



Creative Rights

**for Writers of Theatrical and
Long-Form Television Motion Pictures**

**The Latest WGA Provisions and
Overscale Suggestions**

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Writers Guild of America, west



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Introduction

Securing creative rights for writers was a fundamental goal of the Screen Writers Guild at its founding in 1933 and continues as a prime element of the Writers Guild agenda.

This pamphlet presents a plain-English outline of the creative rights preserved for writers of film and television in the Writers Guild of America Theatrical and Television Basic Agreement. This summary describes the creative provisions of the agreement in some detail, but the actual Guild contract governs in the case of a dispute. This summary can serve as a practical guide to a writer's creative rights established through collective bargaining between the WGA and production companies. This pamphlet also points to examples of "overscale" creative rights provisions, which the writer and his or her agent should consider negotiating in the writer's individual contract.

Although the rights described in this pamphlet are contractual rights, enforceable by arbitration in most cases, legally enforced creative rights on their own are unlikely to yield the richest and most rewarding creative experiences. The best experiences come from projects where all participants—writers, directors, actors, producers, executives and others—respect and welcome the participation of the others. When a finished theatrical motion picture or television program realizes its creative intent, that success is the fruit of collaboration.

In that collaborative spirit, these creative rights are published; it is in that spirit that these creative rights can be fully realized.

How to Establish and Protect a Writer's Rights

Working Only for Signatories

A writer's rights are created and protected by the contract that governs his or her work. Writers Guild members are bound by Working Rule 8, which requires members to work for and sell or option literary material only to companies that have signed a collective bargaining agreement with the Guild. This working rule ensures that all Guild-covered writers are protected by the provisions of a Guild agreement when they work and that the Guild will then be able to enforce their rights, if violated. The Guild collective bargaining agreement is the foundation upon which each writer's individual contract for a specific project is built.

Throughout this pamphlet, the Guild contract provision that grants each right is noted in parentheses for reference. All such references are to the Writers Guild Theatrical and Television Basic Agreement unless otherwise indicated. The contract language should be consulted where greater detail is desired or in the case of an ambiguity.

The Minimum Basic Agreement

The collective bargaining agreement that covers most work done by Guild members is the Writers Guild of America Theatrical and Television Basic Agreement, also known as the Minimum Basic Agreement, or MBA. This contract is the

industry-wide agreement that sets the minimum terms for options and purchases of literary material from writers and for the employment of writers to write theatrical motion pictures and television programs. The contract serves as the basis for each individual writer's contract.

Nothing in the Guild contract can be undercut by an individual contract, but anything (except a guarantee to receive a credit) can be improved. Copies of the MBA are available from the Guild.

(Note: There are two MBAs. They are commonly referred to as the "AMPTP MBA" and the "Network MBA." These agreements are identical, but for a small number of provisions. Differences pertaining to creative rights are noted elsewhere in this pamphlet.)

The Individual Contract — Above and Beyond the MBA

Every time a writer is hired, sells, licenses or options literary material, a deal memo or contract should be drafted to cover the deal. When this occurs, company lawyers will propose a number of provisions to protect the company, and the writer's representative will propose many provisions favoring the writer.

Additionally, hundreds of provisions that protect the writer are incorporated in the individual contract. These are the provisions of the Guild agreement, usually the MBA. The MBA is more than 400 pages long, so it is usually incorporated into your individual contract by reference. In all cases, the Guild agreement is considered part of a writer's deal by operation of labor law and the terms of the MBA itself.

As mentioned above, you can freely negotiate provisions that improve on the Guild-wide minimum terms (MBA Article 9).

The only exception is the receipt of writing credits, which must be determined according to the MBA and Credits Manuals (MBA Article 8, Credits Schedules and the Guild Credits Manuals). Even in the case of credits, however, writers may negotiate more prominent treatment of their writing credits in advertising and publicity than that afforded by the MBA. These benefits would have to be contingent upon receipt of WGA-determined credit and be made applicable to sole credit or to all credited writers if credit is shared.

Some provisions, especially compensation, are routinely improved upon by writers and their agents. These are “overscale” deals. Indeed, the Guild encourages writers to negotiate better individual provisions, realizing that when individual writers obtain greater rights, all writers can eventually benefit.

Overscale Creative Rights

Historically, overscale creative rights have been more difficult to negotiate than overscale compensation. Despite this experience, there is no legal impediment to writers and their representatives negotiating overscale deals in the creative rights areas. These provisions would not generally cost the employer more money, would provide the writer with a more satisfying working relationship, and would likely yield a better theatrical motion picture or television program. This pamphlet should increase awareness of writers’ rights under the Guild agreement, and also expand opportunities for writers to negotiate enhanced creative rights in their individual contracts.

