

Advertising + Marketing

How the New 2022 SAG-AFTRA Commercials Contract Affects Performers and Advertisers

The Bottom Line

- The 2022 Commercials Contract increases session, usage, and pension & health fees, but by the lowest incremental amount in over a decade. Fee caps, a simplified compensation structure and unlimited editing rights balance out these increases by offering savings in other areas while making use fees more predictable over time.
- The new agreement simplifies the previous categorization of digital media channels and accounts for ongoing changes in emerging platforms.
- The new agreement also reflects an increased awareness and prioritization of opportunities for diverse performers and protections for performers as a whole.

A new collective bargaining agreement governing the use of SAG-AFTRA (the Union) performers in commercials has been reached between the Union and the Joint Policy Committee (JPC).

The new 2022 SAG-AFTRA Commercials Contract (the 2022 Contract), which is retroactively effective to April 1, 2022, appears to offer certain benefits to advertiser and agency signatories of the Commercials Contract, particularly JPC authorizers, as well as Union member performers.

The 4.88% increase to use fees is the lowest rate hike in more than a decade. The 2022 Contract's advertiser-friendly editing rules and its simplified approach to categorizing digital media outlets are clearly meant to alleviate advertiser and agency frustrations and make the contract more functional and user-friendly. Additionally, with new protections for talent in the wake of the #MeToo movement and new requirements designed to improve opportunities for performers of color, the Union achieved notable wins for talent.

Read on to learn more about notable changes and how they will affect advertiser and agency signatories and the Union's member performers.

Despite Rate Increases, Advertisers May See Savings – and Simplicity

The pricing structures set forth in the Commercials Contract under prior agreements have been a source of confusion for both signatories and talent. With use payments depending largely on distribution channels, duration of use and the number of edits, union talent and advertiser/agency signatories often found it difficult to predict the total amount that talent was entitled to with certainty.

The following updates in the 2022 Contract attempt to simplify and clarify longstanding pain points with respect to minimum payments due under the agreement:

- Performer wages-and-use rates increase by 4.88% – the lowest increase in over a decade.
- Pension and health contributions increased to 20.5% (from 19%). For JPC authorizers, the increase is lower: only 19.25% (from 18.5%) – the lowest increase for JPC authorizers in over a decade (further incentivizing advertisers and agencies to become JPC authorizers versus signing onto the 2022 Contract directly or engaging talent through a third party signatory).
- Payment of pension and health contributions is now clearly due 30 days following the date that the applicable performer's compensation is required to be paid. This clarification will help minimize confusion over payment deadlines that have historically resulted in disputes over late payment.
- The new compensation structure simplifies session and use fees for linear, linear and digital, and digital-only usage, and includes an annual cap on the amount a performer is entitled to for a Class A commercial.
- The new editing structure gives advertisers more freedom to edit a commercial without having to treat each edited version as a new commercial. Under the 2022 Contract, advertisers have an automatic right to create an unlimited number of shorter or longer versions of a commercial.
- The 2022 Contract also gives advertisers the right to make unlimited edits to a commercial if those edits change a depicted product to another variation of the same product (such as another color or size, or another item in the same product line). They may also make unlimited edits to a commercial if those edits change the background setting via computer-generated imagery (CGI) or green screen (such as changing a beach scene to a mountain scene). Advertisers even have the option to reshoot the same commercial

with different props and with the same performers in different wardrobes to align with an edited background change (such as changing bathing suits and surfboards to ski pants and snowboards).

- The new structure also allows for an unlimited number of similar edits to addressable commercials, which are specifically produced in multiple variations to be inserted at the individual household level. The new editing structure applies to commercials made for both linear and digital media, again, without treating each edit as a separate commercial and without needing to negotiate with the performers. Notably, the Alternate Compensation Structure (ACS), which was introduced in 2019 in an effort to simplify costs, was discontinued as of June 1, 2022.
- After June 1, until the end of the year, advertisers may elect to produce commercials using the traditional, non-ACS, compensation model, or switch to the new 2022 Contract model.
- Those continuing to use the traditional compensation model will be subject to additional increases to talent session-and-use fees with no cap on talent fees for Class A commercials. Also, they will not be able to take advantage of the new editing structure. As a result, advertisers may have a financial incentive to transition to the new 2022 Contract model more quickly.
- As of January 1, 2023, only the 2022 Contract compensation structure will be available.

How these changes will affect advertisers and agencies across the industry, however, remains to be seen. While the benefits of unlimited editing rights will provide some advertisers with more freedom to create a greater number of materials at a lower cost, the increases to the talent session-and-use fees may counteract some of these cost savings. Depending on the specifics of each advertiser's media plan, some may find the 2022 Contract to be financially beneficial, while others may find it to be even more costly.

