

ATA Responses to WGA Proposals

March 12, 2019

WGA Proposal	ATA Response/Counterproposal
<p>1. CONFLICT OF INTEREST</p>	
<p>a. No Agency shall have an ownership or other financial interest in, or shall be owned by or affiliated with, any entity or individual engaged in the production or distribution of motion pictures.</p> <p>b. No Agency shall have an ownership or any other financial interest in, or shall be owned by or affiliated with, any business venture that would create an actual or apparent conflict of interest with Agency’s representation of a Client.</p>	<p>An agent shall be permitted to represent a writer client in connection with the engagement by or sale of rights to an affiliated entity, so long as, prior to the submission of such writer client by the agency for such engagement or sale of rights:</p> <ul style="list-style-type: none"> (a) the agent informs such writer client of the existence and nature of the agency’s relationship with such affiliated entity; (b) the agent advises such writer client that the writer client has no obligation to be submitted to or accept engagement by or sale of rights to such affiliated entity; (c) the agent advises the writer client of his or her right to have the material or services offered to other bona-fide studios simultaneously with offering the material or services to the affiliate; (d) the agent advises the writer client that the writer client may seek independent counsel in connection with the applicable project, at any point in the process prior to the writer client entering a transaction with an affiliate; and (e) the writer client, after being informed of the foregoing, gives consent to such submission. <p>An agent shall not be permitted to represent a client in connection with the engagement by or sale of rights to an affiliated entity unless:</p> <ul style="list-style-type: none"> (a) the agent reasonably believes that such engagement or sale of rights is in the best interests of such writer client; (b) the terms of such engagement or sale of rights are negotiated in good

	<p>faith and on an arm’s length basis;</p> <p>(c) the agency and affiliated entity are each in compliance with the following:</p> <ul style="list-style-type: none">(i) the individuals primarily involved in the day-to-day operations of the agency shall be different than the individuals primarily involved in the day-to-day operations of the affiliated entity, and vice versa;(ii) the agency, including any individual primarily involved in the day-to-day operations of the agency, shall not participate in any of the affiliated entity’s decisions regarding the engagement of or sale of rights other than in the agency’s capacity as a representative of its clients consistent with the fiduciary duties to such clients;(iii) the agency shall maintain the confidentiality of its clients’ confidential information from such affiliated entity, in the same manner it maintains the confidentiality of such information from an unaffiliated entity; and(iv) the agency shall create and make available a written conflicts policy reflecting the above, and have annual training on conflicts for all employees. <p>No writer client shall be required (formally or informally) to work with an agent’s affiliates. In the event that a writer client advises the writer client’s agent that the client does not want to be submitted to, or enter into an engagement by, or sale of rights to, an affiliated entity, the agent shall follow the writer client’s directive, and such election by the writer client shall have no detrimental impact on the agency’s representation of such writer client.</p>
<p>c. No Agency shall derive any revenue or other benefit from a Client’s involvement in or</p>	<p>Other than as permitted by this agreement, an agent shall not derive any revenue or other benefit from a writer client’s employment on a motion picture project, other than a percentage commission based on the writer client’s</p>

employment on a motion picture project, other than a percentage commission based on the Client's compensation.

compensation or fee.

An agent shall be permitted to receive compensation from persons other than the agent's writer client in connection with a packaged television (including OTT and other internet-delivered serial motion pictures) program. If an agent receives compensation from or in connection with a packaged television program computed on a basis other than a percentage of the compensation paid to the writer client of the agent involved with such packaged television program, then the agent shall receive no commissions on the compensation of the writer client for that client's writing services or literary materials supplied to such packaged television program.

An agent shall be permitted to procure employment for a writer client on a packaged television program so long as:

- 1) The writer client is the sole initiating element of the package, and the writer client consents to the program being packaged; or
- 2) The agent adds a writer client as an element of an existing package (including pairing a writer client to develop a new program with another client when that other client has an overall deal including packaging on new programs), and the writer client consents to participation in the packaged television program.

Prior to submitting a writer client to a packaged project (i.e., a project where the agency has already been granted a packaging fee at the time of submission), an agent shall:

- 1) Inform the writer client of the existence of the package;
- 2) Advise the writer client that he/she may choose to be submitted to the packaged project; and
- 3) Receive the writer client's consent to proceed with such submission, but only after informing the client of the foregoing.