The PBS Agreement

There is a separate agreement between the Guild and certain public television stations and producers, the WGA Public TV Freelance Agreement, also known as the PBS Agreement, which sets out the minimum terms of agreements between Guild writers and public television producers. Similar to the MBA in many respects, the PBS agreement establishes substantial and enhanced creative rights for writers of public television programs. Many of the PBS creative rights provisions may serve as goals for enhanced creative rights you can negotiate in your individual contract with non-PBS producers. Writers may negotiate, for example, to incorporate all of the PBS creative rights in a non-PBS contract, or to elect from among them. Your success in negotiating overscale creative provisions will depend upon your bargaining position. You can get a copy of the PBS Agreement by contacting WGA, west at (323) 782-4520, or WGA, East at (212) 767-7800.

Copyright

Initial legal control of a script rests with the copyright holder. Specifically, copyright law vests the copyright holder with exclusive ownership of five rights: 1) reproduction of copies; 2) distribution of copies; 3) performance rights; 4) public display rights; and, 5) the right to prepare derivative works. A creator owns the copyright in a work simply by virtue of having created it. A work should be published with the © copyright symbol or the word “copyright,” the date, and the creator’s name to preserve the copyright for the creator. Otherwise, the copyright may pass into the public domain— that is, have no copyright vested with anyone— and be freely copied.

A copyright filing with the U.S. Copyright Office establishes ownership of the copyright more securely for purposes of legal enforcement. Registration of material with the Writers Guild Registration Office establishes your possession of the material on the date of registration, which may be a key fact necessary to defend against plagiarism or copyright infringement (whether or not filed with the U.S. Copyright office, see below).

When you write an original script on spec, you own the copyright by virtue of having created the script. Transfer of your copyright ownership to a production company is a common element of virtually all purchase agreements. When an original story, treatment or script is sold, the writer usually is required to transfer the copyright to the buyer.

If you are hired to write a script under an employment contract, you are creating a “work for hire” which, under U.S. copyright law, vests the initial copyright with the employer. This is true whether the script is original or is based upon material assigned by the employer. A contract could return the copyright to the writer, but in practice that is rarely done.

Ownership of the script copyright, whether by acquisition or under the work-for-hire doctrine, is the practical means by which the companies preserve their rights to exploit the scripts they pay for. The transfer of copyright from the writer to the production company is a custom in the United States entertainment industry; it is not common worldwide.

In many other countries, the right to produce a film or television program based on a script is licensed for one production by the author and copyright holder (*i.e.*, the writer) to the production company. The copyright is not transferred and all rights

not explicitly licensed remain vested with the copyright holder, the writer.

Separation of Rights

The WGA MBA contains a unique contractual construct called Separation of Rights, which separates out certain rights usually held or controlled by the holder of the copyright and transfers them to the original writer. These provisions entitle the writer to exploit these rights in defined ways, even though the writer no longer holds the copyright. In effect, the writer transfers the copyright in literary material to a company in one provision of their contract, and the Guild MBA returns some of the transferred rights back to the writer in another provision. Separation of Rights is an inventive legal response to the custom of U.S. writers transferring the copyright in their work to their employers. It partially mitigates the effects of that transfer.

The WGA encourages the negotiation of above-scale provisions to retain greater rights for the writer's benefit. For example, when a writer is hired to adapt a book or a play and there are no separated rights, the writer may negotiate equivalent benefits.

A complete treatment of Separation of Rights is outside the scope of this pamphlet. Briefly:

Screenwriters with Separated Rights retain publication rights and dramatic rights for the stage. In addition, these screenwriters are entitled to sequel payments and other benefits. Writers of original theatrical motion pictures may buy back unproduced material five years after the completion of that writer's services on the project, if the material is not then in active development. Immediately after that five-year period,

that writer has the right to buy back the material for a period of two years, for a mandated price. Starting with material written under the 2001 MBA, the writer's two-year reacquisition window may be commenced at any time in the five years following the five-year period during which the company may produce the literary material. The 2001 MBA contains a new benefit for a writer who options his or her original material. That writer may reacquire rewrites of the material, even if the option lapses and the company does not acquire the original material. The writer has two years to buy the rights to that material at the same price as the regular reacquisition, and may commence that right from one to six years after the option in the underlying material has lapsed.

Television writers with Separated Rights retain rights in their material, including the right to produce a television program if the company does not exploit the material within a specified time period. These writers also retain merchandising, publication, and sequel rights, as well as certain rights for exploitation of the literary material in other media.

The importance of Separation of Rights to the general topic of creative rights is that some of the creative rights established by the Guild agreements and summarized here benefit only those writers with Separated Rights in their literary material.

Who Gets Separated Rights

In short, Separated Rights apply to original literary material covered by the Guild MBA. To be covered in the case of an option or sale of literary material, a writer must meet the technical definition of a "professional writer" in the MBA. A professional writer is one who has a theatrical motion picture or

television credit or has had at least 13 weeks of prior industry employment, or has credit for a produced play or a published novel (see Article 1 of the MBA for the complete definition). A writer may also negotiate to be treated as a professional writer.

When creative rights described in this pamphlet are linked to Separated Rights, the writer may often be described as “the writer of original material.”

