

Negotiations have broken off (for the time being at least), but it's still important to understand what's at issue. There are now several recent proposals that have been publicly disclosed, as I had hoped would be the case (see [WGA Strike - Confusion Reigns](#)). This memo summarizes and analyses them. A caveat – the studios have not described their proposal in detail, whereas the Guild has described both parties' proposals in detail; so, the description of the studios' proposal is based on the Guild's description.

You are welcome to circulate this memo without modifying it and with attribution to Jonathan Handel at TroyGould.

References in this memo to supporting documents are shown in curly brackets, like this “ref. {1},” and are listed in Exhibit B below.

Sections 1-3 are summaries in plain English. The remaining sections are more technical.

## 1. **About the Author**

I practice entertainment and new media law at TroyGould, and am a former WGA Associate Counsel. Bio is at <http://www.troygould.com/index.cfm?fuseaction=people.personDetail&id=10547> and blog is at <http://digitalmedialaw.blogspot.com/> or <http://www.jhandel.com>. I have appeared in the media about fifty times regarding the negotiations and strike, including the Wall Street Journal, Variety, LA Times, AP, Reuters, Bloomberg, CNBC, local news programs, Canadian national TV (including two live 5 minute interviews), various radio stations, as well as writing a number of pieces for the [Huffington Post](#) and doing a [YouTube](#) video. Please contact me for further information.

## 2. **Status of Negotiations**

### **a. AMPTP's Roadblocks to Negotiation**

The AMPTP stated on Friday, Dec. 7, that there are six WGA proposals that are “absolute roadblock[s]” to further negotiations. They then walked out of negotiations, a move that imperils the industry and is a pure display of leverage. The Alliance has the right to take positions (several of which I agree with), but walking out of negotiations is unreasonable, particularly 5 weeks into a strike—and particularly since the previously WGA dropped a very significant proposal, which would have granted an increase in the miniscule DVD residual.

In any case, the AMPTP's non-negotiable issues are (see ref. {12}):

#### **i. Fair Market Value Proposal.**

This is a proposal that would require intra-company (self-dealing) transactions to be valued at fair market value for residuals purposes. See row 12a in Exhibit A below. The proposal is intended to deal with the valuation problems created by vertical integration. The AMPTP suggests that the market, not arbitrators, should value transactions, yet in self-dealing there is no market determination. For that reason, the Guild's proposal is

reasonable. One compromise might be to cap the amount by which the arbitrator could increase a valuation (e.g., at most an x% increase), so that there is some certainty for the companies that a rogue arbitrator could not dramatically increase the cost to the company. Not a perfect solution, since the company could undervalue the transaction accordingly, but there is no perfect solution to an issue like this.

## **ii. Reality Jurisdiction**

The AMPTP rejects the WGA's proposal to extend jurisdiction to reality programming. In my opinion, (discussed below), the WGA should accept the AMPTP's position and drop this proposal.

## **iii. Animation Jurisdiction**

The AMPTP rejects the WGA's proposal to extend jurisdiction to animation programming. Again, in my opinion (discussed below), the WGA should accept the AMPTP's position and drop this proposal.

## **iv. Industry Standards**

This WGA proposal would require that if a studio/producer subcontracts writing to an outside company, the terms and conditions would have to satisfy the requirements of the Guild Agreement (MBA). This would allow the companies to completely nullify the agreement by subcontracting. In my opinion, the companies should withdraw the proposal.

## **v. Sympathy Strikes**

The AMPTP rejects the WGA's proposal to permit the WGA to honor other unions' picket lines. Again, in my opinion, the WGA should accept the AMPTP's position and drop this proposal. One essential aspect of a collective bargaining agreement is to assure labor peace during the term of the agreement.

## **vi. New Media Residuals Based on Distributor's Gross**

The AMPTP rejects any new media residual formulas based on distributor's gross. See Sections 3.b.ii, 4.c, 4.d, and 4.e below. This is not entirely reasonable; more viewers of a program should translate into more residuals. However, it might be possible to achieve this without a gross at the source residuals definition.

### **b. The AMPTP's Leverage**

The AMPTP's leverage stems from these factors:

#### **i. They Write the Checks**

He who has the gold ... etc.

#### **ii. The DGA is Waiting in the Wings**

If there isn't a deal soon, the DGA will commence negotiations with the AMPTP and do a deal first. Even though the DGA's contract doesn't expire until June 30, they like to do their deals early, and have struck only once in their history (for a few hours, which scarcely counts). The DGA is holding off on negotiations, but won't wait forever.

There would then be pressure for the new media aspects of the DGA deal to become the template for the WGA deal (and SAG's as well), because all three guilds (writers, directors, and actors, as well as IA) mirror each other in the home video portion of the agreements. And, the directors' deal would be more favorable to studios than the writers' deal would be.

The reason the directors would be less assertive is that the directors don't care about residuals as much as the writers, because two important DGA constituencies don't rely on residuals as much as writers do: film directors generally receive more upfront money than writers and are less reliant on residuals; and assistant directors and other non-director personnel, who are 40% of the DGA membership, receive virtually no residuals. (This leaves middle-class TV directors somewhat in the lurch.)

Also, film directors probably view themselves as quasi-management (which is accurate - they tell people what to do!), and would thus be less aggressive from a labor union perspective.

