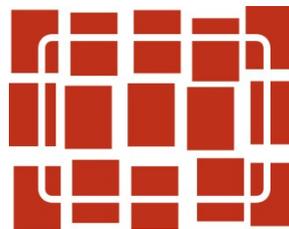


The Real Cost of Reality TV

**How the Nonfiction Television Industry Steals Tens of Millions of Dollars from
New York Taxpayers**

2013 WGA Report on Nonfiction Television



**WRITERS
GUILD
of AMERICA
EAST**

EXECUTIVE SUMMARY

The Writers Guild of America, East conducted a study of working conditions for nonfiction writers and producers in July and August 2013. The study found that violations of New York wage and hour laws are endemic in the nonfiction television industry. Almost all the writer/producers in our study are incorrectly classified by the production companies as exempt employees, who work long hours but receive no overtime pay, among other violations.

Back pay and penalties for these violations amounts to approximately \$40 million every year, and perhaps considerably more. The liability might be the shared responsibility of production companies, payroll companies, and networks.

New York: Media Capital of the World

New York City has long been known as the “media capital of the world.”. Leading companies in all areas of the international media industry have their headquarters here. New York is a center of advertising and publishing, TV networks and live theater, as well as television and film production. New York City has more media jobs than any other city on the planet.¹ One key reason media companies want to be here is the existence of a world-class community of creative talent.

The visual media industry by itself is an important part of New York City’s economy. Film and television production in New York now employs 130,000 people, an increase of 30,000 jobs since 2004.²

Nonfiction Captures An Ever Larger Market Share

Nonfiction and “reality” TV programs have achieved ratings success that rivals or beats scripted programs. Nonfiction is often more profitable for networks, because it is much cheaper to produce, largely due to lower labor costs.

For these reasons, nonfiction programming has captured an ever larger market share. In 2001, “reality” shows accounted for only about 20% of prime-time television programming. Today they account for 40%.³

Profits Are Enormous

Analysts describe the profit margins in cable television as “eye-popping.” The average margin is almost 40%. The most eye-popping profit margins are at networks that program mostly nonfiction.

¹ “Media.NYC.2020,” New York City Economic Development Corporation, 2011.

² “News so good you'd like to frame it: Film biz booms,” New York Daily News, May 9, 2012.

³ Writers Guild of America East report, 2012.

For example, the Discovery network (#13 in total revenue) has one of the highest profit margins in the industry, at nearly 60%.⁴

Standards for Contingent Workers Are A Growing Social Problem

Nonfiction television employs many young writer/producers in their 20s and 30s, as well as veterans of the industry. Most of these writer/producers do not have full-time staff jobs, but are part of the “independent workforce” (freelancers, temps, independent contractors, part-timers, and the self-employed) which now makes up fully a third of all American workers.⁵

The difficulties faced by contingent workers are a growing social problem. The gap between rich and poor constrains the economy, and when working people without health insurance get sick or injured, it puts a strain on our health care system.

In addition, the violations of labor law collectively known as “wage theft” affect not only nonfiction TV producers and many other workers, but also governments and local economies. Nearly \$1 billion is stolen from workers in New York each year, and wage theft costs at least \$427 million a year in lost revenue to New York state.

Nonfiction writer/producers are dealing with the same economic insecurity and decline in living standards that most Americans face today. Real wages are falling, and working conditions are getting worse, in many places, even as the companies gain more profits.

KEY FINDINGS

Working Hours

- 84 % of writer/producers work more than 40 hours a week almost every week
- 60% work more than 8 hours a day, every day
- 85% never receive overtime pay

Timecards

- Only 11% said their timecards always reflected the hours they worked
- 49% said their timecards “never” accurately reflected hours worked

Wage and Hour Violations

- Production companies, payroll companies and networks involved in nonfiction TV production may be facing significant wage and hour liability, at least \$40 million, due to their failure to:
 - Pay overtime
 - Provide meal periods
 - Ensure accurate record keeping

⁴ SNL Kagan, TV Network Summary, Total Net Revenue and Cash Flow Margin, 2012.

⁵ “Independent, Innovative, and Unprotected: How the Old Safety Net Is Failing America’s New Workforce,” Freelancers Union study, 2010.