For more information on Separated Rights, you can get a copy of the pamphlet “Understanding Separated Rights” by contacting the Guilds’ Contracts Departments in Los Angeles at (323) 782-4501 or in New York at (212)767-7800. The Contracts Departments are also available to answer your questions concerning Separated Rights.

Registration of Literary Material with the Guild

The Guild operates a registration service to help writers protect their material against plagiarism or copyright infringement. Writers can register written concepts, stories, treatments and scripts, or any other literary material. The best time to register material is before it is circulated to others. For a fee (currently \$10 for members, \$20 for non-members), the Guild will record the date of registration and secure the material for a period of years. If there is a dispute over authorship, a WGA witness can testify to establish the writer’s possession of the specified material on the registration date. This is often effective in helping to assert a writer’s rights in literary material. Please remember, however, that registration with the WGA is not a substitute for filing with the U.S. Copyright Office. For more information, call for recorded general information in Los Angeles at (323)

782-4500 or in New York at (212) 757-4360. Callers with more specific questions should call the Registration Office in Los Angeles at (323) 782-4540 or in New York at (212) 767-7800.

Recognition of the Professional Status of Writers

Most, but not all, of a writer's creative rights under the MBA are in Article 48. Prior to the 1988 MBA, Article 48 was essentially a one-paragraph statement asserting that it was company policy to encourage the participation of writers in all stages of the production process. In 1988, this article was greatly expanded and the vague generalities were developed into specific terms.

The 1988 improvements and provisions gained in 1995, 1998, and 2001 continue the ongoing effort to foster a mindset in which the writer is routinely included for script changes and/or consultations throughout pre-production, production, post-production, and marketing.

In addition to creative rights, this section of the MBA establishes the Committee on the Professional Status of Writers. The specific mandate of the Committee and its related activities are described more fully later in this pamphlet. In general, the Committee will study and discuss issues relating to the professional status of writers, develop recommended solutions to problems and suggest future improvements in the MBA. As new creative rights and standards are established, put into practice, and seen to be beneficial rather than inimical to the production process, more progress can be made.

Rights Prior to Development

Even before a writer has negotiated a deal with a company, his or her rights can be infringed. The Guild has negotiated several specific protections for writers who are circulating their work to potential buyers or employers.

Limits on the Dissemination of Script Coverage

Unless a company has optioned or purchased literary material, the company may not disseminate critiques or synopses of the material to anyone outside the company without the writer's consent. An exception is made only for those individuals or entities with whom the company has a business relationship, such as an active development deal, a distribution deal, or a production or financing deal. (Article 60)

The Guild suggests that writers carefully consider whether to grant a request by the company to obtain a broad privilege to circulate coverage. Writers should never consent unless they have first seen the coverage (critiques or synopses).

Restrictions on Shopping Material

Screenwriters must take the initiative to impose limits on the circulation of their speculative material by companies to which they submit it. The writer may restrict, in writing, the extent to which a company may shop the writer's material to third parties. To enforce the shopping provisions, the MBA requires the company to pay to the writer, through the Guild, \$750 for each

party to whom the script was submitted in violation of this provision. (Article 49)

In television, the MBA restricts the circulation of speculative literary material unless the writer has consented. A company may not shop literary material which it has not optioned or acquired without first obtaining the written consent of the writer in a different document than the option or purchase contract. To enforce the television shopping provisions, the MBA requires the company to pay the writer, through the Guild, \$750 for each party to whom the material was submitted in violation of these rules. (MBA, Article 49)

For both screen and television, if the company has optioned or acquired the literary material, it can freely submit the material to third parties unless the writer negotiates limits on such circulation in his or her individual contracts.

Rights During Development

The Right to the First Rewrite of Optioned Material Under the MBA

In both features and television, the MBA guarantees to the writer of an original screenplay or teleplay the right to perform the first rewrite under employment during the option period. The writer may only waive this right in writing. This rewrite satisfies the companies' obligation to grant the writer the first rewrite after acquiring the screenplay or teleplay (described below). Screenwriters retain, however, the additional right to rewrite after changes in certain major elements of the project (described below). (Article 16.A.3.d. and 16.B.3.i.)

Writers should not waive the right to do the first rewrite without careful consideration. As an overscale provision to include in an individual contract, a writer could guarantee more rewrites or all rewrites, as is provided in the PBS Agreement.

The Right to the First Rewrite After Acquisition or License (as distinguished from employment)

The writer who sells or options an original screenplay must be offered the first rewrite, unless the writer is unable to perform these writing services or waives the right. (Article 16.A.3.c.) The company should not pressure or coerce the writer to waive the guaranteed rewrite, or any other contractual benefit in the MBA. Any waiver cannot be part of contract boilerplate language.

In television, the writer who sells or options an original teleplay 90 minutes or longer must be offered the first rewrite, unless time constraints render such assignment impractical, or the writer is unable to perform these writing services or waives the right. (Article 16.B.3.h.) Again, a waiver must be freely granted.

In addition, if the company contemplates replacing the original writer, a representative of the company is first obligated to meet with that writer. This gives the writer an opportunity to discuss staying on the project. (Article 16.B.3.h.)

