

From the 2008 ANA Annual Advertising Law & Business Affairs Conference

Q: How do you suggest we respond to agents now who are negotiating limited number of edits for new media?

A: The number of edits in new media may be freely bargained. There is no specific limit. While negotiations may at times be difficult, each side is free to ask for whatever best suits their respective needs. As in any free bargaining situation, each side is also free to consider other sources for their needs and if an particular agent's demands are too limiting, one can always look for talent from other sources.

Q: With regards to the SAG Pension Plans, if a non-signatory client pays the talent directly (non-celebrity), does that fall under SAG jurisdiction?

A: The answer to this question depends on understanding more facts. If the advertising agency producing a spot is a signatory, then the spot must be produced under the union agreements and the agency may have obligations to the pension plans. The specific obligations, however, would require an analysis of all the contracts involved.

Q: Why not do separate contracts, one for union activities and one for non-union activities?

A: While this may be an option, it does not necessarily solve the issue of whether the allocation of compensation between the covered and non-covered services is appropriate when the two contracts are viewed in their entirety. Put another way, whatever the compensation provided in the contract covering union activities may be, according to the collective bargaining agreement, it must reflect the "customary salary" the performer would receive for union covered services.

Q: How should agencies and advertisers deal with the new guidelines from the SAG Pension Plan setting allocations?

A: The appropriate allocation in every multi-service contract is dependent upon the facts in each case. The JPC's position is that there is no foundation or authority for the Pension Plans to issue guidelines. If guidelines are to be adopted, they must be adopted through negotiation between the Screen Actors Guild and the Joint Policy Committee. Therefore, agencies and advertisers should establish the appropriate allocation through a specific analysis on a case by case basis without regard to the guidelines.

Q: In the Booz Allen Hamilton study, did you consider different talent categories, e.g., principal vs. silent on camera?

A: The Booz Allen Hamilton study did not consider changes in talent categories per se. The models do, however, have some weighting of talent rolls for calculating residuals. Consideration, if any, of changing or expanding talent categories is a matter for the JPC to take up with the unions in formal negotiations.

Q: In the new SAG/AFTRA contract discussions, has there been any mention/discussion about local cable compensation -- will it still exist/go away?

A: The handling of local cable differs with each of the models presented. In one model, local cable compensation is determined by measured GRP's while local cable networks will be placed in tiers in another model. But compensation for local cable will most certainly remain in some form in the future.

Q: How do you bargain over the changes recommended by Booz Allen Hamilton if the suggestions are based on considerations of a balanced deal? Would it not immediately create an imbalance?

A: The "balance" required from the study was revenue neutrality in the aggregate. In other words, the total compensation paid to all actors under any new model should be the same as they would have been paid under the current contract formula. That does not mean every individual actor will receive the same compensation or that every advertiser will pay the same amount for its media buys. There will be some actors who will be paid more and some less. Likewise, the total costs to any individual advertiser may change depending upon its distribution among covered media.

Q: Re third party footage: If the footage is used in advertising, do the identifiable people need to sign a union agreement? Do the unions have jurisdiction?

A: The answer depends upon the date the footage was produced, whether it was produced under a collective bargaining agreement, and the purpose for which it was originally produced. Each situation is fact specific and a general answer cannot be provided.

Q: Can a non-signatory agency hire non-union talent for a TV commercial if the client is a signatory to the unions?

A: One is always free to hire non-union performers for a television commercial. If the advertiser or advertising agency is a signatory to the union agreements and the commercial is produced or the talent is hired within the geographic jurisdiction of the unions, however, the performers must be paid at least the minimums required under the union agreements and the production must comply with the union standards. In addition, hiring non-union performers may, in some instances, expose the signatory to

additional assessments, e.g, preference of employment or security, that should be considered in budgeting.

Q: Can a :25/:05 T.V commercial utilize both union and non-union talent, e.g., where the :25 has union talent and the :05 tag is done by a non-union member?

A: The simple answer is "yes". How the union and non-union talent should be paid, however, depends on facts specific to the two productions. Who produced them? Where were they produced? There is no bright line answer with respect to the compensation requirements.