

SAG-AFTRA Commercials Contract Modified to Provide “Free Bargaining” as to Compensation for Low-Budget Digital Productions

The Bottom Line

- *Effective immediately, the SAG-AFTRA Commercials Contract has been modified to include a waiver allowing for “free bargaining” of economic terms for digital productions with a budget of \$50,000 and under. A mid-contract waiver of this magnitude is rare and signals a clear recognition by SAG-AFTRA and the JPC that immediate relief was necessary for signatory agencies to compete on the digital front.*
- *As SAG-AFTRA and the JPC put it in their joint statement: “After listening to the concerns of our signatories and with the JPC’s member needs in mind, both organizations have decided to offer a waiver for commercial digital low budget productions.”*

Responding to the increased concerns voiced by advertising agencies bound by the 2016 SAG-AFTRA Commercials Contract (Commercials Contract) that they cannot compete on the digital front with their non-union counterparts, on October 19, 2017, SAG-AFTRA and the Joint Policy Committee on Broadcast Talent Union Relations (JPC) issued a joint statement announcing that, effective immediately, the Commercials Contract has been modified to include a waiver for commercial digital low-budget productions.

The Waiver

The chief concern leading to the creation of the waiver was the comparatively high cost of talent associated with an increased demand by clients for low-budget digital commercial production. The new waiver seeks to address those concerns by allowing for “free bargaining” with talent for economic terms (i.e., there is no required minimum rate of pay), with union or non-union talent, in connection with digital commercial productions with budgets of \$50,000 and under. Digital commercial productions with budgets over \$50,000 are still required to be paid at rates not less than the minimums set under the Internet and/or New Media provisions of the Commercials Contract. As stated in the SAG-AFTRA/JPC joint statement: “The waiver . . . [is intended] to offer relief to ad agencies that are losing clients to non-signatory ad agencies on digital work. Our hope is that they will now be able to retain this work and maintain those highly creative and productive relationships with advertisers.”

The specific provisions of the waiver are as follows:

- It applies to commercials made for the Internet and/or new media with production budgets of \$50,000 or less.
- It applies to both principal performers and extra performers.
- The parties can bargain freely as to session and usage fees and the number of commercial edits (in a manner similar to a non-union agency negotiating with non-union talent).

- The maximum period of use is one year, after which the signatory producer must re-negotiate with the talent.
- No exclusivity may be required of the talent (i.e., the talent may work competitively while under contract with the signatory producer).
- No fines for engaging non-union talent.
- Pension and health contributions at the same 18% rate that applies to broadcast commercials must be paid by the signatory producer with respect to the agreed-upon compensation.
- Use of the commercial in media covered by SAG-AFTRA other than Internet or new media requires consent of the talent and payment of the applicable Commercials Contract rates.
- All other terms and conditions of the Commercials Contract apply except as modified by the waiver.

What is not clear from the terms of the waiver is if “production” refers to one commercial or any number of commercials bundled in one production. That will likely be clarified in the weeks to come as the waiver takes shape in practice, though it should be noted that there is no obligation on the part of the signatory producer to submit verification of budgets to SAG-AFTRA upfront, but only upon request.

The new digital waiver may also have been an attempt by both SAG-AFTRA and the JPC to stem the tide of what both sides may have feared was coming – the potential termination and withdrawal by numerous signatory agencies (and advertisers) at the expiration of the current Commercials Contract on March 31, 2019. With so much at stake in terms of both SAG-AFTRA and the JPC needing to maintain their collective constituency, the digital waiver may or may not portend additional waivers or modifications beneficial to signatory agencies and advertisers in the next round of collective bargaining, but at the very least may spark further interest on the part of signatory agencies in voicing their concerns to SAG-AFTRA and the JPC in order to further level the playing field with their non-union counterparts.

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