RECOMMENDATIONS

People should be able to build sustainable careers working in nonfiction basic cable television. As this report documents, cable networks generate rapidly increasing revenues producing and broadcasting more and more hours of nonfiction content. If basic standards can be established across the industry, men and women can earn a reasonable living without burning out on 15-hour workdays, and can enjoy the health and retirement benefits everyone needs to live a healthy, productive life and to raise a family if they choose. This is not just a fundamental human right; our experience representing writers and writer-producers elsewhere in the television and film business suggests that it is also good business. Having a stable, experienced, committed workforce would enable the networks and production companies to produce quality content that viewers want to watch, so audiences will expand and deepen and revenues will continue to increase.

- The networks must agree to more reasonable budgets and production schedules. This isn't rocket science; there must be enough money to hire enough people to do the work, and they must have enough time to accomplish it. The pressure to burn people out with insane hours, overwork, low pay, and no benefits begins at the top.
- History demonstrates that the sure way to build a floor of reasonable compensation, benefits, and working conditions is with collective bargaining. Collective bargaining empowers the employees themselves to come together to figure out what works best and what is achievable. The WGAE remains committed to its industry-wide organizing campaign and we anticipate that, just as the Guild and other unions have done with decades of work in the broader entertainment industry, we can raise standards to the point that people can make a living doing the work they care about.
- At the same time, others in the private and public sectors can have a real impact. Elected officials and enforcement agencies can investigate violations of existing laws – in particular, wage and hour laws – and can consider additional enactments to protect the men and women who work so hard in this industry. Companies that choose to break the law and mistreat their employees should not gain unfair competitive advantage.
- All of the stakeholders (elected officials and enforcement agencies, networks, production companies, and employees) can develop a code of conduct which would create the conditions for people to build solid careers creating nonfiction television programs.

INTRODUCTION

In order to assess the working conditions in nonfiction TV, the Writers Guild of America, East (WGAE) conducted a survey of nonfiction writer/producers in July and August 2013. The survey reveals that the companies acting as employers in this industry are not complying with labor law and may face significant financial exposure to wage and hour liability.

This is especially true in light of the Wage Theft Protection Act (WTPA), which became effective in New York State in April 2011.

The White Paper also includes a series of recommendations for how the television industry could come into compliance and improve conditions for writer/producers.

New York City: Media Capital of the World

New York City has long been known as the “media capital of the world.” It is home to some of the world’s largest media conglomerates, including Time Warner, News Corporation, Hearst and Viacom. Seven of the world's top eight global advertising agency networks are headquartered in New York, as well as three of the Big Four music companies. The magazine and book publishing industries are based here. The four largest broadcast TV networks and several cable networks are headquartered here. And New York is America’s largest media market.

One of the reasons media companies want to be here is New York’s world-class community of creative talent. That talent pool is increasingly engaged in the production of nonfiction (including “reality” and documentary) television.

Nonfiction Shows Growing in Popularity

In 2001, “reality” shows accounted for about 20% of all prime-time television programming. Today they account for nearly 40%. In cable, some channels now dedicate as much as 90% of their content to “reality” programming.⁶ Four of the top ten and eight of the top twenty-five highest-rated primetime shows in the 2012-13 season were “reality” or nonfiction shows.⁷ While some of the longest-running hits, like *American Idol*, are down significantly from their peak, they are still among the highest-rated shows on television.

These shows are not only popular, they are profitable - especially for the networks and companies that rely so heavily on them. The main profit driver is that nonfiction shows cost far less to produce than scripted shows.

⁶ “What's wrong with reality TV?”, Jon Gingerich, O'Dwyer's, May 2011.

⁷ “America's Most Watched: The Top 25 Shows of the 2012-2013 TV Season,” Michael Schneider, TV Guide, 6/10/2013.

The most popular nonfiction shows create massive revenue AND profit margins. For example, in 2008, *American Idol* generated \$96 million in revenue for its production company, 19 Entertainment – and its gross profit margin on the show was 77%.⁸ Part of the reason that profits are so high in this case is that this show generates significant revenue through several different streams beyond advertising, including licensing, brand extensions, and ancillary revenue such as management contracts with *Idol* contestants.

