

ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS  
15301 Ventura Boulevard, Building E, Sherman Oaks, CA 91403  
Tel: 818.995.3600 • Fax: 818.285.4450 • [www.amptp.org](http://www.amptp.org)

Carol A. Lombardini  
President

Direct: 818.935.5930

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Matthew D. Loeb  
International President  
International Alliance of Theatrical Stage Employees and  
Moving Picture Technicians, Artists and Allied Crafts  
of the United States, its Territories and Canada  
207 West 25th Street, 4th Floor  
New York, New York 10001

**Re: Exhibition of Motion Pictures Transmitted Via New Media**

Dear Matt:

This Sideletter confirms the understanding of the International Alliance of Theatrical Stage Employees (“the Union”) and the Alliance of Motion Picture and Television Producers, on behalf of the Producers it represented in negotiations for a successor agreement to the 2015 Producer - IATSE Basic Agreement (collectively “the parties”), concerning the application of the 2018 Producer - IATSE Basic Agreement (hereinafter “the Basic Agreement”) to the exhibition on the Internet, mobile devices (such as cell phones or PDAs) and any other new media platform known as of August 1, 2009 (hereinafter collectively referred to as “New Media”) of theatrical and television motion pictures, the principal photography of which commenced on or after February 1, 1973.<sup>1,2</sup>

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<sup>1</sup> The payments provided for under this Sideletter shall only be due in connection with those theatrical and television motion pictures to which the Supplemental Markets provisions of the Basic Agreement apply. It is agreed that the proration provisions, and the understandings set forth in subparagraph (g) of the Supplemental Markets provision, shall apply to any payments due under this Sideletter.

<sup>2</sup> For “feature length primarily animated motion pictures,” as that term is defined in subsection (f)(1) of Article XXVIII of the Basic Agreement, this understanding applies only to those feature length primarily animated motion pictures produced and/or released on or after November 1, 1992, as provided in Article XXVIII(f)(2).

**1. If the Consumer Pays**

**a. License for Limited Period or Fixed Number of Exhibitions**

When the subscriber pays for the program either on a subscription or per-picture basis, and when the payment is in exchange for the right to view the motion picture for a fixed and limited period of time or a fixed number of exhibitions, the Producer shall pay to the Motion Picture Industry Pension and Health Plans five and four-tenths percent (5.4%)<sup>3</sup>,<sup>4</sup> of “Producer’s gross,” as defined in Paragraph 3 below,<sup>5</sup> subject to the Producer’s right to prorate on a comparable basis as provided in Article XXVIII of the Basic Agreement.

The parties agree that the residuals due under this Paragraph 1 .a. shall be payable in the same manner and to the same extent as applicable to pay television and pay-per-view as provided in the following provisions of the Basic Agreement (subject to conforming changes as necessary):

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<sup>3</sup> In the case of feature length primarily animated motion pictures, the percentage payable shall be two percent (2%) for those titles listed in subparagraph (B) of Article XXVIII(f)(2)(ii) and shall be three and six-tenths percent (3.6%) for any such motion picture which has or had its initial theatrical release on or after November 1, 1992.

<sup>4</sup> Should a Producer enter into a license agreement on or after August 1, 2015 with respect to motion pictures covered under this Basic Agreement and/or under any prior Basic Agreement that requires Post ‘60s and/or Supplemental Market payments and that provides a minimum guarantee or non-returnable advance to the Producer in exchange for theatrical distribution rights as well as distribution rights of the theatrical motion picture in one or more other markets for which payments are due under this Agreement, including under this Sideletter, the percentage payable shall be four and one-half percent (4.5%) of the “Producer’s gross” as set forth in Article XXVIII.A.

<sup>5</sup> As bargaining history, this language is based upon the following model: studio licenses to Movielink (formerly know as Moviefly) the right to transmit the motion picture on the Internet to the viewer who pays Movielink on a subscription or per-picture basis. Such payment would enable the viewer to view the motion picture for a fixed and limited period of time or limited number of exhibitions. For example, if Columbia Pictures, through Columbia-TriStar Home Entertainment, licenses to Movielink the right to exhibit a Columbia Pictures film, the residuals shall be based upon 100% of the license fee paid by Movielink to Columbia-TriStar Home Entertainment for such picture.

- Article XXVIII(b)(3)(iv) (foreign receipts);
- Article XXVIII(b)(7) and (b)(10) (time of payment, payment requirements and reporting);
- Article XXVIII(b)(11) and (12) (transfer and assumption); and
- Article XXVIII(c), (d), (e), (f) and (g).

