

SIDELETTER NO. 28

As of July 1, 2008

Ms. Carol A. Lombardini
Alliance of Motion Picture and Television Producers, Inc.
15301 Ventura Boulevard, Building E
Sherman Oaks, California 91403-5885

Re: Programs Produced for New Media

Dear Mr. Counter:

The parties mutually recognize that the economics of New Media production are presently uncertain and that greater flexibility in terms and conditions of employment is therefore mutually beneficial. If one or more business models develop such that New Media production becomes an economically viable medium, then the parties mutually recognize that future agreements should reflect that fact.

A. Terms and Conditions for “Derivative New Media Productions”

A “Derivative New Media Production” is a production for New Media based on an existing television motion picture or program that was produced for “traditional” media – *e.g.*, a free television, basic cable, or pay television motion picture or program (the “Original Production”).

1. BA-Covered Dramatic Programs and Series.

a. A Director must be employed. The Employer shall pay the Director a salary for a Derivative New Media Production separate from any directing salary for the Original Production, which shall be subject to negotiation between the individual Employee and the Employer, and which must be reported to the Guild in a deal memorandum specifying the salary and terms of employment no later than the start of principal photography.

b. UPMs and Assistant Directors employed on the Original Production may be assigned to the derivative production as part of their regular workday on the Original Production. The work for the derivative production shall be considered part of the workday for the UPMs and ADs on the Original Production and shall trigger extended workday payments or overtime if work on the derivative production extends the workday on the Original Production past the contractually defined regular workday. If an Employee who is not employed on the Original Production is employed to perform UPM or Assistant Director duties exclusively for a derivative production, then the terms and conditions set forth below govern.

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c. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Employer and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs (3) and (4) below and those provisions of the BA incorporated herein by reference in Paragraph (1) below. DGA agrees that it will not interfere in any such negotiations between the Employee and the Employer.

(1) The following provisions of the BA are incorporated herein. To the extent the provisions herein are inconsistent with the BA, the provisions of this sideletter control.

(a) Article 1, Recognition and Guild Shop.

Notwithstanding the Guild Shop provisions set forth in Paragraph 1-401 of the Basic Agreement, an individual engaged as the Director of a Derivative New Media Production shall not be required to become a "member of the Guild in good standing" until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Employers for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the DGA and only to work performed on covered New Media productions.

(b) Article 2, Grievance and Arbitration.

(c) Article 12, Pension and Health Plans.

(d) Although the provisions of Section 1-300 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the BA.

(e) Article 17, Miscellaneous Provisions, except 17-500.

(2) The Employer shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Employer and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

(3) The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

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(4) Reuse - Refer to Section E. below.

(5) DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

2. FLTTA-Covered Programs: Dramatic, Variety, Quiz and Game, All Other

a. A Director must be employed, except in those situations in which a Director would not be required to be employed if the program were made for free television. Furthermore, the present understandings between the DGA and the AMPTP and between the DGA and the Networks regarding exceptions to Director staffing, including, but not limited to, those situations addressed in Article 1, Part B., Paragraph 4(c) of the FLTTA, remain in full force and effect. The Company shall pay the Director a salary for a Derivative New Media Production separate from any directing salary for the Original Production, which shall be subject to negotiation between the individual Employee and the Company, and which must be reported to the Guild in a deal memorandum specifying the salary and terms of employment no later than the start of principal photography.

b. Associate Directors and Stage Managers employed on the Original Production may be assigned to the derivative production as part of their regular workday on the Original Production. The work for the derivative production shall be considered part of the workday for the ADs and SMs on the Original Production and shall trigger extended workday payments or overtime if work on the derivative production extends the workday on the Original Production past the contractually defined regular workday. If an Employee who is not employed on the Original Production is employed to perform Associate Director or Stage Manager duties exclusively for a derivative production, then the terms and conditions set forth below govern.

c. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Company and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs (3) and (4) below and those provisions of the FLTTA incorporated herein by reference in Paragraph (1) below. DGA agrees it will not interfere in any such negotiations between the Employee and the Company.

(1) The following provisions of the FLTTA are incorporated herein. To the extent the provisions herein are inconsistent with the FLTTA, the provisions of this sideletter control.

(a) Article 3, Recognition.

(b) Article 4, Guild Security.

Notwithstanding the Guild Shop provisions set forth in Article 4 of the FLTTA, an individual engaged as the Director of a Derivative New Media Production shall not be required to become a “member of the Guild in good standing” until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Companies for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the Guild and only to work performed on covered New Media productions.