However, even shows with far smaller audiences and ancillary revenue than *American Idol* can be profitable, because of the spread between revenue and the cost of production. This can be seen in the profit margin numbers for cable networks that program primarily nonfiction.

Nonfiction + Cable = Super Revenue Growth

Both revenue and profit margins in the cable network industry are enormous, and have grown steadily over the years. The cable network industry's total revenue (advertising plus license fees) was up 5.3% in 2012, to \$52.3 billion.⁹ Revenue has grown nearly 10% per year on average, every year since 2005. It would be over 10%, except for a recession-driven drop in 2009 to 5% growth. 2013 revenue growth is forecast to hit 10% again.¹⁰

Discovery is the highest-ranked nonfiction network (#13) with about \$1.1 billion in annual revenue.¹¹ But the nonfiction networks lead the field in profitability.

“Eye-Popping” Profits

Analysts describe the profit margins in this industry as “eye-popping,” causing investors to “flock to the sector.” (Discovery's stock is up more than 50% in 2013.) The average margin is almost 40%. This is especially noteworthy because there are a number of networks with well-below-average margins, particularly sports networks, whose programming is relatively expensive (ESPN had a 24% margin in 2009).¹²

Nonfiction networks' profit margins drive up the industry average. In 2012, the TLC network led all cable networks with a profit margin of 60%. The Discovery network was right behind TLC at 58%. Even much lower-rated networks had high profit margins: National Geographic at 52%, and Investigation Discovery at 35%.

⁸ CKX, Inc. financial statements (owner of 19 Entertainment).

⁹ “Cable Network Revenue Up 5.3% In 2012, Cash Flow Virtually Flat,” Derek Baine, SNL Kagan, 4/30/13

¹⁰ Ibid.

¹¹ SNL Kagan, Cable Network Comparison, 2012.

¹² “Cable networks on solid financial footing,” Derek Baine, SNL Kagan, 10/29/10

More Than 40% of Top Cable Networks are Nonfiction

Most of the revenue in the cable industry goes to the top 30 networks. Of these, 43% are heavily reliant on nonfiction; the rest are more focused on scripted programming, sports, or news.¹³

Nonfiction vs. Scripted Programming: Average Show Budgets

The cost differential between scripted and nonfiction shows drives profits. A top nonfiction show on the History cable network might have an episode budget between \$225,000 and \$425,000 per episode.¹⁴ History airs some of the highest-rated shows on cable, including *Pawn Stars* (currently averaging 4.6 million viewers), which regularly beats one of its top scripted competitors on Sunday night, the critically acclaimed *Mad Men*. Other nonfiction genres and shows have even lower budgets, in the \$100,000 range or below.

By contrast, *Royal Pains*, a hit scripted show on the USA cable network, has an episode budget between \$2 and \$2.5 million - seven times as much as a History network show. *Royal Pains* averages about 3.6 million viewers.

Nonfiction shows are much cheaper even on the broadcast television side. Top-rated *American Idol* on Fox reportedly has an episode budget of about \$2 million,¹⁵ whereas a scripted show, even a mid-size hit like *Blue Bloods* or *Person of Interest*, is budgeted at closer to \$4 million.

Both the broadcast and cable scripted shows tend to have far more union workers, from camera crews to actors to writers and producers. These workers are not only paid more in general, but receive benefits, and often have participation in the financial success of a show. Both workers and production companies at nonfiction typically share far less of the profits than their colleagues in scripted TV.

Executive Pay “Out of Whack”

These high profits, and investor interest driving stock prices, do lead to big compensation for one person: Discovery’s CEO, David Zaslav. His 2012 compensation totaled nearly \$50 million. Zaslav led trade publication *Deadline Hollywood*’s 2011 list of CEOs whose pay was “most out of whack” with other executives. In 2012, he made 13 times more than the median pay for the next four highest paid executives. His haul included perks like personal aircraft use and \$11,083 in home office expenses.¹⁶

¹³ WGAE study, 2011.

¹⁴ “What Does History Pay for Programming?,” Peter Hamilton, *documentarytelevision.com*, 3/10/2010.

