



Joint Policy Committee on Broadcast Talent Union Relations

Seminar
on
2009 SAG/AFTRA Commercials Contracts

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What isn't in...
...isn't changed



SAG/AFTRA TV COMMERCIALS CONTRACT
and
AFTRA RADIO COMMERCIALS CONTRACT



Term

Three years from April 1, 2009 through March 31, 2012



Retroactive Payment Date

For services performed in commercials made between April 1, 2009 and June 15, 2009, all retroactive payments must be made not later than June 16, 2009



Pension + Health Contributions

The new P+H contribution
rate is 15.5% for
commercials covered under
the new 2009 agreements



Non-Discrimination and Affirmative Action

- Section 14A. amended to include gender identity
- Section 14D. amended to include Middle Eastern
- Section 14G. amended to preclude discrimination as a result of obtaining documents in connection with the Form I-9 and is amended to include disability



More Forms!!!???

More

Disclosures!!!???



The JPC agreed to meet with the Unions within 90 days following the ratification to:

Discuss reasonable measure by which the JPC will undertake to educate stunt coordinators regarding the requirements of Section 14(D) and the policy that underpins it. The JPC will, at a minimum, send a bulletin to its members ..., but will also give serious consideration to other measures that may be suggested during the above-referenced meeting with the Unions



The JPC agreed to meet with the Unions within 90 days following the ratification to:

- Encourage Producers, outside casting services and breakdown services to include the following language in casting specifications:

“We are committed to diverse, inclusive casting. For every role, please submit performers without regard to disability, race, age, color, national origin, sexual orientation or gender identity, or any other basis prohibited by law, unless otherwise specifically indicated.”

- The JPC will send a bulletin and consider other measures that may be suggested



The JPC agreed to meet with the Unions within 90 days following the ratification to:

Discuss the establishment of diversity showcases and encourage its members to send senior-level executives to meetings to discuss the establishment of these showcases as well as encouraging their participation



The JPC agreed to meet with the Unions within 90 days following the ratification to:

Discuss feasible methods of providing additional information regarding usage



Made For Internet and Made For New Media Commercials

Producers shall make every effort to fully inform performers, at the time of audition and hire, of the anticipated number of commercials, and the anticipated usage

The performer's Standard Employment Contract shall note the number of commercials produced



Public Service Announcements

- Right to unlimited national use for one year includes all media covered by the agreement
- Unions agreed to institute a standard PSA waiver letter
- For an experimental 3-year basis, PSA's produced under the aegis of the Ad Council will be allowed to include solicitations for donations



Public Service Announcements

- Other public service groups who qualify under the PSA provisions may request similar waiver regarding donations

- **Note:** No commercial advertising or commercial sponsorship is permitted within a PSA's script or on the landing page of any website referenced in the PSA



Undisputed Overpayments

- Performers must now be notified in writing prior to recoupment, of the overpayment amount, dates, commercial title(s), advertiser, agency, and reason for recoupment
- Timing of notice has no prejudice on right to collect



SAG/AFTRA TV COMMERCIALS CONTRACT



Which Commercials – Which Rates?

The rates, terms and provisions of the 2009
Commercials Contract apply to:

All original commercials produced on or after April 1,
2009



Which Commercials – Which Rates?

The rates, terms and provisions of the 2009
Commercials Contract apply to:

All new or additional versions of commercials
originally produced under prior contracts for
commercials that are integrated on or after April 1,
2009 under the *Integrating of Commercials into
Different Commercials* provisions



Which Commercials – Which Rates?

The rates, terms and provisions of the 2009 Commercials Contract apply to:

All versions of commercials that are edited and aired after April 1, 2009 other than as expressly permitted under the *Editing of Commercials* provisions



Which Commercials – Which Rates?

