

original programs made for

This document is intended to provide an overview of “Original New Media Programs” under the Made for New Media Sideletter: when are they covered, what minimums apply and selected terms we suggest be negotiated.

WHEN IS AN ORIGINAL NEW MEDIA PROGRAM COVERED?

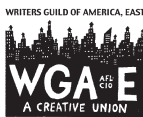
A New Media Program is deemed original and covered by the WGA Minimum Basic Agreement (“MBA”) if it is produced by a signatory company (“Company”) for the Internet, a mobile device, or any other platform thought of as “new media” by the industry, and meets either of the following tests:

First, the program is covered if the Company employs or purchases literary material from a “professional writer” as that term is defined in the MBA.¹

Second, the program is covered if the actual cost of production exceeds any one of the following limits, even if the writer is not a professional writer:

- \$15,000 per minute of program material as exhibited; or
- \$300,000 per single production as exhibited; or
- \$500,000 per series of programs produced for a single order.

When a New Media Program meets one of the above criteria, the WGA has jurisdiction over it. Under WGA jurisdiction, certain terms of the MBA automatically apply, while other terms remain freely negotiable between the writer and the Company.



new media

FACT SHEET

SO MY ORIGINAL NEW MEDIA PROGRAM IS COVERED – WHAT DOES THIS INCLUDE?

Pension & Health Contributions: The Company will make contributions on behalf of the writer to the Producer-Writers Guild of America Pension Plan and the Writers Guild-Industry Health Fund.

The contribution rates for 2/13/08 – 9/30/08 are Pension Plan (6%) and Health Fund (8.5%). From 10/1/08 – 3/31/09 the contribution rates are Pension Plan (6%) and Health Fund (8%) and from 4/1/09 – 5/1/11 the contribution rates are Pension Plan (6%) and Health Fund (8.5%). (MBA Article 17)

A written contract is to be submitted to the writer within 10 days following commencement of services and to the WGA within one week after the Company's receipt of the executed contract.

Guild Shop: A writer employed by the Company who is then a member of the WGA shall remain member in good standing. Each writer who is not a member shall become a member on or before the 30th day of employment, if eligible to do so. (MBA Article 6)

Time of Payment: Payments are due within 48 hours of delivering literary materials and late if not paid within 7 days after delivery. (MBA Article 13.B.9)

Credits: The Company must submit a Notice of Tentative Writing Credits. The writing credit must appear on-screen if there are any personal on-screen credits. If any personal credit can be accessed via hyperlink, the writing credit must be similarly accessible. For more details please contact the Credits Department.

Residuals: Under the following circumstances residuals apply to Original New Media Programs. For information about specific residual formulas please contact the Residuals Department.

- If the program is reused on a new media platform and has a budget over \$25,000 per minute where the consumer pays to watch, then 1.2% of distributor's gross will be payable after the first 26 weeks.

- If the program is reused on free television, television residuals are payable, with the first run treated as run 2; applicable minimums vary depending on length.

- If the program is reused on basic cable, pay television, home video, or in interactive media, the normal reuse formulas apply. (MBA Articles 51, 58 and 64)

Separated Rights are protected in the following respects for Original New Media Programs. For more details on separated rights please contact the Contracts Department.

First, if an Original New Media Program becomes the basis for a television show or feature film, and the same writer of the new media program writes the television show or feature film, the writer may be entitled to separated rights. (MBA Article 16)

Second, if the writer of an Original New Media Program would have been entitled to separated rights had the program been written for free television then the writer shall retain television and theatrical separated rights. The writer may exploit these rights or sell them to a party other than the Company. However, the Company has a right of first refusal if the writer intends to sell the television or theatrical rights to a different party.

Please note, the Company may negotiate directly with the writer to purchase these rights at any time. The terms of such an agreement must be written in either the purchase or employment agreement or in a separate contract altogether. The Company must also pay consideration separate from the initial compensation for such rights.

Third, if a writer creates a series that is exhibited exclusively through new media, the creator may be entitled to sequel payments. Series sequel payments are due when:

1. Separation of rights would apply if the Original New Media Program had been written for free television; **and**
2. The actual cost of production exceeds \$25,000 per minute of program material; **and**
3. The length of each program, as exhibited on new media, is 20 minutes or longer.

If all these conditions are met, the Company must pay no less than the 15-minute television series sequel payment for each new media episode.

No Strike, No Lockout: During the term of the MBA, the WGA will not engage in any strike or work stoppage against the Company and the Company will not engage in any lockout of WGA members. (MBA Article 7)

Grievance and Arbitration: A claim arising out of a dispute regarding writing on a covered Original New Media Program shall be subject to the grievance and arbitration rules/procedures as set forth in the MBA. (MBA Articles 10-12)

SUGGESTED PROVISIONS TO NEGOTIATE:

Initial compensation is negotiable and the Company must pay pension

and health contributions on the amount negotiated.

Residuals: As previously noted, certain residuals are mandatory; however, in the following areas they must be negotiated:

- Reuse on new media platforms where the consumer does not pay. This includes ad supported streaming where it is free to the consumer.
- Reuse on new media platforms where the budget is less than \$25,000 per minute and the consumer pays to watch.

Separated Rights: Right of First Negotiation. As previously noted, a writer will only be eligible for separated rights in a theatrical or television motion picture based on the Original New Media Program if the Company employs the same writer to write the theatrical or television motion picture. Accordingly, a writer should try to negotiate the right to be the writer of the theatrical or television motion picture if he sells these rights to the Company.

Other compensation: A writer may negotiate other compensation such as production or credit bonuses, back-end compensation, merchandising, publications, dramatic stage rights, etc...

Additional creative rights may be negotiated to the extent they do not undercut the MBA.

¹ MBA Article 1.C.1.b. defines a "professional writer" as "any person who has [1] received employment for a total of thirteen weeks as a television, motion picture or radio writer, or [2] has received credit on the screen as a writer for a television or theatrical motion picture, or [3] has received credit for three original stories or one teleplay for a program one-half hour or more in length in the field of live television, or [4] has received credit for three radio scripts for radio programs one-half hour or more in length, or [5] has received credit for one professionally produced play on the legitimate stage or one published novel." Virtually all WGA members are professional writers by this definition.

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