¹⁵ “‘American Idol’ Looking to Downsize for Season 12, Say Sources,” Shirley Halperin, *Hollywood Reporter*, 7/14/12.

¹⁶ “Discovery’s David Zaslav Makes \$49.9m In 2012 Compensation, -4.7%,” - David Lieberman, *Deadline New York*, 4/2/13

Nonfiction Vs. Scripted Television: Comparing Pay And Benefits

Writers on scripted shows, like the producers on nonfiction shows, often work long hours, especially as deadlines approach, over the course of a season. However, the scripted writers have far better compensation and benefits in exchange for their hard work and skill. And we should note that many WGAE members outside of nonfiction basic cable do more than write; in scripted dramatic programs, in public broadcasting, and in news, our members also produce.

The writer/producers who create these successful and profitable nonfiction shows have not shared in the networks' and production companies' success. Where their colleagues in scripted television are usually afforded the benefits of union contracts - such as minimum payments, health insurance and pensions - nonfiction writer/producers, often working for the same companies and networks, are not. They work long hours without minimum salary protections, residuals, or benefits.

Bottom line: because the writer-producers and other employees who work so hard to create nonfiction programming are paid so much less than their counterparts elsewhere in the television industry, they enable cable networks and production companies to reap enormous profits. They deserve a fair share of the rapidly-expanding revenues.

NONFICTION: A DAY IN THE LIFE

The staff on a nonfiction show is typically smaller than a scripted show, resulting in lower overhead for the company.

They can function with a smaller staff because the producers wear so many hats.

The companies also save money by compressing the time frame allowed for producing a show.

On one particularly rigorous job, I worked for more than three weeks straight without a day off.
-Jess Beck, Producer

During the first phase of a show, producers create a program's "story," in many of the same ways a writer on a scripted show does.

They draft outlines that describe what happens, blow by blow. They create "character descriptions" - "Meet Karen, pastry artist, decorator and mom of two who struggles to balance it all but maintains her impish sense of humor..."

They write interview questions for cast members. They dream up "situations" or "challenges" for the characters to create drama and tension - and occasionally write actual dialogue.

The standard for the working shoot day has now stretched to an expected 12 hour day. You won't get the best work from people who are exhausted working 10 days straight, 12 hours a day.

– Annie Wong, Producer

For the producer, this will mean a 6am departure from his hotel.

The long workday will unfold in a frantic rush of loading and unloading, setting up and tearing down lights, cameras and props, prepping actors, filming takes and re-takes, and running between numerous locations.

He'll have to eat a fast food lunch and dinner in the car on the way to and fro, if he gets to eat at all.

It could easily be 10pm before the day's work is finished, and the producer trudges back to the hotel to get a few hours of sleep.

Once the script is written, then the show can go into production.

A scripted episode could take weeks to shoot, but a nonfiction company will sharply limit the number of shooting days allowed, to keep costs down.

This puts extra pressure on the producer to somehow squeeze the work that should take weeks into a few very long days.

I've been on shoots where I worked 16-hour days for 7 or 8 days straight.

At the end of a long day shooting, the AP has to download all the footage, and get on the phone to coordinate the next day's shoot, and I'm often in the hotel room writing interview questions, dialogue, or shotlists, until I go to bed.

– David Mettler, Producer

I've known people to work upwards of 100 hours in a given week while shooting, and then immediately start writing the script upon return, with no down time, in order to have the script ready in time for the editor.

***There's no compensation for that additional work, and it's especially hard when you have a family.
– David Van Taylor, Producer***

The on-air deadline is unlikely to get pushed back if production is behind schedule. The editors often get paid overtime as part of their agreements, so the company makes the producers – who aren't paid overtime – take on the extra work. This could mean that the producer's work stretches, not only from 6am to midnight, but into Saturday and Sunday, and even into weeks of 16-hour days without a single day off.

Once the filming is complete, producers often put on another hat: that of post producer. Believe it or not, post-production days can be even longer than shooting days, especially as the on-air deadline approaches.

And producers have little or no time off before moving into this next phase.

Producers have to review all the footage, write narrative scripts, choose the best bits and get them strung together into a coherent episode.

