

From MOA dated February 26, 2008

Reuse in New Media (W8)

Replace the “Sideletter on Exhibition of Motion Pictures Transmitted via the Internet” with the following Sideletter:

**SIDELETTER ON EXHIBITION OF MOTION PICTURES
TRANSMITTED VIA NEW MEDIA**

As of May 2, 2001
Revised as of November 1, 2004
Revised as of February 13, 2008

J. Nicholas Counter III
President
Alliance of Motion Picture & Television Producers, Inc.
15503 Ventura Boulevard
Encino, California 91436

Re: Exhibition of Motion Pictures Transmitted Via New Media

Dear Nick:

This Sideletter confirms the understanding of the Guild and the Companies (collectively “the parties”) concerning the application of the MBA to the exhibition on the Internet, mobile devices (such as cell phones or PDAs) and any other new media platform known as of February 13, 2008 (hereinafter collectively referred to as “new media”), but not including methods of distribution addressed in other provisions of the MBA, such as free television, basic cable, pay television, videodisc/videocassette and radio, even if digital, of theatrical and television motion pictures as provided herein.¹

1. If the Consumer Pays.

a. License for Limited Period or Fixed Number of Exhibitions

The following shall apply to theatrical and television motion pictures, the principal photography of which commenced on or after July 1, 1971:

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 Company shall pay to the credited writer(s) an aggregate sum equal to one and two-tenths percent (1.2%) of “accountable receipts” as defined in Paragraph 3 below.

¹The parties reserve their respective legal rights and positions as to the applicability of Article 64 to interactive programs transmitted via new media.

b. Paid Permanent Downloads (“Download-to-Own” or “Electronic Sell Through”) (“EST”).

The following shall apply to motion pictures released after February 13, 2008:

If the consumer pays for an EST copy of a theatrical motion picture, the Company shall pay residuals to the credited writer(s) at the rate of 1.8% of 20% of Company’s “accountable receipts,” as that term is defined in Paragraph 3 below, for the first 50,000 units and 3.25% thereafter.

If the consumer pays for an EST copy of a television motion picture, the Company shall pay residuals to the credited writer(s) at the rate of 1.8% of 20% of Company’s “accountable receipts,” as that term is defined in Paragraph 3 below, for the first 100,000 units and 3.5% thereafter.

2. If the Consumer Does Not Pay

If the consumer does not pay for the program, the following shall apply:

a. Theatrical

If the Company should desire to stream a theatrical motion picture, the principal photography of which commenced on or after July 1, 1971, then the Company shall pay residuals at the rate of 1.2% of Company’s “accountable receipts,” as defined in Paragraph 3 below.

b. Television

(1) With respect to television motion pictures, the literary material for which is written on or after February 13, 2008:

(i) The Company 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 Company 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 Company.

(ii) (A) Except as provided below with respect to the streaming of network prime time dramatic programs, the literary material for which is written on or after May 2, 2010:

If the Company 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 Company shall make a residual payment equal to three

percent (3%) (three and one-half percent (3.5%) effective May 2, 2010) of the applicable minimum for the television motion picture under Article 15.B (or under Appendix A, where applicable) 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 Company 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 Company shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective May 2, 2010) of the applicable minimum for the television motion picture under Article 15.B. (or under Appendix A, where applicable) 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) week period.

- (B) If the Company desires to stream any thirty (30) minute or sixty (60) minute network prime time dramatic television motion picture, the literary material for which is written on or after May 2, 2010, beyond the streaming window, it shall pay to the credited writer(s) two percent (2%) of Company's "accountable receipts" for each twenty-six (26) week period of streaming beyond the streaming window, but during the period in which the streaming rights are held by the network or other licensee and in no event more than one (1) year after the expiration of the streaming window. For this purpose only, the parties agree that Company's "accountable receipts" shall be given an imputed value of \$20,000 for a thirty (30) minute program and \$40,000 for a sixty (60) minute program for each such twenty-six (26) week period.²

If, at any time during the one year period following the expiration of the streaming window, the streaming rights should revert to the Company, then the Company shall pay in accordance with the provisions of subparagraph (iv) below. In recognition of the possibility of such a reversion, the parties agree that payment for any use described in the preceding paragraph shall not be due until the earlier of (i) thirty (30) days after the expiration of the six (6)

² It is understood and agreed that this amount is not a reflection of the fair market value of the streaming rights.

month period or (ii) thirty days after the streaming rights revert to the Company.

- (C) None of the aforementioned twenty-six (26) week periods shall cover a period that is more than one 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) 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 Company 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 payment that would otherwise be due for the twenty-six (26) week streaming period would be payable for streaming during the thirteen (13) week period.