Any terms and provisions in any existing performers' contracts of employment which are more favorable to the principal performer than the terms and provisions of the agreement remain in effect



Compensation Rate Increases

With the exception of Cable rates, Internet rates and New Media rates, all other compensation rates, allowances, adjustments and expense reimbursements for principals and extras are increased by 4.43%



Pension + Health Contributions:

Cap on Pension and Health Contributions

Effective January 1, 2012, there is a cap on pension and health contributions on behalf of any performer who earns in excess of \$1,000,000 for covered services under a single contract for a single producer in a contract year



Pension + Health Contributions:

P + H: Choreographers

A choreographer who has had earnings as a dancer in five prior years to the current production and who is working only as a choreographer in the current production, is entitled to payment of pension and health fees on the basis of a principal's minimum session fee



Employees of the Advertiser Exempt from Contract

This provision has been expanded to include the following:

In the event that it is unusually difficult, disruptive or unsafe to film employees of the advertiser in the course of their usual employment, signatories may now film such employees at their usual place of employment during non-business hours or at any time at locations (i.e., stages) that are designed to replicate the employees' usual place of business



Employees of the Advertiser Exempt from Contract

This provision has been expanded to include the following:

- Employees may be directed as well as directed to speak dialogue
- Such direction, however, must replicate the employees' usual working conditions
- Such dialogue must replicate dialogue actually spoken by the employee while conducting their customary work duties



Executive Officers Exempt from Contract

- The previous restriction of “delivering Institutional messages” has been eliminated
- The contract is waived for executive officers of the advertiser who appear in any commercial
- The term “executive officer” is limited to persons who at the time of filming hold one or more of the following titles: Chief Executive Officer, President, Chairman of the Board, or another equivalent title



Cable

Cable Use Rate Increases:

- The unit rate for units 1-200 is increased by 6.56%
- The unit rate for units 201+ remains unchanged

Note: New cable unit weights apply to all commercials regardless of when the commercials were produced



Cable

Made for Cable Commercials:

- With the exception of commercials airing only on local cable systems, holding fees must now be paid for made for cable commercials
- In addition, performers must now grant advertisers exclusivity rights



Internet and/or New Media:

“Moved Overs”

- Use Cycles: may be either 8 week or one year
 - Additional 8 week cycles beyond the initial 8 week cycle must be consecutive or the one year cycle rate applies
 - Unless the performer has withheld internet and/or new media use (as applicable) separate permission from the performer for an eight week cycle payment rate is no longer required



Internet and/or New Media: “Moved Overs”

Use Rates:

- Eight Week Cycle: 133% of the applicable session fee
- One Year Cycle : 350% of the applicable session fee

Note: Provisions regarding unlimited editing remain unchanged



Internet and or New Media: “Made Fors”

- Free bargaining for the production of “made fors” remains in effect until March 31, 2011
- **Effective April 1, 2011**, session fees for “made fors” will be the same as for any broadcast commercial and use fees for “made fors” will be the same as for “moved overs”



Internet and or New Media: “Made Fors”

Use Rates:

- Eight Week Cycle: 133% of the applicable session fee
- One Year Cycle : 350% of the applicable session fee

Note: Provisions regarding unlimited editing remain unchanged



Commercials Made for Foreign Use Only

Session fees may no longer be credited



Preference of Employment

Owners of Specialized Vehicles:

- Owners/drivers of specialized vehicles not readily available in the general market will be exempt from preference of employment penalties
- However, such vehicle driver must meet the safety guidelines specified by the stunt coordinator



Spanish Language – Schedule C:

- **Wild Spot:** the unit weights for certain markets in the wild spot section have been revised as follows:

<u>Market</u>	<u>From</u>	<u>To</u>
Atlanta	1	2
Dallas/Fort Worth	7	8
Las Vegas	1	2
Orlando	1	2
Phoenix	5	6
San Diego/Tijuana	10	11
San Francisco	7	8
Tampa	1	2

- **Foreign Use:** the payments specified in each sub-provision have been increased by one session fee



EXTRAS



EXTRAS

At the time of hiring, an extra performer shall be informed of the type of work involved; **the number of commercials being shot, if known;** whether it is an interior or exterior; if it is to be on location; wardrobe requirements and the estimated total number of days of the call when known.