These provisions can be enhanced in individual contracts, for example, by extending the rewrite rights to non-originals or by adding more guaranteed rewrites.

Rewrites of Original Material Written Under Employment

When original screen or long-form television scripts are written under employment, and if after the first draft the company has the option to and chooses to replace the first writer, the company must meet with the writer. The company's representative at this meeting must be a senior production executive who has read the material, and the executive must give the first writer the opportunity to discuss continuing to perform services on the project. (Article 16.A.3.c., Article 16.B.3.h.) This meeting should take place in sufficient time to allow the writer to understand the company's reasons for wanting another writer, and for the writer to explain, if he or she so chooses, why no change should be made. (In the case of television scripts, the major studios and other companies signatory to the AMPTP agreement have greater latitude in determining who will meet with the writer.)

As an overscale improvement, writers employed to write original scripts are encouraged to negotiate to substitute the stronger provision from the MBA relating to original material sold or optioned, which requires that the writer perform the first rewrite.

The Right to Perform Revisions After New or Changed Elements

The MBA guarantees screenwriters additional revisions if there is a new or changed element on the project, such as the engagement of a director or the attachment of a principal performer to the project. If no other writer has been employed to revise the writer's original screenplay, then that writer must be offered the first opportunity to perform revisions after the new or changed element is committed to the project. (Article 16.A.3.c.) The company's obligation to offer these revisions expires three years after delivery of the first writer's first or final set of revisions, whichever occurs later.

Screenwriters are encouraged to negotiate an extension or elimination of the three-year limitation. Television writers should attempt to secure guaranteed revisions after a new or changed element on their projects.

Consultation About Requested Revisions

In both features and television, the producer or a creative executive is required to consult with the writer to discuss each set of revisions the company requests of the writer. (Article 16.A.3.e., Article 16.B.3.j.) This rule is intended to prevent notes from being sent to the writer with no explanation and no opportunity for discussion.

As an overscale improvement, writers are encouraged to negotiate provisions that specify which executive or producer must consult with them regarding revisions.

Authorization of Rewrites

Companies must include in a writer's deal memo or contract the name(s) of the person(s) authorized to request rewrites or receive delivery of drafts. The goal of this provision is to protect writers against demands for free rewrites and to ensure prompt payment when literary material is delivered.

Long-form Television Rewrite Structure

When a writer has agreed to do three revisions of a teleplay and has negotiated sufficient compensation to cover this work, the producer is permitted to request and receive revisions to the first draft before it is submitted to the network or other licensee. The writer is thus paid for the delivery of the first draft to the producer, helping to shield the writer from performing unpaid revisions and from disputes between the producer and the network over which of them may request each draft.

Signatories to the Network MBA must notify the network when the first draft is received and allow for this new payment structure in their contract with the network. On projects covered by the Network MBA, the writer should ask the company if the network has agreed to pay for drafts the network doesn't receive. In contrast, companies signatory to the AMPTP MBA only affirmatively promise to pay for each draft in a timely manner, and the licensee under the AMPTP MBA agrees to receive one less draft. (Article 13.B.7.f. and AMPTP MBA Sideletter to Article 13.B.7.f.)

Sweepstakes Pitching

A new provision under the 2001 MBA provides that if a writer invited to pitch or be interviewed for possible employment on theatrical projects asks whether an invitation has been extended to other writers, the company must tell that writer the approximate number of writers invited to pitch or be interviewed on the project. On long-form television projects, at the time a writer is invited to pitch or be interviewed for possible employment, the company must make its best efforts to inform the writer of the approximate number of other writers invited to pitch or be interviewed on the project.

Notice to Writers on the Same Material

The MBA obligates a company to notify each writer of any other writers currently employed on the same television project, and to inform each writer of any previously employed writers who have worked on the same television material. The company is also required to give notice when any subsequent writer is employed. In screen, the company must give writers this information upon their request. (Article 18)

Script Cover Pages

Guild rules require that, until the final determination of credits, the cover page of each piece of material include the name of the first writer followed by the word “revisions” and then the names of all subsequent writers. A subsequent writer should indicate his or her contributions by putting the words “current revisions by” followed by the writer’s name and the date the material is submitted to the company. A writer should not remove the names of earlier writers even if he or she believes

that not one word of the prior material remains in the current draft. The cover page may not necessarily reflect the appropriate writing credits for the film. It simply is intended to reflect which writers have worked on a project. The final credits will be determined by the Guild at the end of production.

Script Annotations for Feature and Television Scripts

If script annotations will be required of writers working on fact-based or fact-inspired scripts, the company must inform the writer when the deal is negotiated and provide the writer a copy of any company guidelines or standards regarding such annotations. (Article 13.A.18. and 13.B.11.) Writers are encouraged to negotiate specified time periods for preparing annotations and additional compensation for this work.