- (iii) During the streaming window, or during any of the twenty-six (26) consecutive week periods described in subparagraph b.(ii) above, the Company 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 new media without any additional payment therefor.
- (iv) Upon expiration of the one (1) year period following expiration of the streaming window, if the Company desires to stream the television motion picture, then it shall pay residuals at the rate of two percent (2%) of Company's "accountable receipts," as defined in Paragraph 3 below.
- (2) If the Company should desire to stream any television motion picture covered under a prior MBA, the literary material for which was written prior to February 13, 2008, as to which free television residuals are still payable, then the Company shall pay residuals at the rate of two percent (2%) of Company's "accountable receipts," as defined in Paragraph 3 below.
- (3) Revenues derived from foreign streaming shall be included in "Distributor's Foreign Gross," as provided in Article 15.B.2. of the MBA.

2.1 Use of Excerpts in New Media

- a. Company may use an excerpt or excerpts from a television motion picture (other than a television motion picture ninety (90) minutes or more in length) in new media for the purpose of promoting the television motion picture, provided that

such excerpt(s) does not exceed five (5) minutes in length. Company may use an excerpt or excerpts from a television motion picture ninety (90) minutes or more in length, from a motion picture made for the home video market or from a theatrical motion picture in new media for the purpose of promoting the picture, 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 Company receives revenue in connection therewith:
- (1) For promotion of the exhibition of a television motion picture 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 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 Company 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 exhibition of a theatrical motion picture 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 purpose 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 Company is not required to provide the same level of “tune-in’ information” as is commonly provided in traditional network television promotional announcements.
 - (3) For promotion of the traditional home video release or any “special edition” home video release of a theatrical or television motion picture, 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.
 - (4) 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.
 - (5) For promotion of a new media exhibition of a theatrical or television motion picture, 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

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.

- (6) For “viral” promotion on new media of any use or exhibition of a theatrical or television motion picture, 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 Company 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 (e.g., dailyshow.com), 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 exceed the length limitations set forth in subparagraph a. above, the Company shall pay compensation as follows:
 - (1) For an excerpt up to two (2) minutes in length, the lesser of \$50 or the applicable “new media program fee.”
 - (2) For an excerpt in excess of two (2) minutes in length but less than four (4) minutes in length, the lesser of \$150 (\$157.50 as of May 1, 2010) or the applicable “new media program fee.”
 - (3) For an excerpt in excess of four (4) minutes in length, the applicable “new media program fee.”
 - (4) The “new media program fee” for use of excerpts on free to the consumer platforms is the applicable residual for the use of the entire program in new media as provided in Paragraph 2 of this Sideletter on Exhibition of Motion Pictures Transmitted Via New Media. For a theatrical motion picture, the “new media program fee” for use of excerpts on free to the consumer platforms shall be 1.2% of the Company’s “accountable receipts.”
 - (5) Notwithstanding the above, the use of an excerpt from a theatrical or television motion picture in new media when the consumer pays, whether promotional or not, shall be compensated at 1.2% of Company’s “accountable receipts,” as defined in Paragraph 3 of this Sideletter on

Exhibition of Motion Pictures Transmitted Via New Media. This formula shall apply to a “hybrid” use where the consumer pays for the excerpt and advertising revenues are also derived by the Company from such use. Such revenues shall be incorporated in “accountable receipts.”

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, then the percentage of “accountable receipts” payment set forth in Paragraph 2.b.(2) of this Sideletter on Exhibition of Motion Pictures Transmitted Via New Media shall apply to 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 equivalent of 400 feet of 35mm film containing one (1) or more scenes if the writer(s) is (are) credited. A “non-commercial” use is a use from which the Company 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) No payment shall be required for free to consumer use of excerpts during the streaming window. If the Company pays the “new media program fee” pursuant to Paragraph 2.b.(1)(ii) of this Sideletter on Exhibition of Motion Pictures Transmitted Via New Media, the 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.
- (4) It is understood that the use of an excerpt from a theatrical motion picture, a television motion picture or a made-for-home video motion picture 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 MBA.

f. 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.

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, WGA 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 first six months of the 2008 Agreement, provided that all payments as to which there is no *bona fide* dispute are timely made.

3. “Accountable Receipts”

a. Definition

The term “accountable receipts” for purposes of all reuses in new media of theatrical motion pictures and television motion pictures made for traditional media and of Original and Derivative New Media Productions (each hereinafter referred to as “Such Picture”) shall be as defined in Article 51.C.1.a. of the MBA.^{1, 2 3}

When the “accountable receipts” derived from new media exploitation are received from a related or affiliated entity that acts as the exhibitor/retailer of Such Picture, then the accountable receipts received by the Company 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, the amounts received by the Company 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.