There is no way the AMPTP would grant the WGA a better deal than the DGA, because of the latter's greater stature in the business, and because the AMPTP will not want to reward a guild for striking. In addition, the DGA would probably insist on a favored nations provision, which would allow them to reopen negotiations if the writer (or actors) subsequently got a better deal. This would be an enormous disincentive to the AMPTP granting a better deal to the writers.

### **iii. Unity is Beginning to Crack**

Some showrunners are apparently returning to their producing duties (though not their writing duties). This will allow shows to continue producing scripts they have on hand, giving the networks some temporary relief, even though no new scripts are being written.

Also, the Teamsters, who had expressed unity with the writers, are now apparently crossing the picket line in significant numbers. Their support had been key, since their refusal to deliver equipment can shut down production immediately. If nothing moves, nothing shoots.

### **iv. The IA Strongly Opposes the Strike**

IATSE has continued to be enormously critical of the strike. On Friday, the IA's president released a statement that compared the WGA's leadership to "a huge clown car that's only missing the hats and horns." The IA's angry because (a) many of its members are out of work as a result of the strike, (b) the WGA is seeking to intrude on its jurisdiction in reality and animation, (c) the IA apparently struck in the late 80's and the writers crossed the picket line, and (d) the IA believes the writers have intended to strike for at least the last year.

### **c. The WGA's Leverage**

The WGA has significantly less leverage. The power they have results from (a) their ability to shut down TV production, and, increasingly, film production as well, (b) their ability to destroy pilot season (though the studios and networks may welcome a change from the economic chaos inherent in the spike in expensive production that characterizes pilot season), and (c) their continuing ability to win the PR battle (though the AMPTP has recently hired very aggressive outside PR consultants).

### 3. Summary of Issues

This section summarizes the analysis that is detailed in the later sections of this memo.

#### a. DVD Residuals

The Guild was seeking to double the DVD residual, but has withdrawn this proposal. This removes a major impediment to a deal, although I think it's a mistake. See [Slipped Disc: Why DVD Residuals Still Matter — and Always Will](#).

#### b. New Media Residuals

This is the big issue. The proposals are complicated, and there is significant distance between the parties:

##### i. Paid Exhibition

For paid exhibition (such as iTunes downloads) of movies or television programs, the Guild wants 2.5% of the studio's receipts. The studios want to pay using the home video formula: 0.3% to 0.36% of the studio's receipts. Thus, the Guild wants 7 or 8 times what the studios are offering. The Guild wants the studios to revise their proposal, particularly since the Guild dropped its demand for a doubling of DVD residuals. The studios refuse to do so. The studios' numbers are hard to justify, because there is essentially no cost of goods for downloads and streaming, whereas high cost of goods was the justification for the low home video formula when it was first introduced. The parties should compromise on 1.2%. See [Writers and Producers: Here's the Deal They Should Make](#).

##### ii. Ad-Supported Exhibition

For ad-supported (or other free-to-the-user) exhibition, the studios want a six-week window where no residuals would be payable. The Guild is apparently agreeable to 3 days. The studios also apparently still want the right to designate other uses as promotional, even where the whole program is shown and ad revenue is received; the Guild rejects this proposal. It's not clear what the limits on such promotional designation would be under the studios' proposals – i.e., could they arbitrarily designate any usage as promotional.

After that window, the studios want a formula that works out to a flat residual of \$253 for a one-hour television program and \$139 for a half-hour, per year. (These dollar amounts are not completely arbitrary; they are percentages of certain dollar figures found in the existing guild agreement.) The Guild wants ten times these amounts for the first year, with additional amounts for (a) later years; (b) viewings in excess of 100,000 viewings in any calendar quarter; and (c) viewings outside the U.S. and Canada. For theatrical movies, the Guild wants 2.5% of the studio's receipts, whereas the studios are offering 1.2%.

Note that the distinction in the Guild's ad-supported proposal appears to be between user-paid exhibition and free-to-the-user exhibition, not between download and streaming. These often correlate — i.e., download is often paid (such as on iTunes) and streaming is often free (ad-supported), but not always. In other words, downloads could be ad-supported, and streaming can be pay-per-view or by subscription. Press reports have generally described the proposals by distinguishing between downloads and streaming, but this does not appear to be an accurate description of the proposals.

It's reasonable for the Guild to want additional payments on ad-supported exhibition for every 100,000 views, because additional views generate more ad revenue to the studios; likewise, as to wanting more compensation for later years. Other than that, it's hard to tell whose numbers are more reasonable without knowing what amount of ad revenue a typical half-hour or one-hour television show, or a movie, can generate online or via cell phone.

#### **c. New Media Jurisdiction**

The studios are apparently willing to give the Guild jurisdiction over writing derivative works, meaning Internet and cell phone series that are spinoffs of television shows and movies. However, they are not willing to give the Guild jurisdiction over original (non-derivative) work created for new media. The Guild's numbers suggest that the cost of doing so would be low, but the studios are right to worry that they might have trouble competing with non-unionized companies (and individuals) in this area. The Guild should accept this compromise. The companies should, however, agree to credit parity – if the director gets credit on an online video, the writer should too; credit protection is important, and was actually a key reason the Guild was founded.

#### **d. Made-for-Pay TV Residuals**

The Guild wants significant increases in these residuals, which is understandable given the popularity of series on HBO and Showtime. Any such increases would probably be granted to the DGA, SAG and IATSE (the IA) as well (see [Reflections on Residuals: Go Forth and Multiply](#)), making this an expensive issue for the companies. This issue has apparently not been discussed in the press.