	<p style="text-align: center;">4) An agency will provide a client designated to be a packageable element of a packaged television program with the agreement containing the terms of the agency’s package agreement.</p> <p>A writer client shall have the right to know all facts necessary to making an informed choice as to whether to participate in a packaged television program, and, absent the writer client’s specific authorization, no writer client’s agreement or pitch will be delayed due to agency package negotiations.</p> <p>WGA and ATA will work in good faith to modernize Exhibit N to the AMBA.</p> <p>In addition to packaged television programs, an agency shall be permitted to perform feature film packaging, financing, and sales services on behalf of a writer client so long as:</p> <ol style="list-style-type: none"> 1) The agency fully describes the fees for such services to the writer client in advance of incurring them; and 2) The writer client has consented to proceed with the agency’s performance of services.
<p>d. No Agency shall accept any money or thing of a value from the employer of a client.</p>	<p>ATA cannot respond to this proposal without further information because we don’t fully understand it, nor do we understand the intended breadth of its application. <i>E.g.</i>, it appears on its face to prohibit representation by agencies of any clients (including other writer clients) who might employ writers.</p>
<p>e. Agency shall disclose to Client any fact or relationship creating an actual or apparent conflict of interest.</p>	<p>An agent shall make the disclosures required elsewhere under this agreement.</p> <p>In addition, an agent shall disclose any actual conflict of interest by the agency that employs him or her, known by the agent and not otherwise addressed in this agreement, which a reasonable writer client would consider material in evaluating a proposed engagement or sale of rights on the writer client’s behalf.</p>
<p>2. AGENCY-WRITER RELATIONSHIP</p>	

<p>a. Agency shall at all times act as a fiduciary of Client, and shall comply with all fiduciary duties imposed by a statute or common law.</p>	<p>Agreed in principle.</p>
<p>b. Agency's representation of a Client shall not be influenced by its representation of any other Client.</p>	<p>At our last meeting, WGA stated it would be modifying this proposal and submitting an updated proposal for ATA's review. We have not received an updated proposal, and so reserve comment.</p>
<p>c. Agency shall promptly disclose to Client all inquiries, offers and expressions of interest regarding employment or sale or option of literary material, and shall keep Client apprised of the status of all negotiations.</p>	<p>An agent shall timely disclose to the writer client after the agent's receipt thereof, all bona-fide offers of engagement of or sale of rights by such client that are within the scope of the agent's representation of such client unless the writer client has advised, or the agent knows with reasonable certainty, that such writer client would not consider such an offer given the totality of circumstances.</p> <p>At the written request of the writer client, an agent shall as soon as reasonably practicable following such request:</p> <ul style="list-style-type: none"> (i) provide the writer client, in writing, information stating what active submissions the agency has made on the client's behalf within the past six months; (ii) inform the writer client of the status of all negotiations made on behalf of the client within the past six months; and (iii) provide the writer client with a copy of all executed written agreements (to the extent such agreements are in agent's possession) with respect to the engagement of or sale of rights by such client.
<p>d. Agency shall maintain confidentiality with respect to</p>	<p>Agreed in principle.</p>

<p>Client's employment and financial affairs.</p>	
<p>e. Agency shall not submit Client for employment where the employer or producer has not yet secured underlying rights necessary for the assignment.</p>	<p>At our last meeting, WGA stated it would be modifying this proposal and submitting an updated proposal for ATA's review. We have not received an updated proposal, and so reserve comment.</p>
<p>f. Agency shall be responsive and professional in communicating with Client.</p>	<p>Agreed in principle.</p>
<p>3. AGENCY COMPENSATION</p>	
<p>a. Agency's commission shall be limited to ten percent [10%] of Client's gross compensation, including Client's profit participation.</p> <p>b. Agency's commission shall not reduce Client's compensation below MBA scale compensation.</p> <p>c. Agency shall not circumvent limits on commissions by charging fees for other services.</p>	<p>Any commission charged or collected by an agency from a writer client in consideration for services in connection with procuring the employment of such writer client for a particular project shall not exceed 10% of the writer client's gross compensation, including writer client's profit participation.</p> <p>Nothing in this provision is intended to prohibit an agency from obtaining reimbursement from a writer client for actual out-of-pocket expenses advanced on behalf of the writer client at the client's request, or to prevent an agency from receiving compensation for work performed on behalf of clients other than writers.</p> <p>We note that with regard to (3)(b), at our last meeting, WGA stated it would be eliminating the proposal but did not provide the promised written confirmation of the same.</p>
<p>d. Agency shall provide quarterly to Client and to the Guild an itemized</p>	<p>All monies payable or otherwise belonging to the writer client which are received by an agency: (i) shall be faithfully accounted for by the agency; (ii)</p>