(c) Article 20, Grievance and Arbitration.

(d) Articles 11 and 12, Pension and Health Plans.

(e) Although Article 2 is not applicable, it is understood that the Company may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the FLTTA.

(f) Article 9, Section B., Paragraphs 11., 12., 13., 17., and 19.; Article 1, Section B., Paragraphs 1. and 2.

(2) The Company shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Company and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

(3) The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director’s credit shall be in the form “Directed by” and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. “Click-through” credits may be used.

(4) Reuse - Refer to Section E. below.

(5) DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

B. Terms and Conditions for “Experimental New Media Productions” (Original Productions Only)

Coverage shall be at the Employer’s option with respect to “Experimental New Media Productions.” An “Experimental New Media Production” is defined as any Original New Media Production (1) for which the actual cost of production does not exceed: (a) \$15,000 per minute of program material as exhibited, and (b) \$300,000 per single production as exhibited, and (c) \$500,000 per series of programs produced for a single order; and (2) does not utilize an employee in any DGA-covered category who has previously been employed under a DGA collective bargaining agreement.

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The actual cost of the Experimental New Media Production shall consist of all direct costs actually incurred in connection with the Production. The only costs excluded in determining the actual cost of production shall be development costs, overhead charges, financing costs (*i.e.*, loan origination fees, gap fees, legal fees, and interest), contingency of up to ten percent (10%), essential elements insurance costs, the cost of the completion bond, marketing expenses, contingent payments to talent or other parties, and delivery items required by sales agents, distributors or sub-distributors (*i.e.* delivery materials beyond the answer print, NTSC Video Master if the Production is delivered on videotape, or the digital equivalent if the Production is delivered in a digital format).

C. Terms and Conditions for Original “Made for New Media” Dramatic Motion Pictures and Dramatic Series Productions

A Director must be employed. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Employer and the individual Employee, except for Director’s credit and residuals as set forth in Paragraphs 3 and 4 below and those provisions of the BA incorporated herein by reference in Paragraph 1 below. DGA agrees it will not interfere in any such negotiations between the Employee and the Employer.

1. The following provisions of the BA are incorporated herein. To the extent the provisions herein are inconsistent with the BA, the provisions of this sideletter control.

a. Article 1, Recognition and Guild Shop.

Notwithstanding the Guild Shop provisions set forth in Paragraph 1-401 of the Basic Agreement, an individual engaged as the Director of an Original New Media Production shall not be required to become a “member of the Guild in good standing” until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Employers for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the DGA and only to work performed on covered New Media productions.

b. Article 2, Grievance and Arbitration.

c. Article 12, Pension and Health Plans.

d. Although the provisions of Section 1-300 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the BA.

e. Article 17, Miscellaneous Provisions, except 17-500.

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2. The Employer shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Employer and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

3. The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

4. Reuse - Refer to Section E. below.

5. DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

D. Terms and Conditions for Original "Made for New Media" Variety Programs, Quiz and Game Programs, and All Other Programs

A Director must be employed, except in those situations where a Director would not be required to be employed if the program were made for free television. Furthermore, the present understandings between the DGA and the AMPTP and between the DGA and the Networks regarding exceptions to Director staffing, including, but not limited to, those situations addressed in Article 1, Part B., Paragraph 4(c) of the FLTTA, remain in full force and effect. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Company and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs 3 and 4 below and those provisions of the FLTTA incorporated herein by reference in Paragraph 1 below. DGA agrees it will not interfere in any such negotiations between the Employee and the Company.

1. The following provisions of the FLTTA are incorporated herein. To the extent the provisions herein are inconsistent with the FLTTA, the provisions of this sideletter control.

a. Article 3, Recognition.

b. Article 4, Guild Security.

Notwithstanding the Guild Shop provisions set forth in Article 4 of the FLTTA, an individual engaged as the Director of an Original New Media Production shall not be required to become a "member of the Guild in good standing" until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Companies for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the Guild and only to work performed on covered New Media productions.

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c. Article 20, Grievance and Arbitration.

d. Articles 11 and 12, Pension and Health Plans.

e. Although the provisions of Article 2 are not applicable, it is understood that the Company may not assign any duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the FLTTA.

f. Article 9, Section B., Paragraphs 11., 12., 13., 17., and 19.; Article 1, Section B., Paragraphs 1. and 2.