#### **e. Animation**

The Guild wants jurisdiction on animation, and says the cost to the companies would be low. Nonetheless, in order to avoid angering the IA, I predict that the companies will not concede this issue.

#### **f. Reality**

This is a fairly expensive issue. For that reason, and to avoid angering the IA, I predict that the companies will not concede this issue. There's another reason too: if the Guild had jurisdiction over reality, it could deny the companies the ability to substitute reality programming for scripted programming during the next strike, whenever that occurs (or is threatened) — thus giving the Guild much more leverage in negotiations. The companies will never give the Guild that leverage.

#### **g. Minimum Compensation**

The Guild wants a 3.5% increase, whereas the companies want to increase some minimums by 3%, some by 2% and some not at all. The parties will figure this one out if they can solve the bigger issues.

#### **h. Total Economic Difference Between the Parties**

It's difficult to determine the distance between the parties. The Guild's figures suggest a difference over three years of \$876M to \$1.87 billion, taking account of the fact that some of the demands by the WGA on residuals would imply related increases for the other three unions (DGA, SAG and IA). Splitting the difference results in an increased cost per-company, per-year of only \$18M to \$39M. There's definitely a deal to be done. (The

studios may have an analysis that shows a bigger difference, but maybe not — the studios undoubtedly think the WGA’s proposal will cost more than the \$152M asserted by the Guild, but the studios also say that their own proposal is worth more about \$100M more than the Guild says it is.)

Both parties are hurt by the strike, but the challenge for the WGA is that the studios ultimately have more leverage, in part because they can choose to suspend negotiations and make a deal with the DGA instead (which would be more favorable to the studios than the writers want). See [Writers' Strike: Why They're Talking](#). The parties seem to finally be truly engaged in negotiation, not finger-pointing. For everyone’s sake, let’s hope we see a deal soon.

#### 4. **New Media Proposals**

This section and the following sections of this memo discuss the above issues in more detail, including cites to supporting documents.

Regarding new media proposals, discussed in this section, see ref. {2} and row 8 of Exhibit A below for additional detail.

##### **a. Downloads v. Streaming**

The Guild proposal (ref {2}) does not appear to distinguish between downloads and streaming. Rather, it distinguishes between “Where the Viewer Pays” (sec. 1 of the proposal) and “Where the Viewer Does Not Pay” (sec. 2 of the proposal). This is contrary to press reports, which seem to usually discuss download vs. streaming.

Note that, as I’ve discussed in the HuffPo (see [Slipped Disc: Why DVD Residuals Still Matter — and Always Will](#), 3rd para.), the distinction between downloads and streaming is fallacious: downloads can be ad-supported (just as streaming usually is) and streaming can be PPV (just as downloads usually are) or subscription based; also, there are hybrid technologies.

One complication: In discussing ad-supported exhibition of television product, the Guild proposal (sec. 2.b.i) refers to the number of “viewings initiated” but then adds “(streams).” If interpreted literally, this would mean the Guild is distinguishing between streaming and download only in one sub-portion of the proposal.

##### **b. Paid Exhibition**

For paid viewing (such as iTunes downloads) of movies or television programs, the Guild wants 2.5% of the studio’s receipts. (See Exhibit A below.) The studios want to pay using the home video formula: 0.3% to 0.36% of the studio’s receipts. The Guild wants the studios to revise their proposal, particularly since the Guild dropped its demand for a doubling of DVD residuals (physical product). The studios have not done so.

##### **c. Ad-Supported Exhibition— Studio Proposal**

The studios want a six-week window where no residuals would be payable. The Guild is apparently agreeable to only 3 days. The studios also apparently still want the right to designate other uses as promotional, even where the whole program is shown and ad revenue is received; the Guild rejects this proposal. It’s not clear what the limits on such promotional designation would be under the studios’ proposals – i.e., could they

arbitrarily designate any usage as promotional? The studios have apparently proposed certain limits on this, see ref. {14}, but the details have not been reported.

When residuals are payable, then, for exhibition via new media of a television show free to the viewer (e.g., in an ad-supported model), the studios want to pay a fixed payment of 1.2% of the television residual rate (not of the studio's receipts) for exhibition of television programs, which in turn is equal to the applicable minimum compensation. This computes to \$253 per year for a one-hour program and \$139 per year for a half-hour, at 2007 rates. (As noted above, these dollar amounts are not completely arbitrary; they are small percentages of certain dollar figures found in the existing guild agreement.) This is a fixed rate and does not depend on the studio's receipts from advertising (e.g., ads in-stream or banner ads on the web page that the show is streamed on).

For ad-supported exhibition of theatrical motion pictures, the studios are offering 1.2% of the license fee (i.e., presumably 1.2% of the producer's gross). See ref. {14}.

The studios reject the concept of any proposal that uses distributor's gross as a basis for residuals. See refs. {11} & {12}.

#### **d. Ad-Supported Exhibition— Guild Proposal**

The Guild is apparently agreeable to a 3-day window where no residuals would be payable.