<p>statement showing in standardized electronic format (i) all compensation received by or on behalf of Client; and (ii) all commissions and other revenue received by Agency related to its representation of Client. Client and Guild shall have the right to audit such statements.</p>	<p>shall be held in trust on behalf of such client in a trust account until disbursed to or at the express written direction of the writer client; and (iii) shall not be commingled with any monies belonging to the agency.</p> <p>Monies (other than monies received by the agency in escrow or which are otherwise to be held by the agency in accordance with any applicable agreements to which the writer client is a party or that the agency is legally required to withhold (e.g., wage garnishment or levy)) shall be paid to the writer client or its designee as directed by the client in writing as soon as reasonably practicable after receipt thereof by the agency, provided that the agency shall be permitted to first deduct from such monies any commission payable to the agency by such client or any other monies owing from such client to the agency.</p> <p>Agent shall provide timely statements of client earnings to its writer clients.</p> <p>Upon the written direction of a writer client, agent shall provide a copy of the same to the Guild.</p> <p>ATA and its member agencies shall work with the Guild with the goal of developing an automated system for providing such statements quarterly to client, and upon client written direction, to the Guild.</p> <p>In the event a writer client directs payments of monies to a third party (e.g., the writer client’s business manager), writer client shall be obligated to provide the agent, upon agent’s written request, a statement showing all amounts received by the writer client with respect to a particular engagement or sale of rights procured by agent in connection with the representation of such client.</p>
<p>4. NOTIFICATION TO GUILD</p>	
<p>a. Agency shall provide the Guild with a copy of the agreement or essential deal terms of any</p>	<p>Upon the written request of a writer client, and in the absence of any confidentiality requirements prohibiting disclosure, agent shall provide the Guild with copies of any executed agreement (that the agent has in his/her</p>

<p>engagement or other transaction involving a Client no later than 10 days after the earlier of (i) the existence of a binding contractual commitment; or (ii) the commencement of Client’s writing services.</p>	<p>possession) engaging the writer client’s services or acquiring the writer client’s written materials.</p>
<p>b. Agency shall provide the Guild with immediate notice of Client's commencement of services or delivery of literary material, or other material fact triggering compensation, and a copy of any invoice or other documentation relating to the payment obligation.</p>	<p>ATA and its member agencies will work with the Guild with the goal of developing a universal payment notification/invoicing system that would provide writer clients (and, upon writer client consent, the Guild) with copies of invoices relating to payment obligations in favor of writer clients.</p>
<p>c. Agency shall provide the Guild with copies of all representation agreements with Client.</p>	<p>Agreed in principle.</p>
<p>5. ENFORCEMENT OF MBA AND CLIENT'S INDIVIDUAL WRITING AGREEMENTS</p>	
<p>a. Agency shall not encourage Writer to violate any provision of the MBA.</p>	<p>Agreed in principle.</p>
<p>b. Agency shall zealously advocate</p>	<p>During the course of negotiations for potential engagement or sale of rights, an</p>

<p>for Client’s best interests in all aspects of the employment relationship, including but not limited to the following:</p> <ul style="list-style-type: none"> i. Advocating against Client's performance of uncompensated or speculative writing services; ii. Advocating in favor of multiple steps in theatrical deals; and iii. Protecting Client from abusive hiring practices such as sweepstakes pitching 	<p>agent shall represent the writer client’s best interests and shall use reasonable efforts to:</p> <ul style="list-style-type: none"> (i) timely obtain compensation for the writer client for all services performed by the writer client; (ii) advise the writer client of the disadvantages of accepting uncompensated or speculative services; and (iii) advise the writer client if the agent knows of any unlawful hiring or other employment practices, that reasonably could be expected to materially and adversely affect the writer client or that client’s interests, by the person or entity engaging the writer client.
<p>c. Agency shall be aware of and monitor the contractual deadline for the payment of all compensation to the Client and shall immediately notify the Guild in the event a payment is late.</p>	<p>Once engagement or sale of rights has been procured for a writer client, an agency shall use reasonable efforts to:</p> <ul style="list-style-type: none"> (i) monitor the contractual deadline for the payment of compensation to the writer client in connection therewith; (ii) notify the writer client as soon as reasonably practicable after discovery of any material uncured default in the timing or amount of such payment; (iii) notify the counterparty of any such default as soon as reasonably practicable following a request therefor by the writer client; and (iv) timely advise the writer client of his or her right to inform the Guild of any such uncured material breach (and provide such notice to the Guild if