Then, the executive producers, including network producers, will have their say. They may ask for re-writes and re-organizing.

They may even ask the producers to go back out and re-shoot something that didn't come out the way they wanted it.

WRITERS GUILD OF AMERICA, EAST SURVEY

Methodology

The WGAE conducted an online survey of nonfiction writer/producers in July and August 2013. The sample for this survey was drawn from a WGAE list that includes writer/producer contacts from nonfiction shows. Those who took the survey confirmed that they had worked at a nonfiction production company in the New York area in the past 6 years. Email invitations were sent out to 1266 writer/producers. Of those, 315 completed the survey for a 25% response rate.

Overview: Wage And Hour Laws

Wage and hour laws in New York State cover several areas of the relationship between employers and employees that are relevant to nonfiction writer/producers.

First, they include certain notification and recordkeeping requirements (Section 195.1): for example, an employee must be notified at hire, in writing, of her rate of pay, and the employer must keep records showing how many hours a worker put in per day.

Second, for certain employees, overtime pay is required when the employee works beyond 40 hours a week (Section 195.1 of New York State Labor Law; federal Fair Labor Standards Act).

Third, a meal break of at least 30 minutes must be provided when the employee works a shift of 6 hours or more (Section 162).

Fourth, retaliation and threats of retaliation against employees who attempt to assert their rights under these laws are prohibited (Section 195).

When companies break these laws, they are subject to liability for back pay, penalties, and interest payments. The new Wage Theft Protection Act has a particular focus on increasing financial penalties.

Also, in many industries including television, some workers are improperly classified as “independent contractors” (paid by 1099) rather than employees (paid by W-2). Companies that do this are illegally avoiding the payment of unemployment, social security, disability, and workers compensation taxes, in addition to potentially underpaying workers, and are subject to heavy penalties from taxation authorities as well as the Department of Labor if discovered.

Working Conditions In Nonfiction Television

Our study found that writer/producer jobs in nonfiction television generally feature long hours and inaccurate record-keeping. Hours

Most writer/producers work long hours, both daily and weekly.

More than 80% worked more than 8 hours/day at least once a week, with 60% working more than eight hours every day.

80% of respondents said they sometimes worked more than five days a week.

71% worked more than forty hours a week, every week. 84% worked more than forty hours most weeks.

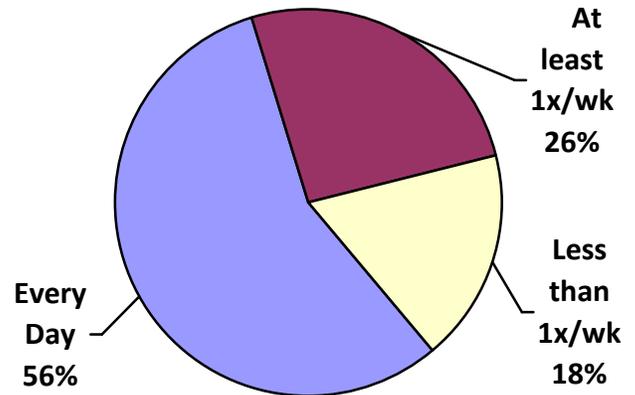
In spite of the fact that most writer/producers are working overtime on a daily and/or weekly basis, the vast majority of respondents (85%) said they never received overtime pay.

Timecards

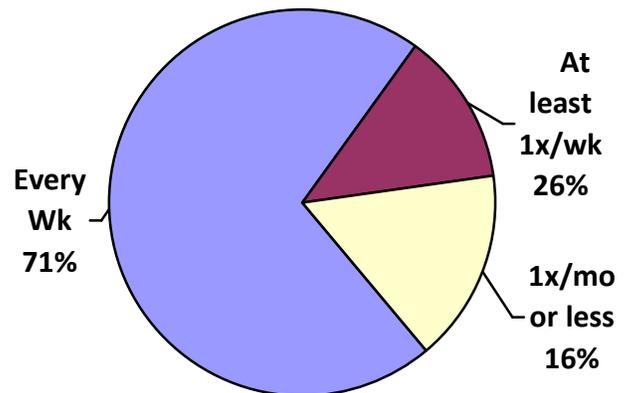
66% of respondents filled out time cards, but only 11% of those filling out timecards said they were always accurate.