When residuals are payable, then, for exhibition via new media of a television show free to the viewer (e.g., in an ad-supported model), the Guild wants 3% of the applicable minimum *per calendar quarter during the first year*. That's 12% of the applicable minimum for one year's worth of exhibition, whereas the studios want to pay 1.2% for one year. So, for starters, the Guild wants ten times as much as the studios are offering.

Also, the Guild wants additional 3% payments for each 100,000 viewings above the first 100,000 in any quarter.

More precisely, the Guild proposal for reuse of primetime network programming, for instance, is 3% of the network primetime residual rate based on the "bargain rate" for high budget programming for other than network primetime (see first rate chart in MBA at Art. 13.B.7.c; and MBA Art. 15.B.1.b.(2).(a)). This means each of the 3% payments is \$632 for a one-hour program and \$348 for a half-hour, at 2007 rates.

After the first year, the Guild wants 2.5% of the studio's gross receipts.

Also, the above is for U.S. and Canada only. The Guild will presumably want additional compensation for availability in foreign territories, but they have not specified the amount.

There's another wrinkle: when a program is first exhibited on a date other than the first day of the quarter, is the first quarter a short quarter (and the first year a short year) under the Guild proposal? For instance, suppose a one-hour program is first exhibited June 1. Does the studio pay the full \$632 for the period April 1 through June 30, or is it pro-rated?

(For documentation of the above discussion, see sec. 2.b of ref. {2}.)

For theatrical movies, the Guild wants 2.5% of the studio's receipts (see sec. 2.a of ref. {2}), whereas the studios, as noted above, had not made a proposal (and may have at this point, but it has not been disclosed).

#### **e. Ad-Supported Viewing — Evaluating the Proposals**

To determine the affordability and reasonableness of the Guild's and AMPTP's proposals, we'd have to know what the studios can expect to make in ad revenue for Internet exhibition. This in turn depends on CPMs for ads in connection with Internet exhibition of movies and TV shows, and also the number of ads (in-stream and banner) that can reasonably be shown for half-hour, one hour and theatrical-length programs; I don't have these figures. Then we'd have to multiply the residual by 9.5, to determine the total residual that would be payable to writers, director, actors and below-the-line crew. (See my HuffPo article [Reflections on Residuals: Go Forth and Multiply](#) for explanation of the 4-union analysis)

For cell-phone exhibition, we'd have to know what licensing fee a cell co. pays for TV shows and theatrical movies, to the extent these are available on cell phones at all. I don't have these numbers.

A word about the 9.5 multiplier. This applies to home video and pay TV (HBO, Showtime, etc.). However, the network TV residuals that the Guild and studios are keying off of are based on a formula that is unique to the WGA agreement (since that formula is based on the minimum compensation for writing services). Thus, the other unions (DGA, SAG, IA) may not have a clear model to work with even if the WGA reaches an agreement. This may complicate those negotiations.

#### **5. Total Economic Difference**

Now let's look at the total cost of the WGA proposal and of the studio proposal (as analyzed by the WGA — the studios have not presented details of their own proposal, whereas the writers have presented details of both proposals). Note — if you don't like numbers, jump ahead about four paragraphs to the Conclusion.

The studios say their proposal is worth \$130M (over three years) in increases over existing total comp (see ref. {1}). The writers say that the studio proposal is worth \$32M in increases; but they also list \$100M in deductions due to promotional uses of streaming, and thus assign a negative \$68M figure to the studio proposal (see Exhibit A below), though it's not clear how to interpret this (see rows 8, 8X and 93 of Exhibit A below). In contrast, they say their own proposal is worth an additional \$152M over three years. Thus, *in the WGA's view*, the parties are separated by \$120M (\$152M minus \$32M) to \$220M (\$152M minus negative \$68M).

However, this only accounts for the residuals difference on a single-union basis (WGA only). As noted above, the studios will probably pay an additional 8.5 multiplier of any residual difference, because the DGA, SAG and IA may get similar residual formulas, although this is not clear, as discussed in the preceding section.

The WGA-only residuals difference is \$15M for pay-TV (see row 11) plus \$74M, \$79M, \$174M or \$179M for new media (see rows 8, 8X and 93). This sum equals \$89M, \$94M, \$189M or \$194M. Multiply by 8.5 to obtain a figure that ranges from \$756M (8.5 times \$89M) to \$1.65 billion. Now add the one-union difference of \$120M or \$220M to obtain a figure of \$876M to \$1.87 billion. This is the difference between the parties on all issues (not just new media), based on the WGA valuations. The studios may have an analysis that shows a bigger difference, but maybe not — the studios undoubtedly think the WGA's proposal will cost more than the \$152M asserted by the Guild, but the studios also say that their own proposal is worth more than the Guild says it is.

**Conclusion:** The difference between the parties appears large in absolute terms. However, dividing by 3 for a per-year figure, then by 8 for a per-company figure (6 majors, plus MGM, plus many smaller companies treated as one company in aggregate economically) yields a per-year per-company four-union difference between the parties of \$36M to \$78M. Divide by 2 to assume the parties ultimately split the difference, and the incremental cost on a per-year per-company four-union basis is \$18M to \$39M. These numbers are certainly affordable for the majors, and presumably for MGM and many or most of the smaller companies (the smaller cos. pay these numbers in aggregate, not per-company; the smaller companies are all lumped together as a single company for the analysis). There's definitely a deal to be made.

