic Agreement (and the analogous provision of Sideletter No. 14 to the FLTTA), which governs licenses to consumer pay new media platforms for a limited period or fixed number of exhibitions, shall apply.

In addition, when a program is made exclusively for on-demand availability on an vMVPD Service, it shall be treated as having been made for a subscription consumer pay new media platform subject to the provisions of Sideletter No. 35 re: Programs Produced for New Media.

Sincerely,



Carol A. Lombardini

AGREED:



Russell Hollander