



**INDUSTRY FREQUENTLY ASKED QUESTIONS
ON 2013 SAG-AFTRA COMMERCIALS CONTRACTS**

1. Term (Section 2)

Q: *The notice that was sent out by the Union said that the 2009 CBA was extended through April 7. Can you confirm that the 2013 CBA is effective April 1?*

A: The 2013 CBA is effective April 1, 2013.

2. What Rates? (Various Sections)

Q: *Hired talent under 2009 CBA but did not use him/her for a commercial. Continued to hold the performer for a future commercial that will be produced and aired post-4/1/13 do we pay the 2009 rates or the 2013 rates?*

A: 2013 rates apply.

Q: *What if we produced a commercial in March but recorded the VO post-4/1/13?*

A: The VO's date of employment was post-4/1/13. Therefore, session and residuals for the VO are paid at the 2013 rates. All other performers in the spot are paid at the 2009 rates.

Q: *If a commercial was produced in 2012 and in June 2013 we record a revised VO version (tag, allowable change), would the whole spot fall under the new rates, the old rates, or only the VO receive the higher session but old holding fee rates and usage limits?*

A: The VO session would be paid at the 2013 rates with residuals at the 2009 rates because it was a permissible edit. All other performers in the spot are paid at the 2009 rates.

Q: *If a previously produced spot has never run and runs this summer are residuals under the 2009 or 2013 CBA?*

A: Residuals are paid at the 2009 rates.

Q: How is a 6% upfront increase equivalent to a 2.9% per year increase? Wouldn't 2.9% per year be a 9% increase?

A: The calculation is a common mathematical formula. No, it is not a 9% increase.

Q: For commercials produced under the 2009 CBA where a wild spot cycle commences after 4/1/13 we will continue to pay old rates but do we use the new unit weight?

A: 2009 rates and 2013 unit weights apply.

Q: For commercials produced under the 2009 CBA where a cable cycle commences after 4/1/13 we will continue to pay old rates but do we use the new cable unit weights?

A: 2009 rates apply but based upon the 2013 subscriber count (i.e., unit weights). Payments are based upon the subscriber count at the time of airing.

Q: For commercials produced under the 2009 CBA, does ANY change to the spot trigger the new rates?

A: No. Any permissible edits under Section 26 do not result in a "new" commercial. Therefore, variations produced as a result of permissible edits are paid under the 2009 CBA. If you edit a commercial or integrate a commercial in such a way that constitutes a "new" commercial, such commercial is paid at the 2013 CBA rates.

Q: LA Scale – For LA based radio records the current "LA Scale" is \$450 + 10%. Will this rate be increased at the 6% rate as well?

A: "LA Scale" does not exist in the CBA. It is a fiction that is foisted upon agencies by talent agents. If it is paid, it should be paid only in the increased wage rates. The supposed 10% for LA Scale should not change. The JPC would appreciate receiving the names of any agents who are insisting upon so-called "LA Scale".

Q: Any increases in preference or union security fines?

A: No increases.

3. PSAs (Section 18)

Q: Is the PSA provision meant to include Ad Council PSAs only?

A: No. Provisions regarding waiver of session for celebrities applies to all PSAs, as does the provision regarding advertiser logos on the charity's homepage. The only provision that only applies to the Ad Council is the waiver for soliciting donations. All

other Producers/charities must apply for a waiver from the Union in order to solicit donations.

Q: *Can logos now appear in the PSA?*

A: No. Advertiser logos may only appear on the charity's website, not within the PSA itself.

4. Editing (Section 26)

a. Section 26.A. - 2nd Lift

Q: *Can the 2nd lift be shorter or longer or the same?*

A: Shorter, longer or the same.

Q: *Do we still get a :15 discount if we produce a 2nd :15?*

A: Yes.

Q: *No integration fee for extras appearing in the edited version?*

A: Correct. The 2nd lift is a permitted edit that rides with the original commercial for the purpose of holding fee and residual payments. The variation is not a "new" commercial.