Warranty and Indemnification

The warranty and indemnification provisions of the MBA protect screen and television writers when lawsuits are filed or threatened, and the claims asserted involve literary material and intellectual property rights, such as copyright infringement. (Article 28) The company must cover the writer on its errors and omissions insurance policy, even if the writer is employed through a loanout corporation. Companies must indemnify writers against damages and legal expenses, including attorney's fees, and relieve writers of liability respecting:

- material supplied by the company to the writer,
- material incorporated into the writer's work by the company or any representative of the company (such as a producer not directly employed by the company),

- changes in the material made by the writer at the company's request or direction, or
- any material not furnished by the writer to the company.

When the company is required by the MBA to indemnify a writer, the writer has an obligation to cooperate in defending against claims, but the writer cannot be required to incur any costs or expenses. For example, the company must pay the writer's attorney's fees and travel expenses for depositions or court hearings, and the cost of copying documents from the writer's files.

The MBA also prohibits companies from inserting certain burdensome clauses into individual contracts. These forbidden clauses are:

- a requirement that writers forfeit the right to object to contributing to the costs of settling claims;
- a requirement that writers indemnify the company with respect to any material other than that furnished by the writer;
- a requirement that writers indemnify the company for claims of defamation, invasion of privacy or publicity unless the writer knowingly violated the rights of third parties, or should have known of the violation;
- a requirement that writers indemnify the company for claims of defamation, invasion of privacy or publicity when the company has asked the writer to use an actual person (living or dead) in the project, so long as the writer answers the company's questions relevant to evaluating the risks in using this material; and

- *[New in the 2001 MBA]* companies cannot require that a writer's contract mandates writer indemnification of the company for an "alleged breach" of a writer's warranty. It is now clear that an actual breach must be established before writer indemnification is triggered.

Rights During Pre-Production and Production

The MBA affirms the companies' recognition of the importance and value of writers' participation during pre-production and production due to the writer's unique knowledge of the material and creative abilities. The companies acknowledge that writers can contribute to the translation of the screenplay or teleplay to the screen by participating in other stages of production. Indeed, they agree that it is their policy "to encourage such participation." With the reiteration of that policy in 1988 and the provisions achieved in the 2001 MBA, writers have gained the ability to participate more fully in the collaborative filmmaking process.

The 2001 MBA contains groundbreaking standards for writer-director collaboration during development, pre-production and production. These "Writer-Director Collaboration Agreements" pertain to the working relationship between writers and directors on theatrical motion pictures as well as long-form television motion pictures. In addition, the new agreements acknowledge the desired working relationship between writers and directors in episodic television. The highlights of these collaboration agreements are enumerated in this pamphlet, along with other creative rights provisions relating to pre-production, production and post-production.

Producer Meetings

With respect to theatrical motion pictures, pilots, movies-of-the-week and miniseries, if a director has not been engaged, the company will “arrange a pre-production meeting between the producer and the writer (a participating writer of the company’s choice) so that the writer has the opportunity for a meaningful discussion of the translation of his/her vision to the screen.” (Article 48.A.1.) The phrase “meaningful discussion of the translation of his/her vision to the screen” confers on the writer the right to discuss in this meeting all aspects of the movie, including tone, location, casting, choice of director, and so forth. Upon assignment of the director, the producer will arrange such a meeting and extend an invitation to the director to participate. (Article 48.A.2.) See additional provisions under the section on director meetings below.

Also with respect to theatrical motion pictures, pilots, movies-of-the-week and miniseries, if an authorized representative of the company believes enhanced participation by the writer will benefit the production process, the company will facilitate that participation. (Article 48.A.3.)

Director Meetings

New in the 2001 MBA, it is the preferred practice on theatrical motion pictures that, shortly after being assigned, the director meet with the writer (or if there is no currently employed writer, any previously employed writer of the director's choice). The meeting with the director will take place prior to any decision to hire a new writer. For long-form television motion pictures, the preferred practice is that shortly after being assigned, the exec-

utive producer and director meet with the writer to share their respective views of the creative thrust of the script and discuss how they can best work together. The company will encourage further communication between the writer and director. (Appendices: Writer-Director Collaboration - Theatrical and Television)

Enhanced Rights to Participate During Production

Call Sheets and Staff Directories or Crew Lists

On features and long-form television, the company must list up to three writers or writing teams on the call sheet adjacent to the director or producer(s). In addition, the currently employed writer (or, if there is no currently employed writer, any previously employed writer of the company's choice) will be provided with a copy of the daily call sheet. All participating writers of theatrical and long-form television motion pictures will be listed in staff directories/crew lists. (Article 48.B. and Article 48.C.)

Cast Readings

The new Writer-Director Collaboration agreement for theatrical motion pictures in the 2001 MBA provides that the preferred practice is for the director to invite the currently employed writer to the first cast reading. When the writer attends the first cast reading, any comments the writer has will be made to the director privately. The writer should make his or her desire to attend the first cast reading known to the director.

For long-form television motion pictures, the preferred practice is for the currently employed writer to be invited to the first cast reading by the executive producer and director, in consultation with the licensee. When the writer attends the first cast reading, any comments the writer would like to make should be

shared only with the director, as well as the executive producer if he or she is present and/or available, and should be done privately.