**b. Paid Permanent Downloads (“Download-to-Own” or “Electronic Sell Through”) (“EST”)**

The following shall apply only to motion pictures released after August 1, 2009:

If the consumer pays for an EST copy of a theatrical motion picture, the Producer shall pay to the Motion Picture Industry Pension and/or Health Plans 8.1% of 20% of “Producer’s gross,” as that term is defined in Paragraph 3 below, for the first 50,000 units and 14.625% thereafter.<sup>6</sup>

If the consumer pays for an EST copy of a television motion picture, the Producer shall pay to the Motion Picture Industry Pension and/or Health Plans 8.1% of 20% of “Producer’s gross,” as that term is defined in Paragraph 3 below, for the first 100,000 units and 15.75% thereafter.<sup>6</sup>

**2. If the Consumer Does Not Pay**

Should the Producer stream a theatrical motion picture on a free-to-the-consumer basis on advertiser-supported services transmitted via the Internet or mobile device, it shall pay to the Motion Picture Industry Pension and/or Health Plans 5.4% of “Producer’s gross,” as defined in Paragraph 3 below.<sup>6</sup>

**3. “Producer’s Gross”**

**a. Definition**

The term “Producer’s gross,” for purposes of all reuses in new media of theatrical and television motion pictures made for traditional media (each

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<sup>6</sup> See footnote no. 4 above.

hereinafter referred to as “Such Picture”), shall be as defined in Article XXVIII(b)(1)(ii), except as provided in Article XXVIII.A.(a).<sup>7</sup>

When the “Producer’s gross” derived from new media exploitation is received from a related or affiliated entity that acts as the exhibitor/retailer of such Picture, then the “Producer’s gross” received by the Producer from the licensing of such rights shall be measured by the exhibitor/retailer’s payments to unrelated and unaffiliated entities in arms’ length transactions for comparable pictures, or, if none, then the amounts received by the Producer from unrelated and unaffiliated exhibitors/retailers in arms’ length transactions for comparable pictures, or, if none, a comparable exhibitor/retailer’s payments to comparable unrelated and unaffiliated entities in arms’ length transactions for comparable pictures.

b. Agreements and Data

On a quarterly basis commencing January 1, 2010, within ten (10) business days after such request, the Producer shall provide for inspection by IATSE’s designated employee or auditor, at Producer’s premises in Los Angeles, full access<sup>8</sup> to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered pictures that were entered into during the immediately preceding quarter. In any subsequent quarterly inspection, the IATSE’s designated employee or auditor may re-inspect any agreements previously inspected and inspect any agreements not previously inspected.

Upon request, in a manner to be mutually agreed upon in good faith, the Producer shall expeditiously provide, or make available, to the IATSE data in its possession or control, or the possession or control of its related distribution entities, regarding the new media exploitation of covered pictures, such as number of downloads or streams by source and ad rates, where relevant to the payments required under this Sideletter.

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<sup>7</sup> For sake of clarity, “Producer’s gross” specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.

<sup>8</sup> Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents.

c. Recordkeeping and Reporting

Payment for exploitation of covered pictures in new media shall be due sixty (60) days after the end of the quarter in which the “Producer’s gross” from such exploitation is received. The Producer shall accompany such payments with reports regarding the “Producer’s gross” derived from such exploitation, which shall be specified by medium and source whenever reasonably possible and will be separated from revenues derived from exploitation of Such Pictures in traditional media. Along with such payments, the Producer shall provide the IATSE with unredacted copies of all corollary distributor’s, subdistributor’s, and exhibitor’s statements relating to the reported “Producer’s gross.”

When the Producer allocates revenues between new media rights and other rights in any Such Picture, among new media rights in multiple Such Pictures, or otherwise, it shall specify such allocation.

d. Confidentiality

The information provided to the IATSE by the Producer will be treated as confidential and appropriate arrangements will be made to safeguard the confidentiality of that information.

e. Reservation of Rights

With respect to theatrical and television motion pictures, the Producer has agreed to a separate payment for this use in new media because exhibition in new media is at this time outside the primary market. The Producer reserves the right in future negotiations to contend that the pattern of release has changed so that this use constitutes or is a part of the primary market of distribution of theatrical or television motion pictures and that, therefore, no additional payment should be made with respect to the exhibition of theatrical motion pictures or television programs (including those covered by this Agreement) in new media. The IATSE reserves the right in future negotiations to contend to the contrary, and further to assert that regardless of whether other exhibitions are or have become part of the primary market, residual provisions for theatrical or television motion pictures so exhibited should be improved.

4. Sunset Clause

The parties recognize that this sideletter is being negotiated at a time when the business models and patterns of usage of theatrical and television motion pictures in New Media are in the process of exploration, experimentation and innovation. Therefore, all provisions of this sideletter expire on the termination date of the Basic Agreement and will be of no force and effect thereafter. No later than sixty (60) days before that expiration date, the parties will meet to negotiate new terms and conditions for reuse of theatrical and television motion pictures in New Media to be in effect thereafter.

The parties further acknowledge that conditions in this area are changing rapidly and that the negotiation for the successor agreement will be based on the conditions that exist and reasonably can be forecast at that time. For example, the parties acknowledge that with respect to the formula in Paragraph 1.b. for electronic sell-through of theatrical and television motion pictures, the growth of electronic sell-through could adversely impact traditional home video sales. In future negotiations, the parties agree that the criteria to be considered in good faith in determining whether the electronic sell-through residual should be increased or decreased include patterns of cannibalization of the home video market and changes in the wholesale price.

Sincerely,



Carol A. Lombardini

**ACCEPTED AND AGREED:**



Matthew D. Loeb  
International President