Q: *Are the lifts still limited to mechanical only?*

A: Yes.

b. Section 26.I. - Factual Changes

Q: *Is the tag fee is only paid if a performer renders services for changes?*

A: Yes.

c. Section 26.K. - Special Offers & Promotions

Q: *The restriction of only one variation in the same market at the same time really limits the use of this waiver. They can't do a national ad mentioning different products for sale during the same week or same day (i.e., as one tag with sheets for sale and a separate version with a tag for jeans for sale)? How can this waiver be used by a national advertiser?*

A: National ads might not have the same degree of freedom, but there are categories of advertisers that will take advantage of the new provision.

Q: *How and when do you tell a performer you're producing under the waiver?*

A: A performer must be advised both at the time of audition and at the time of hire. With respect to the time of hire, you can include it in the "Special Provisions" section of the employment contract. How you notify performers at the time of audition is up to you. For example, you could include it on the audition sign-in sheet, a notice on the wall, a separate notice form provided to everyone auditioning. It may be advisable to have performers acknowledge that they have received the notice at the time of audition in order to avoid disputes at the time of hire.

5. Cable (Section 35)

Q: *Is a commercial produced under 2009 agreement that airs after 4/1/13 paid at 2013 weights?*

A: 2009 rates and 2013 weights.

6. Made Fors (Sections 36 & 37)

a. Experimental Coverage Waiver

Q: *If the interviewer does not make the final cut is he/she paid? What if he/she is never seen or heard? If so, is the performer paid as an on-camera principal or an off-camera principal?*

A: You must pay the interviewer regardless of whether they make the final cut or are ever seen or heard in the spot. If the interviewer is off-camera, you pay him/her as an off-camera principal. If the interviewer is on-camera, you pay him/her as an on-camera principal.

Q: *If the commercial is moved back to broadcast we pay only the principals? Does that mean we don't have to negotiate with principals for broadcast use anymore? Do you pay a preference fine?*

A: If a Made For commercial produced under the experimental waiver is moved back to broadcast, you do not have to then separately negotiate for broadcast use; PROVIDED that your original release with the individual granted you the right to use his/her performance on broadcast. This is a right of publicity issue not a CBA issue.

Q: What if we happen to shoot a SAG-AFTRA member? Do we have to pay them?

A: No, not unless you cast or scripted them or gave them individual direction.

Q: How can I make a commercial of a special event if I don't know who everyone is?

A: The waiver under the CBA does not eliminate your standard right of publicity issues. You should consult with your attorney regarding how to address right of publicity issues at a special event.

Q: What if I hire some performers? Does that take the entire production out of the waiver?

A: No. You would, however, have to pay anyone that you hire under the CBA.

b. UGC/Crowdsourced Commercial Contests

Q: How many days can we leave up the non-winning entries after the contest is over? Our concern is the amount of time it takes our digital team to remove these videos (sometimes a week to change a website) and if there are hundreds or thousands of commercial videos it could be a substantial amount of time. It would be unreasonable to expect that the videos be removed immediately.

A: There is no grace period. You will need to plan accordingly and withhold announcing the winner until you have set up a system to remove the losing entries.

Q: What if we solicit content and not a "commercial"?

A: The CBA only covers the production of "commercials".

Q: Can we produce and display online a compilation of multiple entries during the contest period?

A: Yes.

Q: If I want to air (whether on TV or Internet/New Media) after the contest period, when does the MPU start?

A: The MPU starts when you air the commercial (whether broadcast or Internet/New Media).

c. General Questions

Q: *If a Made For subsequently has industrial/theatrical use does it become a Move Over?*

A: Yes. Assuming you have negotiated with the performer to use a Made For for industrial/theatrical use purposes, you would the for the industrial/theatrical use under the industrial provisions of the CBA plus the difference between the Made For and the Move Over rates.

Q: *If a Producer is paying holding fees on a Made For so that it can have nonconsecutive cycles does the Producer automatically get exclusivity?*

A: No. You must separately negotiate for exclusivity, but both can be covered by the same payment of a single session fee if that is what you negotiate.

