

NEGOTIATING A NEW ARTISTS’ MANAGER BASIC AGREEMENT

Separating Fact from Fiction

Forty-three years ago, the Writers Guild of America (WGA) and the Association of Talent Agents (ATA) renewed the Artists’ Manager Basic Agreement (AMBA), the contract governing the relationship between Guild members and agents who represent them.

Ten months ago, the WGA served a notice to ATA to terminate the Agreement. The WGA refused to meet with ATA for seven months and, when they agreed to a meeting on February 5, 2019, they refused to explain or engage in a dialogue about their 27 proposals. Nevertheless, on February 19, 2019, ATA and its eight-company member representatives gave a comprehensive presentation covering every proposal. The motivation behind the WGA’s lack of engaging with ATA is now clear.

Prior to meeting with ATA, WGA had already prepared a script and released a video of its President David Goodman publicly declaring that WGA and ATA were “at war.” Mr. Goodman pledged that there is “no room for compromise” with the ATA. David Goodman’s speech runs completely afoul of the value and respect that ATA members have long held for the Guild – it also included a number of misleading or factually inaccurate statements that need to be corrected.

Let ATA be clear. On behalf of all its members, we stand ready, willing and able to negotiate in good faith if we have the same commitment from the WGA. It is time to stop creating a false narrative and get to the table and build a new Agreement. For more information, please visit www.agentassociation.com.

DAVID GOODMAN’S COMMENTS	ATA’S RESPONSE
<p>“What has gone wrong is that agency income should be directly tied to writer income—the agent should make more only when his client the writer makes more—but that’s not what’s happening anymore.”</p>	<p>An agent’s success is directly tied to the success of the artists he/she represents – agents only earn more when their clients make more.</p>

<p>“...writers overall are not doing better. We’re doing worse.”</p>	<p>This is an oversimplification. A slice of the WGA is doing worse than before, it seems. But, more writers than ever are working more scale weeks (their own stat), and top level deals are at record levels. Diversity levels are improving. But with shorter orders and longer spans, there may be a segment of working writers experiencing a loss relative to their old income.</p> <p>Overall, the WGA’s own financial report shows that more writers are working and that writers are earning more than ever. Since 2014, agents have secured employment for an increasing number of writers every year, and those writers have seen an increase in average per capita earnings every year.</p> <p>We acknowledge that some writers individually may be making less, or increasing their pay at a slower rate than in the past. But that is due primarily to shorter orders, longer spans, and other industry trends—issues the agencies and the WGA should be working together to address—not any actions by the agencies.</p>
<p>“Free work is a problem that the Guild can best tackle in partnership with the agencies, but they refuse to help us.”</p>	<p>Studios often demand free work from writers, and agents consistently intervene and provide writers with the best possible advice. ATA member agencies have been and remain committed to banding with writers to tackle this problem, as we stated in our latest meeting with the WGA.</p>
<p>“the Guild has the legal right to act unilaterally—to establish a set of rules—we call it a Code of Conduct—that the agencies have to follow if they want to represent our members.”</p>	<p>The WGA’s proposed “Code” is, in their own words, a “power grab.” It is a sweeping attempt by the WGA to remake the entire industry, affecting not only writers and agents but also actors, directors, producers and even studios. As ATA told WGA last week, WGA is sorely misleading writers in telling them that the Guild has unfettered legal authority to unilaterally impose such restrictions.</p>