2. The Company shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Company and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

3. The Company is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

4. Reuse - Refer to Section E. below.

5. DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

E. Reuse of Productions Made for New Media

1. Derivative New Media Productions

a. What Initial Compensation Covers

Initial compensation for a Derivative New Media Production shall constitute payment for thirteen (13) consecutive weeks of use on all free-to-the-consumer, advertiser-supported platforms transmitted via the Internet or mobile devices (hereinafter "advertiser-supported platforms"), commencing with the first day that the Derivative New Media Production is available for exhibition on any advertiser-supported platform, and for a separate twenty-six (26) consecutive week period of use on any consumer pay New Media platform (hereinafter "consumer pay platform"), commencing with the first day that the Derivative New Media Production is available for exhibition on any consumer pay platform.

b. Use on Advertiser-Supported Platforms Within One (1) Year Following Expiration of the Thirteen (13) Consecutive Week Period.

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(1) If the Employer desires to use the Derivative New Media Production on advertiser-supported platforms beyond the thirteen (13) consecutive week period, but within one (1) year after expiration of the thirteen (13) consecutive week period, 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 following “residual base for syndication” as consideration for a twenty-six (26) consecutive week period of use, commencing with the first day that the Derivative New Media Production is available for use on any advertiser-supported platform following the expiration of the thirteen (13) consecutive week period:

(a) For a Derivative New Media Production that is derivative of a dramatic television motion picture or program of the type covered by the BA or FLTTA, other than a non-network or network non-prime time dramatic program and other than a strip dramatic non-network or network non-prime time program of the type covered by the FLTTA, the “residual base for syndication” is the residual base used under the BA to pay runs in syndication for a dramatic free television motion picture of the same length as the Derivative New Media Production.

(b) For a Derivative New Media Production that is derivative of a non-network or network non-prime time dramatic program or a strip dramatic non-network or network non-prime time program of the type covered by the FLTTA, the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length as the Derivative New Media Production. The residual base shall be prorated for a Derivative New Media Production ten (10) minutes or less in length in five (5) minute increments, to a five (5) minute base equal to one-third of the 0-15 minute base for programs 0-5 minutes in length, and to a ten (10) minute base equal to two-thirds of the 0-15 minute base for programs more than five (5) minutes, but not more than ten (10) minutes, in length. In no event shall the residual payment be less than \$21.00.

(i) For example, for a Derivative New Media Production five (5) minutes in length that is derivative of a network prime time dramatic television motion picture, the residual payment is calculated by multiplying the residual base for syndication in the BA for a dramatic program 7 minutes and under in length (\$2,375 as of July 1, 2008) by 3% (or 3.5%, as applicable).

(ii) As a further example, for a Derivative New Media Production three (3) minutes in length that is derivative of a non-network or network non-prime time dramatic program of the type covered by the FLTTA, the residual payment is calculated by multiplying the prorated residual base for syndication applicable to the length of the Derivative New Media Production by 3% (or 3.5%, as applicable). In this case, the “residual base for syndication” is one-third of the applicable minimum compensation for a 0-15 minute non-network or network non-prime time dramatic program, or \$1,553 (as of July 1, 2008). The applicable percentage rate (3% or 3.5%) is then applied to the \$1,553 figure.

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(iii) If, in the preceding example, the Derivative New Media Production were instead seven (7) minutes in length, then the residual base would be the prorated ten (10) minute rate, or \$3,106 (as of July 1, 2008), and the applicable percentage rate (3% or 3.5%) would then be applied to that figure.

(c) For a Derivative New Media Production that is more than ten (10) minutes in length and is derivative of a variety or quiz and game program of the type covered by the FLTTA (other than a network prime time variety special), and for a Derivative New Media Production of any length that is derivative of a program of the type covered under the “All Other Programs” category in the FLTTA, the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length and type as the Derivative New Media Production, *i.e.*, the applicable minimum initial compensation.

(i) For example, if the Derivative New Media Production is 22 minutes in length and is derivative of a network prime time quiz and game program, then the residual base is the applicable minimum compensation for a 16-30 minute network prime time quiz and game program, or \$3,916 (as of July 1, 2008). The applicable percentage figure (3% or 3.5%) would then be applied to this base.

(ii) Similarly, if the Derivative New Media Production is four (4) minutes in length and is derivative of a program in the “All Other Programs” category, the residual base is the applicable minimum compensation for a five (5) minute or less, once per week program under the “All Other Programs” category, or \$611 (as of July 1, 2008). The applicable percentage figure (3% or 3.5%) would then be applied to this base.