Q: *If you negotiate to pay holding fees for the right to have nonconsecutive cycles, do those fees continue every 13 weeks or is it just one session fee?*

A: Every 13 weeks (presuming you want to continue with nonconsecutive cycles).

Q: *Can you apply session/holding fees for Made Fors?*

A: You can credit the session fee in the initial use cycle. If you pay holding fees for nonconsecutive cycles and/or exclusivity, you may not credit the holding fees.

Q: *Holding fees are not required for 21-months of use as long as cycles are consecutive?*

A: Yes. Holding fees are only required for Made Fors if you want nonconsecutive cycles.

Q: *Can we still negotiate for unlimited editing?*

A: Yes. There are no changes to a Producer's right to negotiate for unlimited editing.

7. **Move Overs (Sections 36 & 37)**

Q: *We have a commercial from 2011 that is in a one-year Internet cycle. The cycle will expire at the end of May. The MPU is 3 weeks later. Since this was produced under the 2009 CBA, do we have to pay the one-year extension cycle to cover the 3 weeks or can we pay the 8-week cycle?*

A: Assuming you are willing to pay the 2013 rates, you may opt to use an 8-week cycle.

8. **8-Week Dealer Cycle (Section 38)**

Q: *Can we credit the holding fee?*

A: No.

Q: *Can the session fee be credited?*

A: No.

Q: *Currently there is an obligation to check "Dealer Use" on the performer's contract. Must the performer now also be notified in advance of hiring that we intend to use an 8-week dealer cycle?*

A: No.

Q: *Can you upgrade from the 8-week to the 6-month?*

A: No.

9. **Foreign Use (Section 42)**

Q: *Is worldwide use is now 9 session fees?*

A: Yes.

10. **Pension & Health (Section 47)**

Q: *On a multi-service contract with installments that began prior to 4/1/13 with installments after 4/1/13, what rate do we pay? 15.5% or 16.8%?*

A: There is no black and white answer to this question.

The industry has long taken the position that the rate increase is effective for contracts entered into prior to a new CBA when the Producer either exercises an option under the contract or amends the contract. So, for example, if a contract began on January 1, 2013 and continued for 2 years with quarterly payments, and Producer had an option to

renew for an additional year upon the conclusion of the initial term, all payments during the initial term (i.e., January 1, 2013 through December 31, 2014) would be at the rate of 15.5%.

The Union and the SAG Plans, however, take the position that the rate increase is effective for all payments made after the effective date of the new CBA. Using the same example as above, the January 1, 2013 payment would be at 15.5% and all subsequent payments would be at the rate of 16.8%.

In sum, while the industry supports the first position outlined above, signatories should be aware that the SAG Plans auditing multi-service contracts will likely demand an increase in rates effective 4/1/13. You should consult with your legal counsel as to your best course of action.

Q: *Will the allocation guidelines be added as a part of the contract?*

A: The allocation guidelines will remain as an Exhibit to the CBA.

Q: *Still required for deceased performers? If so, is it all deceased performers or just deceased celebrities?*

A: Yes. P&H contributions are still required for deceased performers. The requirement is not limited to deceased celebrities.

Q: AMF – *Will the JPC help defend a claim if there is a disagreement over what is or is not a “commercial”?*

A: The AMF may be used to assist in the defense of claims or in arbitrations that the JPC believes impact the industry as a whole.

11. Ad-ID (Section 51)

Q: *Is it mandatory?*

A: Yes.

Q: *Does it apply to local radio as well as local TV?*

A: Yes.

Q: *Only mandatory for commercials, not for industrials?*

A: Yes, commercials only.

Q: *What if we don't have the Ad-ID at the time of hire for the employment contract?*

A: Even prior to 2013 you were required to include the "commercial code number" on the A-1. The only difference is that now that "code" must be Ad-ID.