<p>“We think there are many agencies and good, honest agents who will ultimately welcome what the Guild and writers are doing. We’ve talked to people at smaller agencies who do. So we expect to sign up many of the smaller agencies. Regarding the big 4, we will seek your help to organize key agents to make the move to independence so they can keep working with you if their agency won’t sign our Code of Conduct. So I am saying that our collective power here is the power of divide and conquer.”</p>	<p>WGA’s attempt to divide ATA members is not only a violation of the current AMBA – it’s also as misguided as their attempt to remake the entire industry. Rest assured that each and every ATA member will continue to advocate for all its clients, including writers, by rejecting WGA’s proposed “Code,” which we believe would harm not only writers but also countless others throughout the entire industry. The proposed “Code” can be unilaterally changed by the WGA every 60 days. No size agency—or its clients—benefits from giving up control of agency operations to the WGA. ATA members will stand together on this and accept only a negotiated agreement.</p> <p>A strong and stable agency is in the best position to advocate for its clients.</p>
<p>“The WGA recently had conversations with 9 independent – mostly film – producers to ask if agency packaging hurts or helps the business, and whether the Writers Guild would damage their business if we banned this conflicted practice. The producers’ overwhelming answer was that agency packaging and producing hurt their business and they’d love to see us stop it.”</p>	<p>To help clients’ shows and films get made, agencies have helped secure financing or distribution for more than 1,000 independent films over the past five years, creating great opportunity for writers and all artists represented at all size agencies.</p>
<p>Packaging</p>	
<p>“In television, packaging is when an agency demands to be paid directly by the studio rather than commissioning talent at 10%... The agency has no financial incentive to get TV writers more money. None.”</p>	<p>Packaging, by definition, keeps more money in writers’ pockets. Clients come to agencies to get their projects made and to keep them on the air. A failed show makes no money for the agency – it’s a loss. Agencies’ interests are aligned with their clients when they package, just like they are aligned when they commission clients.</p>

<p>Agency packaging fees are “taken directly out of the budget of the show, money that could be used to hire more writers and pay writers more money.”</p>	<p>This claim defies logic, history and fact. Writers’ salaries on packaged shows and non-packaged (commissioned) shows are not different.</p> <p>If television package fees are eliminated, writers would be on the losing end of the deal. Studios would retain the fee and the profit share that would otherwise go to the packaging agency. This money would not be reinvested in writers – just ask any studio. Instead, studios would likely have to pay for more development executives to do the work packaging agents do now, all at the artists’ expense.</p> <p>Additionally, writers, actors and directors would pay out of their own pockets – the standard 10% commission on their earnings.</p>
<p>“The [packaging] agency then gets 10% of the show’s gross profits for the life of the show, even though its work is normally finished before the pilot is shot.”</p>	<p>Packaging agencies provide services to shows throughout their entire life cycle. They continue to help the show find talent. They support the show in network negotiations. They find new homes for cancelled shows. They also regularly negotiate new and better compensation packages for the writer clients – who are typically on two-year deals – over the life of the series, while the package fee remains exactly the same.</p> <p>Furthermore, as ATA has explained to WGA, agencies are never paid 10% of gross profits. Rather, they are paid a percentage – sometimes 10%, sometimes 7.5%, and frequently half that or less due to splits between agencies – of modified adjusted gross profits based on the highest-participating client’s definition. What does that mean? It means that agencies don’t participate in profits until their client does – and the agency’s clients who created the show typically make far more than the agency does, and those clients take home the same backend amount whether a show is packaged or simply commissioned.</p>

Affiliates	
<p>Agencies “are moving to become our employers by becoming producers and owning content... A few writers will get a great deal... But most writers will get screwed.”</p>	<p>Let’s be clear. This is patently false. No ATA member agency employs writers</p> <p>More Opportunities: For affiliates of agencies that invest in companies that produce content, those investments will serve artists’ interests as more buyers will equate to more opportunities for artists and a more vibrant marketplace.</p> <p>Artists First: By generating new opportunities through an artist-first lens, affiliates of agencies tend to be talent-friendly and creator-driven – often offering artists greater creative control and better financial terms.</p> <p>Artists Decide: An agency who has affiliates involved in the production space has submission processes that require projects to be shopped to multiple buyers. At the end of the day, the author or writer determines where a project lands based on every offer on the table.</p>
<p>“If your agent is your employer, you don’t have an agent.”</p>	<p>Let’s be clear. This is patently false. No ATA member agency employs writers. None. Rather, some agencies have affiliates—legally separate businesses with separate management and separate operations, housed in separate offices and with separate employees—who perform content-related services. These entities are legally and operationally separate businesses from agencies. Agencies disclose these relationships, and they negotiate with affiliates at arm’s length to ensure offers and deals are as good, if not meaningfully better, than others in the marketplace. That said, ATA has repeatedly told WGA that agencies are willing to listen to concerns and discuss formalizing some rules of the road to assure clients that their interests will never be compromised.</p> <p>Agents work for writers – those roles have never and will never be confused or reversed. Agents always put artists first.</p>