Extras

In addition to the wage and allowance increases, the following items apply to extras:

- Crowd Work: has been increased from 40 to 45 registered extras
- Extras shall be informed at the time of hire as to the number of commercials being shot, if known



Extras

In addition to the wage and allowance increases, the following items apply to extras:

- Extras shall be paid a flat rate of \$8 per day travelling to work within the studio zone
- Extras shall be paid \$5.74 per device if asked to bring a portable computer, a portable digital music player, a handheld mobile device, or similar devices



Extras

In addition to the wage and allowance increases, the following items apply to extras (17.C):

17.C.4 All other cancellations pursuant to C.1 shall require payment of the ½ check: If an extra performer is notified of such cancellation, per Section C.1. (a), (b), or (c) above, before 4 P.M. of the work day previous to the work date specified in such call, or is otherwise employed on the same work date by the same production company, at a rate equal to or higher than the rate applicable to such extra performer as specified in such canceled call, he/she shall not be entitled to such ½ check.



Get it?



Get it?

Let's break it down



Extras

17.C.1. The Producer shall have the right to cancel any call for any of the following reasons beyond its control:

- (a) illness in principal cast;
- (b) fire, flood or other similar catastrophe;
- (c) governmental regulations or order issued due to a national emergency.

In the event of any such cancellation, the extra performer so canceled shall receive a ½ check, except as provided in subsection 4 below.



Extras (Old)

17.C.4. If an extra performer is notified of such cancellation before 4:00 P.M. of the work day previous to the work date specified in such call, or is otherwise employed on the same work date by the same production company, at a rate equal to or higher than the rate applicable to such extra performer as specified in such canceled call, he/she shall not be entitled to such $\frac{1}{2}$ check.



Extras (New):

In addition to the wage and allowance increases, the following items apply to extras (17.C):

17.C.4 All other cancellations pursuant to C.1 shall require payment of the ½ check: If an extra performer is notified of such cancellation, per Section C.1. (a), (b), or (c) above, before 4 P.M. of the work day previous to the work date specified in such call, or is otherwise employed on the same work date by the same production company, at a rate equal to or higher than the rate applicable to such extra performer as specified in such canceled call, he/she shall not be entitled to such ½ check.



“A Clarification”

We fought hard, but finally conceded.



Schedule A.I.I. – Casting and Auditions

The payments set forth in SAG subparagraphs (c) and (d) (AFTRA subparagraphs (i) and (j)) shall not apply if Producer calls a Performer back for a third or fourth audition, provided that:

- The producer limits the audition to three performers or fewer per role
- None of the performers brought back to audition for the role are on their first audition, and



Schedule A.I.I. – Casting and Auditions

The payments set forth in SAG subparagraphs (c) and (d) (AFTRA subparagraphs (i) and (j)) shall not apply if Producer calls a Performer back for a third or fourth audition, provided that:

- The third and fourth auditions are limited to two hours.
- For auditions beyond the fourth audition, subparagraph (d) shall apply without modification



AFTRA RADIO COMMERCIALS CONTRACT



Which Commercials?

The terms and provisions hereof shall apply to all
commercials produced on or after April 1, 2009
and any edited versions not allowable under Section 22
Editing and Dubbing



Compensation

All compensation is increased by 5.35%



Wild Spot Unit Weights

Certain wild spot markets are increased as follows:

<u>Market</u>	<u>From</u>	<u>To</u>
Atlanta	5	6
Charlotte	2	3
Dallas-Ft. Worth	6	7
Houston	5	6
Orlando-Daytona Beach	3	4
Phoenix	4	5
Raleigh-Durham	2	3
San Francisco	6	7
Tampa-St. Petersburg	4	5



Digital Millennium Copyright Act

(Section 4001)



Digital Millennium Copyright Act

(Section 4001)

Assumption of Obligations.— (1) In the case of a transfer of copyright ownership ... in a motion picture ... that is produced subject to [a] collective bargaining agreement..., the transfer ... shall be deemed to incorporate the ... collective bargaining agreement, and the transferee shall be subject to the obligations to make residual payments ... provide related notices ... and any remedies under [the] assumption agreement for breach of those obligations ...