Note, also, that row 8 of the chart recites 2.5% (of studios' receipts) as the WGA's new media residual proposal, yet (as discussed in the preceding section) the Guild has since made a different proposal for unpaid uses (such as streaming; EST remains at 2.5% under the Guild's proposal), tiered and based on applicable minimums for creation of the material, not based on studios' receipts. Thus, the numbers above do not reflect the new proposal, and the difference between the parties may be less than the amount calculated here.

## 6. Key Economic Differences

Here's a table of key economic differences, excerpted from Exhibit A below, with my analysis added in the fourth column. Note that row 11 has not been discussed in the press. Also, note the caveat in row 15 re the Guild's numbers for reality.

|   | <b>Issue</b>                 | <b>WGA Minus AMPTP (\$M)</b> | <b>JLH Analysis</b>  |
|---|------------------------------|------------------------------|--|
| 1 | Minimum Increases            | \$7                          | Important difference, but not huge.  |
| 2 | Minimums for Non-traditional | \$0.5                        | <p>Jurisdiction over new media would cost the companies almost nothing over the next three years, according to the Guild; of course, the companies may disagree, and in any case are worried that this market will grow significantly in the future and that these numbers would increase correspondingly.</p> <p>Also, the companies are presumably worried that if they grant jurisdiction, they would have to do so for the DGA, SAG and even IA as well.</p> <p>Nonetheless, the companies say they are willing to grant</p> |

|           |                            |               |  |
|-----------|----------------------------|---------------|--|
|           |                            |               | jurisdiction over derivative works (web and cell phone series based on TV shows and movies), though not over original content. In my view, the Guild should take that deal, and re-address the issue in 3-6 years if the market changes.                                     |
| 8, 8X, 93 | Reuse of non-traditional   | \$74 to \$179 | This (new media residuals) is the big issue, discussed in detail in sec. 4 above.  |
| 9         | DVD (WGA dropped proposal) | \$0           | This removes a major impediment to a deal, although I think it's a mistake. See my HuffPo article <a href="#">Slipped Disc: Why DVD Residuals Still Matter — and Always Will.</a>  |
| 11        | Made-for-Pay TV Residuals  | \$15          | This issue is economically significant, especially since an increase would probably be mirrored in the DGA, SAG and IA agreements (see my HuffPo article <a href="#">Reflections on Residuals: Go Forth and Multiply</a> ). However, it has not been discussed in the press. |
| 14        | Animation                  | \$2           | Note how small this issue is economically, according to the Guild. Nonetheless, in order to avoid angering the IA, I predict that the companies will not concede this issue. Maybe they'll agree not to oppose representation elections (seems unlikely though).             |
| 15        | Reality Jurisdiction       | \$13M         | <b>Important:</b> The Guild's figure only includes P&H. It does not include any increase in compensation that would result from setting minimums, which is usually what jurisdiction implies. So,  |

|  |  |  |
|--|--|--|
|  |  | <p>either the Guild has omitted the increase in minimums, or they are only proposing a truncated form of jurisdiction that would impose P&amp;H but not minimums (and thus would offer the reality writers less than is generally assumed).</p> <p>In any case, this issue is economically significant, especially since the DGA (and maybe AFTRA?) might seek jurisdiction as well, if granted to the WGA.</p> <p>For that reason, and to avoid angering the IA, I predict that the companies will not concede this issue.</p> <p>Also, this issue is important to the WGA because if attain reality jurisdiction, they can deny the companies the ability to substitute reality programming for scripted during the next strike, whenever that occurs (or is threatened) — thus giving the Guild more leverage. That, of course, is yet another reason the companies won't give on this issue.</p> |
|--|--|--|

## 7. Terminology

References to “Art.,” “App.,” “Sch.,” “Sec.,” “Sideletter,” or page numbers, refer to 2004 WGA-AMPTP Minimum Basic Agreement (MBA; i.e., the union contract). Language is paraphrased, except where shown in quotes. Also, note that “motion picture” in the MBA includes TV movies and TV series, as well as theatrical (and direct-to-video) movies. The MBA can be found at [http://wga.org/subpage\\_writersresources.aspx?id=1610](http://wga.org/subpage_writersresources.aspx?id=1610). I use “studios,” “producers,” and “AMPTP” interchangeably in this memo (and include the networks in this terminology as well).

## 8. Disclaimer

Opinions, analysis and predictions are mine, not those of TroyGould, its clients, or either party to the negotiations. Reasonable efforts to provide accurate information have been made, but accuracy is not guaranteed, especially in light of the limited information available and the technical nature of the proposals. Please report errors or updates to me. This chart is for informational purposes only, and is not legal advice. The information provided by the Guild is incomplete, and the AMPTP has provided virtually nothing except its bottom-line figure. (The MBA is over 600 pages, and there are, in addition, numerous arbitration decisions interpreting its provisions.)

## Exhibit A – Chart of Overall Economic Impact of Proposals

The chart below is dated 12/3/07 – 12/4/07. It combines the two tables in ref. {1}, and adds information from refs. {3} and {4}; plus other refs. as indicated. In particular, columns 3-5 are from the first table in ref. {1} and columns 6-8 are in the second table in ref. {1}. Cols. 1-2 appear in both tables. All rows are from refs. {1} and {2}, except that row 12A is from ref. {4} and row 12B is from ref. {3}. Col. 9 is my own calculation of col. 5 minus col. 8.