Large numbers of producers reported various illegal behaviors on the part of employers with respect to timecards. 64% said they'd been asked to turn in a timecard that just said "worked"; 60% had been asked to turn in a timecard before the end of the pay period; and 18% reported being asked to hand in a blank time card.

Worked More than 8 Hours Per Day



Worked More than 40 Hours Per Week



VIOLATIONS OF WAGE AND HOUR LAW

The study shows that nonfiction production companies may be violating wage and hour law, based on the common practices of:

- Failure to pay overtime
- Failure to keep accurate records

Overtime

Television networks and production companies are boosting their profits by failing to pay overtime to the thousands of employees who create their nonfiction programs. As we have seen, most employees work overtime and almost none are compensated properly for it.

Our survey indicates that producers and assistant producers work several hundred hours of unpaid overtime per year. We estimate that at least 1300 producers and assistant producers work in nonfiction basic cable television in New York. Based on the results of our survey, we estimate that writer/producers are deprived of approximately \$40 million every year. (That number could be as high as \$66 million, depending on the number of producers and APs employed in a given year, and the number of weeks they work.) The statute permits collection of unpaid amounts for six years, retrospectively – for a current liability of more than \$240 million.

-

The WTPA provides for mandatory payment of attorney's fees when employees prevail on claims.

Timecards and Recordkeeping

For non-exempt employees, according to the federal Fair Labor Standards Act, the following records must be kept. The WTPA provides that records must be kept for 6 years.

- (1) personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.¹⁷

This information is generally available to employees through their pay stubs.

Widespread practices in the nonfiction television industry, such as asking employees to turn in a blank timecard or one that just says "worked," are in violation of these requirements. Also, written notice must be given at hire AND every year thereafter, AND prior to any changes in pay, of

¹⁷ Handy Reference Guide to the Fair Labor Standards Act. US Dept of Labor, Wage & Hour Division.

employees' wage rates and basis, and written acknowledgments of receipt by the worker must be maintained by the employer.

When it is established that back pay is owed, if the company does not reach a settlement, 100% of the back pay will be owed, plus:

- \$100 per week, up to \$2,500 total per employee for providing an improper wage statement
- Up to \$10,000 per employee plus possible order of reinstatement for any retaliation or threats thereof
- Automatic 15% increase in amount of total judgment if not completely paid within 90 days

RECOMMENDATIONS

People should be able to build sustainable careers working in nonfiction basic cable television. As this report documents, cable networks generate rapidly increasing revenues producing and broadcasting more and more hours of nonfiction content. If basic standards can be established across the industry, men and women can earn a reasonable living without burning out on 15-hour workdays, and can enjoy the health and retirement benefits everyone needs to live a healthy, productive life and to raise a family if they choose. This is not just a fundamental human right; our experience representing writers and writer-producers elsewhere in the television and film industry suggests that it is also good business. Having a stable, experienced, committed workforce would enable the networks and production companies to produce quality content that viewers want to watch, so audiences will expand and deepen and revenues will continue to increase.

- The networks must agree to more reasonable budgets and production schedules. There must be enough money to hire enough people to do the work, and they must have enough time to accomplish it. The pressure to burn people out with insane hours, overwork, low pay, and no benefits begins at the top.
- History demonstrates that the sure way to build a floor of reasonable compensation, benefits, and working conditions is with collective bargaining. Collective bargaining empowers the employees themselves to come together to figure out what works best and what is achievable. The WGAE remains committed to its industry-wide organizing campaign and we anticipate that, just as the Guild and other unions have done with decades of work in the broader entertainment industry, we can raise standards to the point that people can make a living doing the work they care about.
- At the same time, others in the private and public sectors can have a real impact. Elected officials and enforcement agencies can investigate violations of existing laws – in particular, wage and hour laws – and can consider additional enactments to protect the men and women who work so hard in this industry. Companies that choose to break the law and mistreat their employees should not gain unfair competitive advantage.
- All of the stakeholders (elected officials and enforcement agencies, networks, production companies, and employees) can develop a code of conduct which would create the conditions for people to build solid careers creating nonfiction television programs.