DMCA

Transfer of Rights – Assumption Agreement

New Language:

Transferee hereby agrees with Transferor that all television commercials covered by this agreement (listed below) are subject to the Screen Actors Guild Commercials Contract under which the commercials were produced and that the parties contemplate a transfer of exclusive rights in the covered commercials from the Transferor to the Transferee. Transferee hereby agrees expressly for the benefit of Screen Actors Guild and its members affected thereby to make all payments of, including but not limited to holding fees and use fees, as provided in said Contract...*



DMCA

Transfer of Rights – Assumption Agreement

- No agency liability if transfer of rights agreement signed by advertiser
 - If agency works for a non-signatory, transfer of rights agreement should be obtained prior to production
- Failure to obtain the required written assumption agreement is considered a substantial breach of the agreement



DMCA

Transfer of Rights – Assumption Agreement

But what does this mean?

- For advertising agencies that are JPC authorizers, a way to end being put between the union and an advertiser that is not a JPC authorizer when disputes arise, even when the assumption agreement is not signed by the advertiser
 - While failing to get the assumption agreement is a “substantial breach of the agreement”, there is no financial remedy and no financial exposure to the agency



Celebrity Endorsement Contracts



Allocation of Compensation for Contributions to Pension and Health Plans

- Separate provision in principal performer's agreement allocating performer's compensation between covered and non-covered services
- Allocations must be stated as either a flat amount or a percentage of the total compensation
- Designate multi-service contract status on the contribution remittance reports filed with the Plans
- Notify your payroll company that a P+H payment authorization is for a multi-service contract



Allocation of Compensation for Contributions to Pension and Health Plans

- Provide copies of contracts to Plans:
 - at the time of submission of initial contribution reports, or
 - upon SAG's or the Plans request, or
 - require that SAG's or the Plans' representatives inspect the agreements at a mutually-agreed location in Los Angeles or New York



Allocation of Compensation for Contributions to Pension and Health Plans

- SAG is “entitled to demand” unredacted copies “solely” for the purpose of arbitrating a dispute, provided both SAG and the Plans execute a confidentiality agreement
- If there is a disagreement:
 - Parties will use their reasonable efforts to negotiate a mutually agreeable allocation, or
 - Resolve dispute through arbitration



Allocation Guidelines



Allocation Guidelines

Provided a Producer allocates in accordance with the Guidelines, such allocation shall be rebuttably presumed to be proper in any proceeding brought to challenge such allocation



Allocation Guidelines

- No agreed upon allocation for sports team sponsorships, e.g., NASCAR, or musical tours
- 100% of contract amount is reportable where compensation paid is solely for covered services
- A 50% allocation for a multi-service contract where SAG commercial services are involved with non-covered services



Allocation Guidelines

Exceptions

- Models: 40%
- Active or inactive athletes advertising products related to their sport: 20%
- Commercials used exclusively outside the United States: 40%



Allocation Guidelines

Exceptions

- Commercials where performer has had an active role in developing and features the performer's name or image in the product, product line, or collateral merchandise: 40%
- Where compensation is comprised, in part, of royalties or stock: 40% of any upfront non-refundable guarantee; no application to royalties



Allocation Guidelines

Exceptions

- Services only in both television and radio commercials: allocation split 80% to television and 20% to radio
- Services in both television and radio plus non-covered services: 90% to TV and 10% to radio



Allocation Disputes



Allocation Disputes

- Prior to filing any arbitration, meet and confer to facilitate conciliation of the dispute
- Submit the grievance to arbitrator on written submissions
- Each submission will include the amount of the allocation to covered services the submitting party believes to be appropriate and such other facts and evidence that support the position of the submitting party



Allocation Disputes

- If Producer is an authorizer to the ANA-AAAA Joint Policy Committee (“JPC”), the JPC shall be entitled to receive copies of documents, notices, and awards, subject to necessary confidentiality restrictions
- The submissions and awards relating to such proceedings shall not be published or otherwise made available beyond (a) the JPC’s legal counsel, (b) the union, (c) any JPC authorizer that subsequently becomes a party to an arbitration or (d) any JPC authorizer that represents an advertiser that is not an authorizer
- Provision sunsets on March 31, 2012