JLH comments and analysis are in *[bracketed bold italics]*. I have also numbered a few rows that the WGA did not, for ease of reference. These numbers are also in bracketed bold italics. Other text is as supplied by the WGA.

**Important:** The AMPTP columns are the WGA's characterization and analyses of the AMPTP's positions. The AMPTP has not released its own description of its positions, except to say that its total is \$130 million (see ref. {6}), not \$31.87 million (see Sub-Total row below); some limited detail is also provided by the AMPTP in ref. {12}.

|   | WGA Positions  | WGA Assumptions   | WGA Avg Year (\$M) | WGA Total (\$M) | AMPTP Assumptions as Reported by WGA   | AMPTP Avg Year as Reported by WGA (\$M) | AMPTP Total as Reported by WGA (\$M) | 3-Year Difference (WGA Total Minus AMPTP Total as Reported by WGA) (\$M; rounded) |
|---|--|---|--------------------|-----------------|--|---|--------------------------------------|---|
| 1 | Minimum Increases  | \$260 million at 3.5%   | \$9.42             | \$28.27         | \$210 mil @ 3.0%, \$45 mil @ 2.0%, \$5 mil frozen  | \$7.23                                  | \$21.68                              | \$7   |
| 2 | Minimums for Non-traditional                                       | \$1000 x 200, 350, 450 webisodes each year <i>[does this also include mobisodes?]</i> | \$0.33             | \$1.00          | \$700 x 200, 235, 275 webisodes each year <i>[Note that studios apparently assume that market grows more slowly. Also, Variety (ref. {7}) reflects a different proposal: \$800 for a 5-minute webisode ranging up to \$1,300 for a 15-minute webisodes.]</i> | \$0.17                                  | \$0.50                               | \$0.5   |
| 3 | Made-for-Basic Cable – apply all mins                              | 100 pgms over 3 years x \$5k by existing sigs   | \$0.17             | \$0.50          | No change  | \$ -                                    | \$ -                                 | \$0.5   |
| 4 | Prog fees for all, incl non- trad                                  | Assumes not all webisodes/episodes apply  | \$0.40             | \$1.20          | No change  | \$ -                                    | \$ -                                 | \$1.2   |
| 5 | <i>[These rows are not included in the WGA's published tables]</i> |   |                    |                 |  |   |                                      |   |
| 6 |  |   |                    |                 |  |   |                                      |   |
| 7 | Daytime Serial Breakdowns  | Growing uncompensated breakdown problem   | \$0.60             | \$1.80          | No change  | \$ -                                    | \$ -                                 | \$1.8   |

|   | WGA Positions            | WGA Assumptions  | WGA Avg Year (\$M) | WGA Total (\$M) | AMPTP Assumptions as Reported by WGA  | AMPTP Avg Year as Reported by WGA (\$M) | AMPTP Total as Reported by WGA (\$M)  | 3-Year Difference (WGA Total Minus AMPTP Total as Reported by WGA) (\$M; rounded) |      |
|---|--------------------------|--|--------------------|-----------------|---|---|---|---|------|
| 8 | Reuse of non-traditional | <p>2.5% -- comparison to the way AMPTP is paying [Note – <i>this proposal includes theatrical motion pictures as well as television.</i></p> <p><i>Also, this proposal includes electronic sell-through (EST; i.e., download-to-own), whereas the AMPTP has apparently not made a revised EST proposal).</i></p> <p><i>[Note – this chart does not reflect the revised, tiered proposal made by the WGA for ad-supported uses (such as free streaming). That proposal is discussed in Secs. 3.b.ii &amp; 4.d above.]</i></p> | \$29.30            | \$87.90         | <p>\$250 per epi less 6 wk window/promo (high estimate)</p> <p><i>[More precisely, for reuse of primetime network programming, for instance, the AMPTP proposal is apparently 1.2% of the network primetime residual rate based on the “bargain rate” for high budget programming for other than network primetime (see ref. {10}); first rate chart in MBA at Art. 13.B.7.c; and MBA Art. 15.B.1.b.(2).(a)]</i></p> <p><i>This computes to \$253 for a one-hour program and \$139 for a half-hour.</i></p> <p><i>The AMPTP proposal re theatrical ...</i></p> <p><i>Note – continued in next column due to formatting problem.</i></p> | \$4.68                                  | <p><i>Continued from previous column:</i></p> <p><i>... exhibition is 1.2% of the license fee (see ref. {14}).</i></p> <p><i>The foregoing is for streaming or ad-supported. For paid downloads (EST), the studios’ most recent proposal is to use the DVD formula, which is 0.3% or 0.36% of the studio’s receipts.]</i></p> | \$14.04   | \$74 |