The parties agree that the residuals due to writers under this paragraph 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 MBA provisions (subject to conforming changes as necessary):

- Article 51.C.3. (foreign receipts and non-returnable advances);
- Article 51.C.5. (allocation of pro rata shares of residuals among writers);
- Article 51.C.7. (gross participations);
- Article 51.C.8. (transfer and assumption);
- Article 51.C.9. (assumption agreement);
- Article 51.C.10. (continuing obligations); and
- Article 65 (financial responsibility).

b. Agreements and Data

On a quarterly basis commencing June 30, 2008, within ten (10) business days after such request, the Company shall provide for inspection by the Guild’s designated employee(s) or auditor(s), at Company’s premises in the greater Los

¹ For permanent downloads, a.k.a. “electronic sell through” or download to own,” residuals will be paid on 20% of “accountable receipts” as defined herein at the agreed upon percentage(s).

² For sake of clarity, “accountable receipts” specifically includes advertising revenues when the license, distribution or other agreement provides for sharing in such revenues.

³ “Accountable receipts” does not include a new media exhibitor’s own revenues from the exhibition of a motion picture or television program as such exhibition does not constitute “sub-distribution” for these purposes.

Angeles area, full access⁴ to all unredacted license, distribution and other agreements pertaining to new media exploitation of covered pictures that were entered into during the immediately preceding quarter.⁵ In any subsequent quarterly inspection, the Guild's designated employee(s) or auditor(s) 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 Company shall expeditiously provide or make available to the Guild 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 "accountable receipts" from such exploitation are received. The Company shall accompany such payments with reports regarding the "accountable receipts" 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 Company shall provide the Guild with unredacted copies of all corollary distributor's, subdistributor's and exhibitor's statements relating to the reported "accountable receipts."

Where the Company 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 the Guild by the Company will be treated as confidential pursuant to Article 53 of this Basic Agreement and appropriate arrangements will be made to safeguard the confidentiality of that information.

e. Reservation of Rights.

With respect to theatrical and television motion pictures, the Company has agreed to a separate payment for these uses in new media because new media exhibition is at this time outside the primary market. The Company reserves the right in future negotiations to contend that the pattern of release has changed so that these uses constitute or are 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 or television motion pictures (including those covered by this Agreement) in new

⁴ Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda and other ancillary documents.

⁵ In the initial quarter, the Company shall also provide WGA with access to all said agreements that were entered into between January 1, 2006 and March 30, 2008.

media. The Guild 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 MBA, including but not limited to Articles 10, 11 and 12, shall apply. In the event of a conflict, the terms and conditions of this Sideletter shall control.

Very truly yours,

WRITERS GUILD OF AMERICA, WEST, INC., on behalf of itself and its affiliate, WRITERS GUILD OF AMERICA, EAST, INC.

By: _____
David J. Young
Executive Director, WGAW

ACCEPTED AND AGREED:

The respective signatory companies represented by the ALLIANCE OF MOTION PICTURE & TELEVISION PRODUCERS, INC.

By: _____
J. Nicholas Counter III

Add a new Unpublished Sideletter to the Sideletter on Exhibition of Motion Pictures Transmitted via New Media entitled “Unpublished Sideletter Regarding New Media Exhibition”:

“UNPUBLISHED SIDELETTER REGARDING NEW MEDIA EXHIBITION

As of February 13, 2008

J. Nicholas Counter III
President
Alliance of Motion Picture and Television Producers
15503 Ventura Boulevard
Encino, California 91436

Re: New Media Exhibition

Dear Nick:

During the negotiation of the 2008 WGA MBA, the Guild and the Companies discussed the nature of distribution via new media. In particular, the Companies compared new media to basic cable distribution. The Companies stressed that a new media exhibitor might work with a third party in the same way that a cable network, such as FX, works with MSOs to exhibit programs. The Guild acknowledged that it considers new media exhibitors such as hulu.com to be exhibitors, and not distributors, and that analogous situations to the one in basic cable would be treated the same—namely, that the third party would be considered an exhibitor and would not make the initial exhibitor a distributor.

In addition, the parties agree the language in Paragraph 1.a of the Sideletter on Exhibition of Motion Pictures Transmitted Via New Media, which was changed in the 2008 negotiations, is not a substantive change from the corresponding language that appeared in the same sideletter in the 2004 and 2001 MBAs.

Very truly yours,

WRITERS GUILD OF AMERICA, WEST,
INC., on behalf of itself and its affiliate,
WRITERS GUILD OF AMERICA, EAST,
INC.

By: _____

David J. Young
Executive Director, WGAW

ACCEPTED AND AGREED:

The respective signatory companies represented by the
ALLIANCE OF MOTION PICTURE & TELEVISION PRODUCERS, INC.

By: _____

J. Nicholas Counter III

Make conforming changes as needed.