Allocation Disputes

- In any arbitration, performer's "customary salary" for acting services and the Allocation Guidelines shall be given substantial consideration in resolving the dispute
- The arbitrator may also consider the weighting of services between covered and non-covered services, and may also consider any other evidence submitted by the parties that the arbitrator deems to be probative



Studies

- Gross Ratings Point
Compensation Based Pilot
- Internet and New Media Model Study
 - Monitoring Study



Gross Ratings Point Compensation Based Pilot

- JPC and the Unions shall jointly engage an independent consultant to conduct year long pilot of Booz & Company GRP Model
- Unions and the JPC will have the right to appoint a representatives to work with the consultant
- Costs of the Pilot will be paid with funds secured from the AICF/IACF



Gross Ratings Point Compensation Based Pilot Timetable

4/15/09 – 6/15/09	Define scope, hire consultant, determine success criteria
6/16/09 – 7/31/09	Select software vendor; identify stakeholders
8/1/09 – 3/31/10	Build, integrate, test, verify
4/1/10 – 3/31/11	Conduct Pilot
4/1/11 – 6/20/11	Evaluate results
10/1/11 ~ 1/3/12	Exclusive GRP negotiations (6 weeks)
11/12/11 ~ 2/14/12	Full negotiations



Gross Ratings Point Compensation Based Pilot

During the operation of the Pilot, Performers will continue to be paid under the CBA in effect at the time of the Pilot



Internet and New Media Model Study

- JPC and the Unions shall jointly engage an independent consultant to study how best to measure the usage of commercials on the Internet and New Media
- Objective is to identify a structure that can serve as the basis of a usage-based compensation system for performers rendering services in commercials on the Internet and New Media



Internet and New Media Model Study

- Parties will cooperate with the consultant by providing data and access to experts and processes, subject to reasonable measures necessary to safeguard confidential and proprietary information
- Costs of the study will be paid with funds secured from the AICF/IACF



Internet and New Media Model Study

- Assigning a dollar value to exposure shall NOT be an objective of the study
- Unions and the JPC will have the right to appoint a representatives to work with the consultant
- Study shall be completed on or before June 1, 2011 unless the deadline cannot be met due to circumstances beyond the parties' control



Monitoring Study

- JPC and the Unions will jointly engage an independent consultant to continue examination of methodology to monitor airings of commercials
- Producer will grant consultant access to current monitoring practices subject to reasonable measures necessary to safeguard confidential and proprietary information



Monitoring Study

- If Monitoring Study and the GRP Pilot Study are conducted by different consulting companies, parties agree that the consultants shall all be required to cooperate and collaborate
- Costs of the study will be paid with funds secured from the AICF/IACF



Commercial Service Fee to Fund JPC



Commercial Service Fee to Fund JPC

Beginning on July 1, 2009:

- Advertisers that are JPC authorizers or that use advertising agencies that are JPC authorizers will pay a one-time flat fee of \$75.00 per new television commercial, payable when the commercial is first used, i.e., contemporaneous with the first use payment
- Approved by ANA and 4A's, these fees will be collected by the talent payroll agencies and remitted to the ANA monthly



Commercial Service Fee to Fund JPC

What is considered a "new" commercial?

- Any original commercial produced under the SAG and AFTRA television commercials contracts
- Any new commercial or version produced under the integration provisions of the SAG and AFTRA television commercials contracts
- Any edited version not permitted under Section 26 of the SAG and AFTRA television commercials contracts



Commercial Service Fee to Fund JPC

Beginning on July 1, 2009:

- ANA oversees funds and budgeting process for the JPC
- Payroll services paid from the fee (4%); agencies should not be charged anything further
- The JPC anticipates that the Commercial Service Fee will decrease in future years as funds raised become sufficient to address short and long term budget requirements
- Same system used in Canada



Questions