(d) For a Derivative New Media Production that is ten (10) minutes or less in length and is derivative of a variety or quiz and game program of the type covered by the FLTTA (other than a network prime time variety special), the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length as the Derivative New Media Production, but the residual base shall be prorated as set forth in Section E.1.b.(1)(b) above for a Derivative New Media Production ten (10) minutes or less in length.

(i) For example, for a Derivative New Media Production four (4) minutes in length that is derivative of a Network Prime Time Variety Series program of the type covered by the FLTTA, the residual payment is calculated by prorating the residual base for syndication and then multiplying the resulting figure by 3% (or 3.5%, as applicable). In this case, the “residual base for syndication” is the applicable minimum initial compensation for a 0-15 minute network prime time variety series program, one-third of which is \$1,662 (as of July 1, 2008). The applicable percentage rate (3% or 3.5%) is then applied to the \$1,662 figure.

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(ii) If, in the preceding example, the Derivative New Media Production were instead seven (7) minutes in length, then the residual base would be two-thirds of the 0-15 minute rate, or \$3,323 (as of July 1, 2008), and the applicable percentage rate would then be applied to that figure.

(e) For a Derivative New Media Production five (5) minutes or less in length that is derivative of a Network Prime Time Variety Special program of the type covered by the FLTTA, the “residual base for syndication” is the minimum initial compensation for a variety program segment, or \$1,782 (as of July 1, 2008). The base for a Derivative New Media Production variety program more than five (5) minutes, but not more than ten (10) minutes, in length that is derivative of a Network Prime Time Variety Special is \$6,320 (as of July 1, 2008) and the base for a Derivative New Media Production variety program more than ten (10) minutes, but not more than fifteen (15) minutes, in length that is derivative of a Network Prime Time Variety Special is \$10,917 (as of July 1, 2008).

(2) If the Employer desires to use the Derivative New Media Production on advertiser-supported platforms for all or any part of the twenty-six (26) consecutive week period immediately following the twenty-six (26) consecutive week period described in Section E.1.b.(1) above, but within one (1) year after expiration of the thirteen (13) consecutive week period, 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 for syndication,” as that term is defined in Section E.1.b.(1) above, as consideration for a twenty-six (26) consecutive week period of use, commencing with the first day that the Derivative New Media Production is available for use during such twenty-six (26) consecutive week period.

(3) 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 thirteen (13) consecutive week period. In the event that use of the television motion picture on advertiser-supported platforms 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 thirteen (13) consecutive week period, then the payment for that period shall be prorated in weekly units to cover the shorter use period.

c. Use on Advertiser-Supported Platforms More Than One (1) Year Following Expiration of the Thirteen (13) Consecutive Week Period

Upon expiration of the one (1) year period following expiration of the thirteen (13) consecutive week period, if the Employer desires to use the Derivative New Media Production on advertiser-supported platforms, then it shall pay residuals at the rate of two percent (2%) of “Employer’s gross,” as defined in Section 5 of the Sideletter re Exhibition of Motion Pictures Transmitted Via New Media.

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d. Use on Consumer Pay Platforms

For use of a Derivative New Media Production on New Media platforms for which the consumer pays (*e.g.*, download-to-own, download-to-rent, paid streaming), the Employer shall pay a residual equal to 1.2% of the “Employer’s gross,” as defined in Section 5 of the Sideletter re Exhibition of Motion Pictures Transmitted Via New Media, attributable to the period beyond the twenty-six (26) consecutive week period of use.

e. Use in Traditional Media

The Employer shall pay residuals for the use of a Derivative New Media Production in “traditional media” (*e.g.*, free television, basic cable, pay television, home video) under existing BA and FLTTA formulas.

(1) Free Television Exhibition

(a) Except with respect to exhibition of Derivative New Media Productions that are more than fifteen (15) minutes in length as exhibited in network prime time, residual payments for free television exhibition of Derivative New Media Productions shall be computed as follows:

The New Media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual base used to compute the payment shall be the residual base used to pay runs in syndication for a free television motion picture or program of the same category and length as the Derivative New Media Production. The residual base shall be multiplied by the percentage applicable to the run in question and the resulting product shall be the residual payment.

(i) As an example, suppose that a five (5) minute dramatic Derivative New Media Production is exhibited for the first time in network prime time. The applicable residual base is the residual base used for dramatic programs seven (7) minutes and under in length exhibited in syndication (\$2,375 as of July 1, 2008). That figure will be multiplied by 50%, the percentage applicable to a second run on a network, for a residual payment of \$1,188.

(ii) If the same Derivative New Media Production were exhibited a second time on the network, that run would generate a residual payment of \$950 (\$2,375 x 40%).