New Clarity for Digital Media and Streaming

A major goal of the Union and JPC in negotiating the 2022 Contract was to have an agreement that takes into account trends in the industry and better reflects the media landscape of today. Before the 2022 Contract was ratified, the previous Commercials Contract characterized website-driven distribution channels within a category known as "Internet," while app-driven channels and other new methods of distributing and accessing online media were separately categorized as "New Media." However, platforms such as Instagram and other social media sites, which have both a website and mobile app, quickly presented challenges and caused confusion about which usage fees applied to social media commercials.

The same was true with the rise in prominence of over-the-top streaming services like Hulu (and all the +’s ... Disney, Apple, Paramount, Discovery). Increasingly, advertisers and agencies were left to wonder whether use of a commercial on a platform like Hulu was categorized as Television, Internet or New Media. Advertisers and agencies quickly grew frustrated with the existing language in the Commercials Contract, which did not take into account the mechanics of these emerging digital technologies and often resulted in advertisers being forced to pay double the fees when using a commercial on a social media or streaming platform to ensure that the usage was covered for both Internet and New Media.

The 2022 Contract attempts to address these frustrations by introducing new categories that better define current distribution platforms and leave room for the emergence of new platforms down the road. The 2022 Contract eliminates the “Internet” and “New Media” categories and replaces them with the following:

1. **All Digital** relating to:
 - Traditional Digital (e.g., social media, YouTube, brand websites, retailer websites, etc.); and
 - Gaming Platforms/Virtual Worlds/Augmented Reality/Emerging Platforms
2. **Streaming Platforms** (e.g., Amazon Prime, Hulu, Netflix, Disney+, AppleTV+, Peacock, Paramount Plus, YouTubeTV, etc.).

These new categories should make it easier for advertisers and agencies to determine the appropriate amount of use fees owed to talent and which union obligations are applicable to a given digital content production.

The 2022 Contract also protects talent’s rights in newly developing digital platforms, including augmented reality, virtual reality and the metaverse. As improvements in CGI and artificial intelligence make it easier to utilize and replicate performers’ likenesses, voices and other identifying attributes, the Union now expressly prohibits using computer-generated images or voices of performers to create “digital doubles” to evade the obligations of the 2022 Commercials Contract.

Waivers Here to Stay ... for Now

In recent years, the rise in digital media led advertisers to produce low-budget content at higher volume, with greater frequency, across a variety of channels. However, under prior Commercials Contracts, signatories faced challenges because usage restrictions, minimum payment obligations and other requirements imposed by the Union impeded their ability to compete with non-signatories, who were able to produce digital advertising more quickly

and at lower talent cost. To help level the playing field, the Union began introducing various waivers of certain requirements, offering signatories greater flexibility in producing advertising content covered by the Commercials Contract, while taking into account their practical need to meaningfully compete for advertising business. Such waivers include, for example, the [Low Budget Digital Waiver](#), the [Temporary Stock Footage Waiver](#), the Social Media Waiver and, most recently, the [Influencer Produced Sponsored Content Waiver](#).

While the 2022 Contract doesn't introduce any new exceptions that are intended to aide in leveling out the playing field between signatories and non-signatures in the same manner and to the same extent as the waivers, the agreement does include a new provision relating to the use of stock footage and still photographs in commercials stemming from a prior waiver that signatories are likely to find beneficial. The [Temporary Stock Footage Waiver](#), introduced at the start of the COVID-19 pandemic in 2020, sought to resolve a long-standing conflict between the Union and the JPC regarding whether and when pre-existing stock footage and still photographs used in commercials would trigger the need to make session-and-use payments to the individuals depicted in those stock materials.

The 2022 Contract clarifies that Union obligations do not apply to persons depicted in pre-existing photographs that were not made by or on behalf of the advertiser and that are licensed for use in a commercial. This change provides greater clarity to advertisers and agencies seeking to utilize stock photography in commercials. The Union and JPC have confirmed that, in those instances where ambiguity remains, the Temporary Stock Footage Waiver continues to remain in effect. In addition, the Low Budget Digital Waiver, Social Media and YouTube Waiver, and Influencer Produced Sponsored Content Waiver also remain in effect without any modifications. The Low Budget Digital Waiver will expire on December 31, 2022. However, the Union and JPC will meet prior to its expiration to decide whether or not the waiver should be renewed.

Reflecting New Social Priorities

The Union and the JPC also agreed upon several changes that reflect the industry's growing focus on diversity, equity and inclusion in the wake of social movements like #MeToo and "#OscarsSoWhite." To help protect performers from sexual harassment and abuse, the 2022 Contract implements new requirements for auditions and on-set working conditions involving nudity or intimate acts. For example, the 2022 contract prohibits auditions from taking place in hotel rooms where performers are alone with representatives of the production.

The 2022 Contract also prioritizes diverse performers by requiring producers to utilize only "qualified" hairstylists and makeup artists, defined to mean "hair stylists with proven ability

and experience styling a variety of textures and styles” including locks, twists, fades and tight curls, and “makeup artists who are experienced in working with diverse skin pigments and features.” These changes are an important win for the Union and its performers, and are an important step forward in creating new norms in the advertising industry to support women and performers of color.

For More Information

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