|      | WGA Positions   | WGA Assumptions   | WGA Avg Year (\$M)   | WGA Total (\$M) | AMPTP Assumptions as Reported by WGA                           | AMPTP Avg Year as Reported by WGA (\$M) | AMPTP Total as Reported by WGA (\$M) | 3-Year Difference (WGA Total Minus AMPTP Total as Reported by WGA) (\$M; rounded) |
|------|---|---|--|-----------------|--|---|--------------------------------------|---|
| [8X] | Offset/Reuse on Non-traditional                                 | <i>[Not included in WGA chart, even though WGA reportedly is willing to agree to a 3-day window]</i>  | [\$ -?]  | [\$ -?]         | Promotional Exclusions <i>[but does this duplicate row 8?]</i> | \$ (1.56)                               | \$ (4.67)                            | \$5   |
| 9    | DVD   | Was \$57 mil., now dropped <i>[I have previously argued that this is a mistake; see <a href="#">Slipped Disc: Why DVD Residuals Still Matter — and Always Will</a>]</i>   | \$ -   | \$ -            | No change  | \$ -                                    | \$ -                                 | \$0   |
| 10   | <i>[This row is not included in the WGA's published tables]</i> |   |  |                 |  |   |                                      |   |
| 11   | Made-for-pay TV Residuals                                       | based on best data available  | \$5.00   | \$15.00         | No change  | \$ -                                    | \$ -                                 | \$15  |
| 12   | <i>[This row is not included in the WGA's published tables]</i> |   |  |                 |  |   |                                      |   |
| 12a  | Fair Market Value   | <i>[Add new Art. 67 to provide that intra-company transactions (transactions between company affiliates) will be valued at fair market value, so that companies cannot reduce residuals owed by setting artificially low license fees between their subsidiaries; this has been an issue for the Guild since the mid-90's when the Fin-Syn rules were eliminated]</i> | <i>[Guild did not provide estimate; hard to estimate cost to studios, since degree of underreporting is unknown]</i> |                 | <i>[AMPTP rejects proposal. See refs. {11} &amp; {12}.]</i>    |   |                                      | <i>[Unknown]</i>  |

|     | WGA Positions   | WGA Assumptions  | WGA Avg Year (\$M)  | WGA Total (\$M) | AMPTP Assumptions as Reported by WGA                                   | AMPTP Avg Year as Reported by WGA (\$M) | AMPTP Total as Reported by WGA (\$M) | 3-Year Difference (WGA Total Minus AMPTP Total as Reported by WGA) (\$M; rounded) |
|-----|---|--|---|-----------------|--|---|--------------------------------------|---|
| 12b | Audit rights  | <i>[Existing provision (Art. 53.A) allows Guild to obtain "financial terms of contracts"; proposal would allow Guild to obtain "all documents, including electronic records"; this is important in order to effectively audit new media residuals]</i> | <i>[Guild did not provide estimate ; presumably no direct cost to studios, since Guild presumably pays cost of audit, and electronic records are readily available]</i> |                 |  |   |                                      | \$0   |
| 12c | Tri-Guild audit/enforcement                                     | Renew  | \$0.09  | \$0.27          | Renew  | \$0.09                                  | \$0.27                               | \$0   |
| 13  | <i>[This row is not included in the WGA's published tables]</i> |  |   |                 |  |   |                                      |   |
| 14  | Animation   | a handful of features -- initial comp and residuals  | \$0.70  | \$2.10          | No change. <i>[AMPTP rejects proposal. See refs. {11} &amp; {12}.]</i> | \$ -                                    | \$ -                                 | \$2   |
| 15  | Reality Jurisdiction  | Assumes 600 writers at \$50k at 14.4% P&H <i>[14.4% appears to be a typo for 14.5%, which makes the multiplication turn out correctly (600 times \$50K times 14.5%); also, I believe 14.5% is in fact the current P&amp;H rate)</i>                    | \$4.35  | \$13.05         | No change. <i>[AMPTP rejects proposal. See refs. {11} &amp; {12}.]</i> | \$ -                                    | \$ -                                 | \$13  |

|      | WGA Positions  | WGA Assumptions                                     | WGA Avg Year (\$M) | WGA Total (\$M) | AMPTP Assumptions as Reported by WGA   | AMPTP Avg Year as Reported by WGA (\$M) | AMPTP Total as Reported by WGA (\$M) | 3-Year Difference (WGA Total Minus AMPTP Total as Reported by WGA) (\$M; rounded) |
|------|--|---|--------------------|-----------------|--|---|--------------------------------------|---|
| 16   | P&H  | various trades                                      | \$ -               | \$ -            | Various trades   | \$ -                                    | \$ -                                 | \$0   |
| 17   | <i>[This row is not included in the WGA's published tables]</i>                          |   |                    |                 |  |   |                                      |   |
| 18   | Showrunner Training funding  | <i>[cell is blank in WGA chart]</i>                 | \$ 0.18            | \$ 0.53         | <i>[cell is blank in WGA chart]</i>  | \$ 0.18                                 | \$ 0.53                              | \$0   |
| 19-? | <i>[Unknown if there are additional rows not included in the WGA's published charts]</i> |   |                    |                 |  |   |                                      |   |
| [90] | Universal Studios 1948 to 1960   | <i>[row not included in chart of WGA proposals]</i> |                    |                 | Revise 1960 legal settlement   | \$(0.07)                                | \$(0.21)                             | \$0.2   |
| [91] | Compilation Show Rates   | <i>[row not included in chart of WGA proposals]</i> |                    |                 | Decrease current rate by 60%   | \$(0.08)                                | \$(0.25)                             | \$0.2   |
| [92] | <b>Sub-Total</b>   | <i>[row not included in chart of WGA proposals]</i> |                    |                 | <i>[cell is blank in WGA chart]</i>  | <b>\$10.62</b>                          | <b>\$31.87</b>                       | NA  |
| [93] | Promotional Uses   | <i>[row not included in chart of WGA proposals]</i> |                    |                 | Use deemed promo pays no residual (low estimate)<br><i>[unclear how this relates to row 8]</i> | \$(33.33)                               | \$(100.00)                           | \$100   |
| [94] | <b>Total</b>   | <i>[cell is blank in WGA chart]</i>                 | <b>\$50.54</b>     | <b>\$151.61</b> | <i>[cell is blank in WGA chart]</i>  | <b>\$(22.71)</b>                        | <b>\$(68.13)</b>                     | \$220   |