	the writer client, in writing, requests the agent do so).
d. Agency shall cooperate fully with the Guild in any investigation or contract enforcement action undertaken on behalf of a Client.	Agreed in principle, subject to client consent and legal obligations. An agent may not use the fact that such investigation involves an affiliate of the agency as a basis for its refusal to cooperate in such investigation.
e. Agency shall not encourage Client to violate any Guild rule.	Agreed in principle.
6. NON-DISCRIMINATION AND DIVERSITY	
a. Agency shall comply with all state and federal anti-discrimination laws in its selection and representation of Clients.	Agreed in principle. In addition to the requirements under applicable law, an agency: <ul style="list-style-type: none"> (i) shall not refuse to represent any potential writer client on the basis of such potential writer client’s membership in a protected class, including, but not limited to, race, color, religion, creed, national origin, sex, sexual orientation, gender identification, marital status, military or veteran status, disability or medical condition; (ii) shall use good faith efforts to refer qualified diverse writer clients for the engagement of or sale of rights; and (iii) shall consult with its agents regarding diversity as an important factor in the selection, representation, and referral of writer clients. If requested, ATA and member agencies will actively participate in the Guild’s diversity programs.
b. Agency shall not, without prior disclosure to Client, procure any	Agreed in principle.

<p>employment where there is a reasonable basis to believe that the Client will be subjected to a hostile work environment or other forms of workplace harassment.</p>	
<p>c. Agency shall take steps to ensure the referral of qualified diverse writers for any open writing assignment.</p>	<p>Agreed in principle.</p>
<p>d. Agency shall consult with their Clients regarding diversity as a factor in their procurement of employment.</p>	<p>Agency shall consult with its agents regarding diversity as an important factor in the selection, representation, and referral of writer clients.</p> <p>Agents shall consult with their writer clients who are in a position to engage other talent (e.g., showrunners) regarding diversity as an important factor in the employer client’s selection of employees.</p> <p>Guild shall encourage its members to engage diverse writers.</p>
<p>e. Agency shall provide the Guild with an annual report summarizing Agency's diversity efforts and reflecting, through anonymized data, the employment history of writers represented by the Agency, broken down by membership in statutorily protected classes.</p>	<p>Guild and agency shall cooperate to develop annual reporting that is shared both ways (Guild to agency, and agency to Guild) regarding diversity efforts and reflecting, through anonymized data, the employment history of writers represented by the Guild and agency, respectively.</p>
<p>7. ENFORCEMENT OF AMBA</p>	

<p>Streamline arbitration process in the AMBA to provide for enforcement of its provisions through expedited arbitration through a sole neutral arbitrator. Enhance penalties for breach of AMBA, including loss of franchise for serious violations. Revise list of approved arbitrators.</p>	<p>Develop efficient grievance process, with an expedited track for appropriate cases.</p>
<p>8. TERM OF AMBA</p>	
<p>Term of the new AMBA shall be three years, provided that it shall thereafter renew for one-year periods unless either party gives written notice of termination at least 60 days before the expiration date then in effect.</p>	<p>AMBA shall continue in effect for a minimum of four years and shall continue thereafter unless terminated by either party. Termination shall be effective 180 days after written notice of termination is delivered. Parties shall negotiate in good faith for a new AMBA during the period between delivery and effective date of termination notice.</p>
<p>ADDITIONAL PROPOSALS</p>	
	<p>The ATA and WGA will activate a standing committee to address matters of interest to both parties, including, but not limited to, industry best practices and any concerns regarding the AMBA. The standing committee will meet at least quarterly and report results to all parties.</p>
	<p>ATA will serve as a resource to assist the Guild in advance of, and in connection with, its collective bargaining negotiations.</p>