Set Visits

A new provision in the 2001 MBA addresses a writer's right to visit the set and to bring a reasonable number of guests. On theatrical and long-form television motion pictures, it is the preferred practice that if the writer makes a request, the company will arrange for a set visit at an appropriate time. The director retains discretion to approve any such visit because of the nature of the material being shot, confidentiality considerations, personal dynamics of the cast or other key personnel, or due to other reasons. (Appendices on Writer-Director Collaboration - Theatrical and Television)

Location Expenses

If the company requires a writer to travel in connection with work on a project, the company must provide first class travel, board and lodging. (Article 21) Generally, the writer's participation in the creative process as described in MBA Article 48 (Professional Status of Writers) is voluntary, and therefore additional compensation for the writer's time is not mandated. Any additional writing services authorized by the company while on location must be compensated. Expenses are reimbursed as authorized by the company.

Individual Negotiations

The companies have, in effect, invited writers to express their desire to be more involved in the production of their scripts.

Writers, in their individual contract negotiations, should seek to specifically express that desire and negotiate language that refers to Article 48 (Professional Status of Writers) and the applicable Writer-Director Collaboration Appendix of the MBA. Individual contracts may establish greater, specific involvement for a writer, including expanded consultation rights. For example, a writer could negotiate an absolute right to be present on the set and, if travel is involved, for the company to pay expenses, to be present at some or all rehearsals, and to view dailies.

The creative involvement provisions of the PBS Agreement can serve as models for overscale provisions under the MBA. For example:

- Consultation with writer: The PBS Agreement requires that the company “consult with the writer in good faith as to decisions regarding casting of principal performers and choice of principal locale and director.” It also requires that the writer have reasonable access to the director for consultations regarding interpretation of the writer’s work, allowing the writer to make recommendations on any matter relating to the script.
- Consultation regarding script changes: Both the MBA and the PBS Agreement allow persons other than the writer to write bridging material necessitated by cutting for time and other “minor adjustments” in dialogue made prior to or during principal photography. But the PBS Agreement requires greater writer participation in effecting the changes. During pre-production or post production, such changes “will be made in consultation with the writer, if the writer is present...or is available by

telephone.” During principal photography, the writer must have the first opportunity to make the changes if the writer is present or available by phone.

- Notice of rehearsal dates and production schedule: The PBS Agreement specifies that the company “shall give notice to the writer sufficiently in advance of all rehearsal dates and scheduled dates for production, so as to enable the writer to be present, if the writer so desires, during rehearsal and production.”
- Viewing Dailies: Under the PBS Agreement, the writer has the right to view dailies.

Right to Participate After Production

Cast/Crew Events

New provisions in the 2001 MBA provide for all participating writers on theatrical and long-form motion pictures to be invited to cast/crew events. Since the company is not required to provide transportation or overnight accommodations, writers are encouraged to negotiate for these costs to be paid by the company. (Article 48.B. and Article 48.C.)

Viewing Cuts

For theatrical motion pictures, television pilots, movies-of-the-week and miniseries, all participating writers (any writer who wrote literary material on the project under WGA jurisdiction) have the right to view a cut of the film. (Article 48.B. and Article 48.C.)

For theatrical motion pictures, each participating writer has the right to a “Writer’s Viewing Period.” Although the scheduling of this viewing period remains in the hands of the company, the MBA guarantees that the viewing period shall occur in sufficient time to allow the writer’s suggestions to be implemented, if approved.

For movies-of-the-week and miniseries, the company must invite all participating writers to view the “director’s cut” within 48 hours following the company’s viewing. In some cases, a video may substitute for in-person viewing. If the company is provided with a videocassette copy of the director’s cut, the

company must simultaneously furnish a videocassette copy of the cut to the writers. If an emergency situation renders it impracticable to give writers an in-person viewing, and when no videocassette copy of the cut is available, the viewing will be scheduled as soon as practicable, but not later than the next viewing of a cut. If thereafter the company calls a discussion meeting by telephone or in person regarding the cut, the most recent participating writer must be invited to participate in this discussion. In any event, the producer has agreed to be available to receive the writers' comments.

Attending Sneak Previews

Credited writers of theatrical films, television pilots, movies-of-the-week and miniseries must be invited to the first sneak preview, if any is held in Los Angeles County. If possible, the company must give the credited writers five days notice before the sneak preview. The MBA provides that an inadvertent failure to comply or failure to comply due to exigencies of time does not constitute a breach of these sneak preview provisions. Writers are encouraged to reduce the possibility of an inadvertent failure by asking company representatives about the time and place of the first sneak preview and requesting their invitations. (Article 48.B. and Article 48.C.)

Writers can improve upon these MBA provisions by negotiating, for example, for the right to attend research screenings.