## Exhibit B – References

Here are the reference documents cited in this memo:

| <b>Ref.</b> | <b>Description</b>   | <b>Date</b>                       | <b>Location</b>   |
|-------------|--|-----------------------------------|---|
| {1}         | WGA description of current state of negotiations   | 12/4/07                           | <a href="http://wga.org/subpage_member.aspx?id=2628">http://wga.org/subpage_member.aspx?id=2628</a> and <a href="http://www.wgaeast.org/index.php/articles/1145?wgpf=1">http://www.wgaeast.org/index.php/articles/1145?wgpf=1</a> |
| {2}         | WGA proposed revised Sideletter on Exhibition of Motion Pictures Transmitted Via New Media | 12/5/07                           | <a href="http://www.wga.org/contract_07/W8.pdf">http://www.wga.org/contract_07/W8.pdf</a> and linked to at <a href="http://wga.org/subpage_newsevents.aspx?id=2633">http://wga.org/subpage_newsevents.aspx?id=2633</a>            |
| {3}         | WGA proposed revisions to audit provisions of MBA (Art. 53)                                | 12/5/07                           | <a href="http://www.wga.org/contract_07/W12b.pdf">http://www.wga.org/contract_07/W12b.pdf</a> and linked to at <a href="http://wga.org/subpage_newsevents.aspx?id=2633">http://wga.org/subpage_newsevents.aspx?id=2633</a>        |
| {4}         | WGA proposed new Article re non-arms length transactions (Art. 67)                         | 12/5/07                           | <a href="http://www.wga.org/contract_07/W12a.pdf">http://www.wga.org/contract_07/W12a.pdf</a> and linked to at <a href="http://wga.org/subpage_newsevents.aspx?id=2633">http://wga.org/subpage_newsevents.aspx?id=2633</a>        |
| {5}         | Negotiations Statement   | 11/29/07                          | <a href="http://wga.org/subpage_newsevents.aspx?id=2615">http://wga.org/subpage_newsevents.aspx?id=2615</a>   |
| {6}         | Variety article (McNary)   | Posted 12/4/07; printed 12/5/07   | <a href="http://www.variety.com/article/VR1117977016.html?categoryid=10&amp;cs=1">http://www.variety.com/article/VR1117977016.html?categoryid=10&amp;cs=1</a>   |
| {7}         | Variety article (McNary)   | Posted 11/29/07; printed 11/30/07 | <a href="http://www.variety.com/article/VR1117976776.html?categoryid=14&amp;cs=1">http://www.variety.com/article/VR1117976776.html?categoryid=14&amp;cs=1</a>   |
| {8}         | LA Times article   | 12/5/07                           | <a href="http://www.latimes.com/entertainment/news/business/la-fi-strike5dec05,0,6946048.story">http://www.latimes.com/entertainment/news/business/la-fi-strike5dec05,0,6946048.story</a>   |

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|------|---|--------------------------|---|
|      | (Verrier and Eller)   |                          |   |
| {9}  | Hollywood Reporter article (DiOrio)   | 12/6/07                  | <a href="http://www.hollywoodreporter.com/hr/content_display/news/e3i7c5caf365ab6a9b86a14fd76f2f0d354?pn=2">http://www.hollywoodreporter.com/hr/content_display/news/e3i7c5caf365ab6a9b86a14fd76f2f0d354?pn=2</a>                         |
| {10} | Email / blog posting from WGA Negotiating Committee member (and WGAw Board Member) Robert King                    | 12/6/07                  | <a href="http://artfulwriter.com/?p=293">http://artfulwriter.com/?p=293</a>   |
| {11} | WGA statement "The Latest Word -- AMPTP Breaks Off Negotiations "   | 12/7/07                  | <a href="http://wga.org/subpage_member.aspx?id=2643">http://wga.org/subpage_member.aspx?id=2643</a>   |
| {12} | AMPTP Statement During WGA Negotiations (reprinted in AMPTP puts their foot down in strike talks)                 | 12/7/07                  | <a href="http://weblogs.variety.com/wga_strike_blog/2007/12/amptp-puts-thei.html">http://weblogs.variety.com/wga_strike_blog/2007/12/amptp-puts-thei.html</a>   |
| {13} | Talks Day #8: Moguls Walk From Talks After Issuing An Ultimatum To Writers; Both Sides Accuse Each Other Of Lying | 12/7/07, updated 12/8/07 | <a href="http://www.deadlinehollywooddaily.com/talks-day-8-toldja-amptp-quits-talks-issues-statement-filled-with-lies/">http://www.deadlinehollywooddaily.com/talks-day-8-toldja-amptp-quits-talks-issues-statement-filled-with-lies/</a> |
| {14} | Hollywood   | Posted                   | <a href="http://www.variety.com/article/VR1117977628.html?categoryid=18&amp;cs=1">http://www.variety.com/article/VR1117977628.html?categoryid=18&amp;cs=1</a>   |

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