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(b) However, if the Derivative New Media Production is ten (10) minutes or less in length and is derivative of a program of the type covered under the non-network or network non-prime time strip dramatic, variety, or quiz and game categories covered by the FLTTA, then the residual base to be used in calculating the free television residual payment shall be prorated in five (5) minute increments as set forth in Section E.1.b.(1)(b) or (d) above, to a five (5) minute rate for programs 0-5 minutes in length and to a ten (10) minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length.

(i) For example, suppose a Derivative New Media Production in the non-network prime time quiz and game category that is ten (10) minutes in length is shown once on network television, but not in prime time. The residual base is calculated by prorating the residual base for 0-15 minute non-network prime time quiz and game programs (\$2,427 as of July 1, 2008) to take into account the shorter length of the Derivative New Media Production. In this case, the program is ten (10) minutes in length, so the prorated base is two-thirds of the 0-15 minute rate. The resulting residual payment is \$809 ($\$2,427 \times 2/3 \times 50\%$).

(ii) If the same Derivative New Media Production were subsequently exhibited a second time on the network, that run would generate a residual payment of \$647 ($\$2,427 \times 2/3 \times 40\%$).

(iii) If the same Derivative New Media Production were subsequently exhibited on television, whether on a network or not, the residual payment for that exhibition would be \$405 ($\$2,427 \times 2/3 \times 25\%$).

(c) The formula for reruns in network prime time of Derivative New Media Productions more than fifteen (15) minutes in length as exhibited is as follows: The New Media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments for use on free television. The residual payment shall be the amount payable under the BA or FLTTA for a rerun in network prime time of a free television motion picture or program of the same type and length as the Derivative New Media Production.

(i) For example, if a dramatic Derivative New Media Production twenty (20) minutes in length is exhibited in network prime time, the residual payment is \$11,772 (as of July 1, 2008), the same payment applicable to the rerun of a 30 minute dramatic program in network prime time.

(ii) As another example, if a dramatic Derivative New Media Production forty-three (43) minutes in length is exhibited in network prime time, the residual payment is \$22,174, the same payment applicable to the rerun of a 60 minute dramatic program in network prime time.

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(2) Exhibition on Pay Television, on Home Video and on Basic Cable

For exhibition on pay television, the Employer shall pay residuals equal to 1.2% of “Employer’s gross” pursuant to Paragraph 18-103 of the BA or Article 24, Section C. of the FLTTA, as applicable. For home video exploitation, the Employer shall pay residuals pursuant to Paragraph 18-104 of the BA or Article 24, Section D. of the FLTTA, as applicable. For exhibition on basic cable, the Employer shall pay residuals pursuant to Paragraph 11-108 of the BA or Article 7, Section E. of the FLTTA, as applicable.

2. Original New Media Productions

a. What Initial Compensation Covers

Initial compensation for an Original New Media Production shall constitute payment for a twenty-six (26) consecutive week period of use on any consumer pay New Media platform (hereinafter “consumer pay platform”), commencing with the first day that the Original New Media Production is available on any consumer pay platform, and all uses on free-to-the-consumer, advertiser-supported platforms transmitted via the Internet or mobile devices (hereinafter “advertiser-supported platforms”).

b. Use on Consumer Pay Platforms

(1) No payment shall be due for any use on consumer pay platforms for an Original New Media Production budgeted below \$25,000 per minute of actual program material as exhibited.

(2) For all uses of an Original New Media Production budgeted at or above \$25,000 per minute of actual program material as exhibited on consumer pay platforms (*e.g.*, download-to-own, download-to-rent, paid streaming) beyond the twenty-six (26) consecutive week period, the Employer shall pay a residual equal to 1.2% of the “Employer’s gross,” as defined in Section 5 of the Sideletter re Exhibition of Motion Pictures Transmitted Via New Media, attributable to the period beyond the twenty-six (26) consecutive week use period.

(3) Paragraph 2.a. above shall apply to an Original New Media Production initially released on a consumer pay platform which is subsequently released on an advertiser-supported platform or vice versa.

c. Use in Traditional Media

The Employer shall pay residuals for the use of an Original New Media Production in “traditional media” (*e.g.*, free television, basic cable, pay television, home video) under existing BA and FLTTA formulas.