Attending the Premiere, Press Junkets and Festivals

New provisions in the 2001 MBA provide that the credited writer(s) of a theatrical motion picture will be invited to attend the domestic premiere of their picture or the domestic film fes-

tival at which their film is first exhibited, unless notified otherwise by the company. The company must furnish first class transportation and accommodations to two individuals if they are required to travel more than 150 miles to attend the premiere, festival or press junket. Writers should consider negotiating for guaranteed invitations to these events if they receive credit and also consider negotiating that the company must cover the cost for them to attend, with a guest, even if the company is required to pay for two or more other writers. (Article 48.B.)

Videocassette Copies

The company must furnish, at no cost, the credited writers of a theatrical motion picture with a videocassette of the movie when videocassettes are made. (Article 48.B.)

Copy of the Shooting Script

Participating writers are entitled to a copy (or two copies in some instances) of the final shooting script. (Article 13.B.8.f., Theatrical Schedule A)

Credits

On-Screen Credit

For both theatrical motion pictures and television programs, each company signatory to the MBA agrees to abide by the Guild's determination of writing credits in accordance with the provisions of the credits schedules of the MBA. (Article 8) These provisions cover how the credit will appear on screen, its place in the sequence of credits, and its appearance in ads, publicity and other company uses of credits.

Placement of the Writing Credit

The MBA generally requires that the writing credit be placed next to the credit to the director. If the writing credits are in the main titles, they will appear on a title card immediately preceding the card on which the credit to the director appears and no more than the second credit prior to the beginning of the film. If the writing credits appear in the end titles, they will appear immediately following the credit to the director as the second card in the end titles. (Theatrical Schedule A, paragraph 8. and Television Schedule A, paragraph 7.)

Use of a Pseudonym

Credited writers of theatrical motion pictures are guaranteed the right to use a "reasonable" pseudonym if the request is made within five business days after credits are final and if the writer was paid less than \$200,000 for writing services on the movie. (Theatrical Schedule A, Paragraph 1.)

In television, generally, a writer is guaranteed the right to use a

“reasonable” pseudonym if the request is made within the normal five-business-day period to protest a tentative credit (two days if the company requests an emergency credit determination). In the event of a protest, the writer has 24 hours after the Guild’s determination of credits to elect the use of a pseudonym. The guaranteed right to use a pseudonym applies only if the writer was paid less than three times minimum for writing services. (Television Schedule A, Paragraph 1.)

As an overscale improvement, writers are encouraged to negotiate for a higher compensation ceiling or for the absolute right to use a pseudonym regardless of compensation.

Credit in Advertising and Publicity

The MBA generally requires that WGA-determined writing credits must appear in advertising and publicity in parity with the credit given to the director or producer. Prior to the final determination of credits, the company may use its good faith credits. New provisions were gained in the 2001 MBA which enhance the appearance of writing credits in press kits, and on laserdiscs and DVDs.

Now, the company must include the identity, background and filmography of the credited writer(s) in standard print and electronic press kits for theatrical and long-form television motion pictures, if such information about the director is included.

In addition, unless notified otherwise by the company, the credited writer(s) on theatrical and long-form projects (or in some circumstances the writer(s) the company believes in good faith will be entitled to writing credit) will be interviewed for the purpose of including information about the writer(s) in the standard

electronic press kit, or on laserdiscs or DVDs, if the company interviews the director for this purpose. The company retains discretion to include any or all of the interview material.

The domestic version of the laserdisc or DVD, as well as the Internet web page dedicated to a theatrical or long-form motion picture, will now contain a filmography of the credited writer(s), if a filmography of the director is included. Now, each participating writer should submit a filmography to the advertising/publicity department of the company at the time of his/her last submission of literary material to the company.

Possessive Credits

The MBA contains a preamble that highlights the Writers Guild's strong, longstanding objection to the use of possessive credits. The Guild believes that granting possessive credits to directors inaccurately imputes sole or preeminent authorship, and that the widespread use of the credit denigrates the creative contributions of others in the collaborative art of filmmaking.

During the negotiation of the 2001 MBA a great deal of time was spent trying to reach agreement regarding limitation of "A Film by" and other possessive credits. Although there was serious dialogue on the subject, no agreement was reached. It was agreed that this issue would be addressed on an industry-wide basis along with other credits issues. Until resolution of this issue, writers and their representatives can assist in this effort by making known their belief that the granting of a possessive credit to the director denigrates the work, not only of writers, but of all those who contribute creatively to the making of a film.

Initiatives to Expand and Protect Creative Rights

The Committee on the Professional Status of Writers

Two Committees on the Professional Status of Writers were created in Article 48 of the 1988 MBA: one dealing with theatrical motion pictures and one dealing with long-form television motion pictures. Each committee meets at least three times per year. These committees are joint company and Guild committees charged with discussing, negotiating, and recommending provisions concerning creative rights and the professional status of writers in the industry. The company representatives are CEOs from the major studios and networks. The committees have published guidelines that they recommend to the industry as standards of conduct. In the 2001 negotiations, issues relating to episodic television were also discussed in the television committee.

The WGAw's component is called the President's Committee on the Professional Status of Writers. The Committee members from Writers Guild of America, west, along with delegates from the Writers Guild of America, East's Creative Rights Committee, meet to help set the WGA's creative rights agenda. The Committee also serves to focus on wider Guild efforts in creative areas, and to improve the professional and creative status of writers generally.