Q: *Is it alpha, numeric or both?*

A: Please contact the Ad-ID Customer Service Team at cs@ad-id.org.

Q: *Who is responsible for enforcement?*

A: The Union.

Q: *What are the penalties for not complying?*

A: There are no specific penalties under the CBA for failing to use Ad-ID. However, failing to comply may make filing payments and required forms impossible and constitute a breach of the CBA and ERISA obligations.

12. Time Bar on Late Claims (Section 58)

Q: *Paragraph 20 of the written summary states that there is a time bar on claims for disputed payments for audition, travel or production-related session claims (e.g., overtime, wet pay, smoke pay, meal periods, etc.) Would this include attempts by the Union to reclassify drivers as stunt drivers?*

A: Yes, assuming the performer knew or should have known at the time of the production (or at the latest, upon receipt of his/her payment) that he or she should have been reclassified.

13. ID of # of Tags and Commercials (Exhibits A-1 & A-2)

Q: *We have always understood the executed contract as a guarantee which must be honored. For example, if we contract to make 2 commercials and only record one, we still owe the session fee for the one not produced.*

A: The executed contract is a binding contract with the performer. You should include only the number of commercials, tags, etc. that you are 100% sure that you will be producing.

14. Stunt Coordinators at Auditions (Schedule A)

Q: *What is the penalty for not complying?*

A: There is no specific remedy provided in the CBA.

15. **Spanish Language (Schedule C)**

Q: *Clarify if you add the general wage increase of 6% first before adding the 10% program fee, 5% wild spot fee (so it's compounded) OR are you just adding a straight 16% increase ?*

A: The Spanish language-specific increases are compounded by the 6% overall wage increase.

16. **Extras (Schedule D)**

a. **Agent's Commission**

Q: *If a performer does not list an agent, then no commission is due?*

A: The fact that a performer does not list an agent does not eliminate the obligation to pay a commission if the performer later provides the name of an agent. The agent must have been responsible for procuring the employment of the performer.

b. **General**

Q: *Any change to the required 45 per day?*

A: No change.

Q: *Any changes to wet/smoke fees or travel fees?*

A: Any fees subject to pension and health contributions are subject to the 6% rate increase. The \$8 mileage allowance is not subject to P&H and is therefore not subject to the 6% increase.

17. **Radio**

Q: *\$90 and calendar day of \$10. Same for radio (\$3.60 per day up to \$90)?*

A: Yes.

Q: *Are preference zones the same as SAG extra or SAG principal zones?*

A: The preference zones were amended to add the following cities:

*Atlanta, Georgia 100 miles from center of city
Boston, Massachusetts 100 miles from center of city
Chicago, Illinois 100 miles from center of city
Cincinnati, Ohio 100 miles from center of city
Coral Gables, Florida 150 miles from center of city

Denver, Colorado 150 miles from center of city
Dallas, Texas 100 miles from center of city
Detroit, Michigan 100 miles from center of city
Honolulu, Hawaii 100 miles from center of city
Los Angeles, California 300 miles from center of city
Miami, Florida 100 miles from center of city
Minneapolis, Minnesota 100 miles from center of city
Nashville, Tennessee 100 miles from center of city
New York, New York 100 miles from center of city
Philadelphia, Pennsylvania 100 miles from center of city
Pittsburgh, Pennsylvania 100 miles from center of city
St. Louis, Missouri 100 miles from center of city
San Francisco, California 100 miles from center of city
*San Juan, PR 100 miles from center of city
*Seattle, Washington 100 miles from center of city
*Tucson, Arizona 150 miles from center of city
Washington, DC 100 miles from center of city
Wilmington, NC 100 miles from center of city

Q: *Is the MPU for radio 21-months?*

A: Yes.

Q: *What do we pay for Internet streaming?*

A: There are no changes to the fees for Internet streaming. The fee for Made Fors is 133% for the 8-week cycle and 350% for the one-year cycle. The fee for Move Overs is 150% for the 8-week cycle and 400% for the one-year cycle.