

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

SAG-AFTRA COMMERCIALS CONTRACT'S LOW-BUDGET DIGITAL WAIVER UPDATED FOR 2020

SAG-AFTRA and the Joint Policy Committee on Broadcast Talent Union Relations (JPC) made a splash two years ago when they modified the 2016 SAG-AFTRA Commercials Contract (Commercials Contract) by introducing the “Low Budget Digital Waiver” (2017 LBD Waiver).

The 2017 LBD Waiver permits signatory advertising agencies to negotiate more flexible rates with talent when producing low budget digital commercials, helping to ease the frustrations of signatory agencies trying to compete with their non-union counterparts in the growing digital advertising space.

For information on the initial issuance of the 2017 LBD Waiver, please see our previous alert, [“SAG-AFTRA Commercials Contract Modified to Provide ‘Free Bargaining’ as to Compensation for Low Budget Digital Productions.”](#)

Just as the signatory agencies were lauding the impact of the 2017 LBD Waiver for helping to level the digital playing field, SAG-AFTRA and the JPC announced modifications to it, resulting in the new 2020 Low Budget Digital Waiver (2020 LBD Waiver), which took effect January 1, 2020. Early reviews on the industry side seem mixed at best.

BUDGET CHANGES

The 2017 LBD Waiver allowed signatory agencies to bargain

THE BOTTOM LINE

Effective on January 1, 2020, the LBD Waiver has been modified, most significantly, to shift the budget threshold from \$50,000 per commercial, regardless of the number produced during any one production day, to a budget of \$100,000 in the aggregate per production day. It is too early to say what the net impact of the new waiver will be, but simple math suggests that the new provisions may result in a decrease in digital content being produced under the new 2020 LBD Waiver due to the budgetary restrictions of each production day. Consequently, these modifications could cause frustration to signatory agencies whose clients continue to demand a high volume of low budget digital content. Agencies and their advertiser clients may, once again, find themselves fighting for more modifications to remain competitive.

rates freely with talent to appear in commercials intended for use solely on the Internet and/or new media, with a production budget of \$50,000 or less. Importantly, the \$50,000 budget was determined on a per-commercial basis, meaning that agencies could bundle any number of commercials into one production day with each unique commercial having its own \$50,000 budget cap.

The most notable change under the new 2020 LBD Waiver is that the production budget calculation has shifted from \$50,000 per commercial to \$100,000 per production day, with

talent usage fees (but not session fees) as well as editing and other post-production fees no longer a part of the budget.

Will the new budget calculation result in agencies having more latitude to create higher production-value digital content?

Think of it this way: Your kid asks for money to go shopping at the mall, and you say he can spend either \$50 per store, in as many stores as he wants — or he can spend \$100 for the entire day, regardless of the number of stores. Which deal will he take? Unless

>> continues on next page

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

he only needs to buy one pricier item, he would probably prefer a budget of \$50 per store.

Applying the mall hypothetical to the 2020 LBD Waiver, it becomes clear that, while the new budget calculation may encourage agencies to create higher-value productions, it also imposes financial constraints upon agencies who seek to produce even a moderate volume of digital commercials in a given day.

For example, under the 2017 LBD Waiver, four commercials could be made in one day at a budget of \$50,000 each; but under the new 2020 LBD Waiver, each of the four commercials could be budgeted at only \$25,000 per commercial — reducing the production value of each by half.

Agencies tasked with creating a high volume of digital content may prefer the flexibility to produce any number of different commercials on one production day at \$50,000 per commercial, as opposed to producing under an aggregate \$100,000 cap covering all commercials produced during one production day.

SESSION FEES AND OTHER CHANGES

The new 2020 LBD Waiver also now requires that talent be paid session fees not less than scale (with use fees still being negotiable) when the qualifying low-budget digital production is shot on the same day as a production that is not subject to the waiver, which is defined as a “Connected Shoot.” In “Unconnected Shoots,” meaning shoots involving only qualifying low-budget digital productions, talent session fees are still negotiable, as are use fees.

As with the budget shift, adding scale session fees for each commercial produced on the same day during a “Connected Shoot” may, in such instances, increase talent costs as compared to the 2017 LBD Waiver.

Other changes to the 2017 LBD Waiver include the following:

- >> No celebrities may be used under the 2020 LBD Waiver (which was the practical effect of the 2017 LBD Waiver, since talent fees were included within the \$50,000 production budget cap).
- >> Overtime hourly rates are negotiable for Unconnected Shoots, but must

be paid based on the Commercials Contract rates for Connected Shoots.

- >> Edit fees are negotiable for principal performers, but in the case of extras used in a Connected Shoot, the extra integration fee (based on scale session fees) is due.
- >> Verification of the budget is required to be provided to the union prior to the shoot for all Connected Shoots. This requirement does not apply to Unconnected Shoots (though, as before, the union may request such verification).

FOR MORE INFORMATION

Howard R. Weingrad
Partner
212.468.4829
hweingrad@dglaw.com

Samantha G. Rothaus
Associate
212.468.4868
srothaus@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com

© 2019 Davis & Gilbert LLP