The work of the Committee is best conducted with input from the writing community at large. Suggestions and comments can be forwarded to the Committee through the WGA's Member Services Department and WGAE's Executive Director.

Joint WGA-DGA Creative Rights Committees

In the 2001 MBA negotiations, the Guild raised creative rights issues that the companies felt involved the DGA. As a result of those negotiations, the WGA and DGA agreed that committees should be formed to "further the collegial relationship between writers and directors." To that end, three joint WGA-DGA creative rights committees were established: one each for theatrical motion pictures, long-form television and episodic television. Each committee will meet twice a year and be joined for another meeting that includes CEOs appropriate to the field. General topics to be discussed include issues arising under the Writer-Director Collaboration Appendices to the MBA, such as meetings with the director, attendance at the first cast reading and visits to the set.

Additional Initiatives to Enhance Writer-Director Collaboration

As a result of the 2001 MBA negotiations, the WGA and DGA have each agreed to publish annually two issues of their respective magazines with cover stories devoted to the topic of successful collaborations between writers and directors: one focusing on theatrical collaborations and one focusing on television collaborations. The Guilds will host joint seminars at which successful screen and television collaborators will discuss their working relationships. In screen, the WGA and DGA

will jointly publish and disseminate to their respective memberships a pamphlet setting forth the creative rights of writers and directors.

Future Negotiations

In order to protect writers' creative rights in the future, the 2001 MBA provides: "Each Company agrees that it will not negotiate a provision in any collective bargaining agreement that infringes upon the creative rights of the writer under the WGA MBA."

Enforcement

Contract Enforcement

The Writers Guild eagerly assists writers in enforcing contract provisions, including creative rights provisions, at no cost to the writer other than regular dues. If you have an immediate problem with any of the creative rights provisions relating to pre-production, production or post-production, please contact the WGAw's Member Services Department or the WGAE's Contracts Department.

The Guilds' Claims Departments pursue and investigate claims of contract violations, and if possible, negotiate a settlement with the company in consultation with the writer(s) involved. The Guilds' Legal Departments take disputes to binding arbitration when cases cannot be resolved informally.

The Guild proactively enforces writers' creative rights. Writers can assist in Guild enforcement in two ways: by knowing their rights and letting the Guild know when they are infringed.

Hotline Option for Article 48 Violations

The first resort for resolution of certain disputes under Article 48 (Professional Status of Writers) is a hotline between the Guild and the companies. If no resolution is found within seven days after the Guild's initial contact with the companies' hotline representative, the Guild may arbitrate those disputes designated as arbitrable. The "hotline" procedure was designed as an informal and expeditious method to try to resolve claims without having to resort to more contentious legal proceedings.

The Guild prefers to see the writer given the creative participation provided under the MBA than to seek money damages for the writer after a breach. During negotiations the companies stated that they prefer this too. The hotline procedure was established for this purpose. Therefore, we urge writers to call the Guild quickly when their creative rights under Article 48 (Professional Status of Writers) have been violated.

To use the hotline procedure, call the WGAw Member Services Department at (323) 782-4567 or the Writers Guild East's attorneys at (212) 767-7800. Callers should clearly indicate that there is a creative rights problem for the hotline. This identification will ensure prompt action. A Guild representative will ascertain if the matter is appropriate for the hotline procedure. If so, the Guild will call the Alliance of Motion Picture and Television Producers (AMPTP) and swift resolution will be sought.

Grievance and Arbitration

The Guild arbitrates many claims that cannot be resolved informally through the hotline or in settlement discussions conducted by the Guilds' Claims Departments. The Guild's legal staff prepares cases for hearing and conducts arbitrations on behalf of writers. These cases are funded by member dues, so there is no cost to individual writers. Many cases are settled shortly before arbitration hearings begin, or even during the hearing before briefs are submitted.

IMPORTANT ADVICE: Writers should try to secure additional arbitration rights in their individual employment agreements. For example, a writer's contract could specify that creative

rights provisions of the MBA that are subject to the hotline procedure but not to grievance and arbitration, as well as all over-scale creative rights provisions, be arbitrable by the Guild under the MBA arbitration procedures.

Contact Information

Questions about the meaning of any provision of a Guild agreement or about provisions being considered for an individual negotiation should be directed to the Guilds' Contracts Departments at (323) 782-4501 in Los Angeles, and (212) 767-7800 in New York. Potential claims for breach of a contract should be directed to the WGAw's Claims Department at (323) 782-4521 or the WGAE's Contracts Department at (212) 767-7800. Writers and their representatives should not delay before calling the Guild about a known violation because contractual deadlines may bar WGA action due to the passage of time. Questions about specific cases already assigned to a Guild lawyer can be addressed to the WGAw's Legal Department at (323) 782-4521 and the WGAE's attorneys at (212) 767-7800. If you are not sure where to go for help, please call the WGAw's Member Services Department at (323) 782-4567 or the WGAE at (212) 767-7800.