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(1) Free Television Exhibition

(a) Except with respect to exhibition of Original New Media Productions that are more than fifteen (15) minutes in length as exhibited in network prime time, residual payments for free television exhibition of Original New Media Productions shall be computed as follows:

The New Media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual base used to compute the payment shall be the residual base used to pay runs in syndication for a free television motion picture or program produced for non-network or network non-prime time of the same category and length as the Original New Media Production. If the program category has both a high budget rate and a low budget rate, then the residual base shall be the base applicable to the low budget category. In the case of dramatic programs, the residual base described in the preceding sentence shall always be the base under the BA, rather than under the FLTTA. The residual base shall be multiplied by the percentage applicable to the run in question and the resulting product shall be the residual payment.

(i) As an example, suppose that a five (5) minute dramatic Original New Media Production is exhibited for the first time in network prime time. The applicable residual base is the residual base used for network non-prime time dramatic programs seven (7) minutes and under in length exhibited in syndication (\$2,375 as of July 1, 2008). That figure is multiplied by 50%, the percentage applicable to a second run on a network, for a residual payment of \$1,188.

(ii) If the same Original New Media Production is exhibited a second time on the network, that run would generate a residual payment of \$950 (\$2,375 x 40%).

(b) However, if the Original New Media Production is ten (10) minutes or less in length and falls under the non-network or network non-prime time strip dramatic program, variety, or quiz and game categories in the FLTTA, then the residual base used in calculating the free television residual payment shall be prorated in five (5) minute increments, to a five (5) minute rate for programs 0-5 minutes in length and to a ten (10) minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length. The residual base is one-third of the 0-15 minute rate for programs not more than five (5) minutes in length and two-thirds of the 0-15 minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length.

SIDELETTER NO. 28 (continued)

(i) For example, suppose an Original New Media Production in the non-network prime time quiz and game category that is ten (10) minutes in length is shown once on network television, but not in prime time. The residual base is two-thirds of the residual base for 0-15 minute non-network prime time quiz and game programs (\$2,427 as of July 1, 2008), or \$1,618, which is multiplied by 50% because it is treated as the second network run, for a residual payment of \$809. ($\$2,427 \times \frac{2}{3} \times 50\%$).

(ii) If the same Original New Media Production were subsequently exhibited a second time on the network, that run would generate a residual payment of \$647 ($\$2,427 \times \frac{2}{3} \times 40\%$).

(iii) If the same Original New Media Production were subsequently exhibited on television, whether on a network or not, the residual payment for that exhibition would be \$405 ($\$2,427 \times \frac{2}{3} \times 25\%$).

(c) The formula for reruns in network prime time of Original New Media Productions more than fifteen (15) minutes in length as exhibited is as follows: The New Media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments for use on free television. The residual payment shall be the amount payable for a rerun in network prime time of a free television motion picture or program produced for non-network or network non-prime time of the same category and length as the Original New Media Production. If the program category has both a high budget and a low budget rate, then the residual base shall be the base applicable to the low budget category. In the case of dramatic programs, the residual payment described in the preceding sentence shall be the amount payable under the BA rather than under the FLTTA.

(i) For example, if a dramatic Original New Media Production twenty (20) minutes in length is exhibited in network prime time, the residual payment is \$11,772 (as of July 1, 2008), the same payment applicable to the rerun of a thirty (30) minute dramatic non-network or network non-prime time program in network prime time under the BA. If the Original New Media Production is run a second time in network prime time, the same payment (\$11,772) would be due.

(ii) As another example, if a dramatic Original New Media Production 43 minutes in length is exhibited in network prime time, the residual payment is \$22,174, the same payment applicable to the rerun of a sixty (60) minute dramatic non-network or network non-prime time program in network prime time under the BA. If the Original New Media Production is run a second time in network prime time, the same payment (\$22,174) would be due.

SIDELETTER NO. 28 (continued)

(2) For exhibition on pay television, the Employer shall pay residuals equal to 1.2% of “Employer’s gross” pursuant to Paragraph 18-103 of the BA or Article 24, Section C. of the FLTTA, as applicable. For home video exploitation, the Employer shall pay residuals pursuant to Paragraph 18-104 of the BA or Article 24, Section D. of the FLTTA, as applicable. For exhibition on basic cable, the Employer shall pay residuals pursuant to Paragraph 11-108 of the BA or Article 7, Section E. of the FLTTA, as applicable.

F. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of productions made for New Media are in the process of exploration, experimentation and innovation. Therefore, all provisions of Section E. of this Sideletter expire on the termination date of the 2008 BA and FLTTA 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 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.

Sincerely,

Jay D. Roth
National Executive Director

AGREED AND ACCEPTED:

Ms. Carol A. Lombardini