

# **SCREEN ACTORS GUILD – PRODUCERS PENSION AND HEALTH PLANS**

## **MULTI-SERVICE COMMERCIAL ALLOCATION GUIDELINES**

### **INTRODUCTION**

**The Screen Actors Guild/Producers Pension and Health Plans** (the “Plans”) are multi-employer pension and health funds regulated under ERISA and other applicable law. The Plans are governed by a Board of Trustees comprising management and labor representatives in equal numbers, charged with a fiduciary duty to supervise collection of Plan contributions. Rates for Plan contributions are established through collective bargaining between SAG and various multi-employer bargaining groups in various industries, with contributions generally established as a percentage of the compensation payable to performers for their work.

These Guidelines have been developed through a variety of resources, including the extensive industry experience of management and labor trustees, and analysis and review by the Trustees, Plan staff and outside consultants. Many thousands of specific contracts have been reviewed and audited, and custom and past practice by advertisers and agencies – both signatory and non-signatory to SAG Agreements – have been evaluated.

When a person (often a celebrity) enters into a contract for both television commercials that are subject to SAG jurisdiction, and for such non-SAG services as personal appearances, photography for a print campaign, or radio, it is necessary to identify the amount of total compensation that is allocable to SAG-covered services, for which SAG pension and health contributions will apply as a percentage of that compensation. SAG covered compensation includes payment for the exclusive right to acting services (whether or not acting services are performed), commission payments to the performer’s agent (whether or not the commission is issued directly to the agent), products given to the performer, charitable contributions made on behalf of the performer, and royalties or other non-refundable advances. The SAG Commercials Contract provides that when non-covered services are involved and there is a dispute over the portion of the compensation allocable to SAG-covered services, the principal performer’s “customary salary” shall be given substantial consideration in resolving such dispute. Because of the unique circumstances of every endorsement agreement – including the nature of the covered and non-covered services, customary salary varies widely.

## **SCREEN ACTORS GUILD – PRODUCERS PENSION AND HEALTH PLANS**

In order to provide assistance in identifying “customary salary” in multi-service contracts, the Trustees have established Guidelines based on the wide industry experience of those Trustees and of the Plans. These Guidelines as set forth below establish the “customary salary” of a performer. The Guidelines will assist producers in understanding the amount of contributions that will be accepted by the Plans for multi-service contracts in most situations.

As noted below, these Guidelines are based on the concept that “customary salary” is most often best measured as a percentage of the total salary of the performer under a particular contract. These Guidelines are based on this concept because the Plans’ experience is that such an approach provides the most practical way to establish fair and consistent guidelines. The general acceptance of this approach by the industry for many years has reinforced the Plans’ conclusion that this measure of “customary salary” does fairly reflect industry experience.

The Trustees recognize that because there can be such a wide range of covered and non-covered services, contractual provisions and performer histories, there may be circumstances where the “customary salary” should be higher or lower than these Guidelines would indicate. For example, there may be cases where television advertising may be dominant and the non-covered services may be minimal and in such cases, allocations from 60% to 90% or higher may be appropriate. The opposite may also be the case; where the television services are contractually limited and the non-covered services are substantial, a lesser allocation may be appropriate.

These Guidelines provide an important indication to producers regarding those situations in which contributions to the Plans may be considered by the Plans to be inadequate. In those situations, producers will therefore have an opportunity to bring to the attention of the Plans those factors that the producers believe warrant different contribution levels. In making the allocation, if a Producer believes that the application of these Guidelines is inappropriate in a particular situation, or has questions about the application or appropriateness of the Guidelines in particular situation, the Producer should bring those concerns to the attention of the Plans. In particular in the case of music tour or race car driver endorsement contracts meriting special consideration, producers may wish to contact the Plans.

# **SCREEN ACTORS GUILD – PRODUCERS PENSION AND HEALTH PLANS**

## **GUIDELINES**

“Commercials” as defined by the Screen Actors Guild Commercial Contract may include, but are not limited to: television and in-cinema advertising (film or tape), internet, in-store/television unit, internal usage, and commercials made for or designed for exhibition on New Media, etc. In addition, commercial services include the right to produce and use commercials and to hold the performer to exclusivity, whether or not that right is exercised.

- A. 100% of contract amount is reportable where compensation paid is solely for SAG commercial services.
- B. As a minimum, 90% allocation for combined SAG commercial services and radio services, subject to adjustment based on proportion of television to radio usage. An allocation of 80% or less may be considered based on contract specification of usage
- C. As a minimum, 50% allocation for a multi-service contract where SAG commercial services are involved with other non-covered services (including radio services). This allocation also applies where no SAG commercials are produced or used in a given period, but the employer has the right to do so and to hold the performer to exclusivity. Higher allocation may be appropriate in cases where SAG commercial services are involved in a significant amount and other non covered services are minimal.
- D. As a minimum, 40% allocation for a multi-service contract of currently active athletes who endorse a product/brand with which they are strongly associated and who generally wear the corporate logo/image on their clothes or equipment. This allocation does not apply to athletes advertising products that are unrelated to their sport; nor does it apply to retired or inactive athletes regardless of the product/brand they are advertising. Guideline C would be applicable in those cases.
- E. As a minimum, 40% allocation for a multi-service contract of print and fashion models advertising beauty products, clothing, etc., or other similar products. This allocation does not apply to actors performing as models in commercials. Guideline C would be applicable in those cases.

## **SCREEN ACTORS GUILD – PRODUCERS PENSION AND HEALTH PLANS**

- F. As a minimum, 40% allocation for commercials used exclusively in a contiguous regional foreign market (such as East Asia), but which is short of worldwide. Any distribution for territories greater than regional market remains subject to the minimum 50% allocation.
  
- G. As a minimum, 40% allocation for performers in commercials for products or product lines which the performer has had an active role in developing and often features the performer's name or image on the product or product line.
  
- H. As a minimum, 40% of any upfront non-refundable guarantee to performers appearing in commercials for products or product lines, where performers have a financial interest in the sale of products or product lines, and other non-covered services are involved.