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## **PENCILS DOWN!** **Webinar about WGA Strike**

**November 8, 2007**  
**11:00 a.m. Pacific/2:00 pm Eastern**

**Hosted by Foley & Lardner LLP and**  
**Association of Media and Entertainment Counsel**

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### **(1) What are the central issues in the strike?**

#### **Writers want:**

- Residuals for shows and movies streamed over the Web and on mobile phones.
- A doubling of residual payments from home video sales.
- Extension of guild pay and benefits to writers on reality TV programs.
- Jurisdiction over writers who write content distributed

#### **Producers say:**

- DVD sales are needed to offset rising marketing and production costs.
- It's too early to lock into pay formulas for online shows because technologies are changing rapidly.
- No pay for streaming of TV shows on the Web because it is a form of promotion.



## **(2) Who does the strike involve?**

The nearly 12,000 members of the Writers Guild of America, who write primarily for television shows and movies. While the Writers Guild of America is split into two guilds, West and East, the two were jointly negotiating the new writers' contract and are going on strike together. (The guilds split the country at the Mississippi River.)

With 4,000 members -- 2,500 of whom work under the contract that just expired and will be walking out -- WGA East represents a smaller number of writers than its West Coast counterpart. But the work stoppage will trip up the production of 30 television shows based in New York, including "Law & Order: Criminal Intent," "30 Rock," "Gossip Girl," "Who Wants to Be a Millionaire" and "The View." Soap operas will be hard hit, as will late-night shows like "Saturday Night Live," "The Daily Show," "Late Night With Conan O'Brien" and "The Late Show With David Letterman," most of which are expected to immediately go into repeats.

## **(3) Where will the picketing occur?**

The WGA-W will be picketing at the following locations:

CBS RADFORD STUDIOS  
4024 Radford Avenue  
Studio City, CA 91604

HOLLYWOOD CENTER STUDIOS  
1040 N Las Palmas Ave.  
Los Angeles, CA 90038

CBS TELEVISION CITY  
7800 Beverly Blvd  
Los Angeles, CA 90036

NBC BURBANK  
3000 W Alameda Ave  
Burbank, CA

CULVER STUDIOS  
9336 W Washington Blvd  
Culver City, CA 90232

PROSPECT STUDIOS  
4151 Prospect Ave  
Los Angeles, CA

DISNEY STUDIOS  
500 S Buena Vista Street  
Burbank, California 91521

PARAMOUNT STUDIOS / RALEIGH STUDIOS  
HOLLYWOOD  
5555 Melrose Avenue & 5300 Melrose Ave  
Los Angeles, CA 90038

FOX STUDIOS  
10301 W Pico Blvd  
Los Angeles, CA 90064

RALEIGH STUDIOS MANHATTAN BEACH  
1600 Rosecrans Ave  
Manhattan Beach, CA 90266



SONY PICTURES STUDIOS  
10202 W. Washington Blvd  
Culver City, CA 90232

UNIVERSAL STUDIOS  
100 Universal City Plaza  
Universal City, CA 91608

SUNSET GOWER STUDIOS  
1438 N. Gower Street  
Hollywood, CA 90028

WARNER BROS. STUDIOS  
4000 Warner Boulevard  
Burbank, CA 91522

WGA-E will be picketing around Rockefeller Plaza on 49th St. in New York City.

#### **(4) What writers are not involved?**

Writers for commercials, sports programs and reality TV, who are not covered under the guild contract.

#### **(5) What about writers for animated productions?**

This is a gray area. Although the Writers Guild has contracts for prime-time animated TV shows including "The Simpsons," most animated features are covered under Animation Guild Local 839, which is part of the International Alliance of Theatrical Stage Employees (IATSE). Some writers for these animated shows belong to both unions.

A dual member who chooses to work under the Animation Guild agreement would be crossing the picket line in the eyes of the Writers Guild, risking fines and loss of membership. The IATSE says it is prepared to take legal action if the Writers Guild prohibits its members from working on animated features.

#### **(6) How can the WGA and/or studios and networks collude to negotiate against the WGA? Isn't it a violation of the Antitrust laws?**

The antitrust laws prohibit agreements by two or more that "restrain trade in interstate commerce." To prevent unions from antitrust liability, a "labor exemption" was created under the Clayton Act of 1914. It has two components. The so-called "statutory" labor exemption allows unions to enter into agreements which may create a monopolistic practice regarding the working conditions of the employees it represents. The "Non-Statutory Labor Exemption is a judicially-derived expansion of the labor exemption that protects union activity from antitrust scrutiny. The non-statutory labor exemption is based on the policy that favors collective bargaining and gives it preference over the antitrust laws. Basically, any union-management agreement that was a product of good faith negotiation will receive protection from the antitrust laws. That means that the provisions of the agreement cannot be attacked as collusive or anti-competitive. The statutory and non-statutory



exemptions were intended to help unions from the threat of antitrust suits. But the tables have been turned. In the past, the exemptions have been used by management to enforce agreements that were "forced" on a weaker union (yes, there have been weak unions in sports and entertainment). The NFL players union learned this the hard way, when, after a series of cases in the late 1980s and early 1990s, it was ruled that the exemption applied throughout the negotiation process, even after a labor contract expired. This interpretation of the non-statutory exemption was upheld by the U.S. Supreme Court in 1997.

**(7) Will writers be able to finish their current projects?**

The guild says that striking writers must "immediately" stop writing for all the major studios and production companies and cannot begin any new project while on strike.

**(8) Could a striking writer talk to studios about projects?**

Not under guild rules. The guild says striking writers must not negotiate or discuss current or future writing projects with a company that is a target of the strike, which includes most studios and networks. Striking writers also may not sign or deliver documents related to a writing assignment or sell or option a script.

**(9) What about "spec" scripts already submitted?**

The guild says that once a strike begins, writers should ask studios to return their "spec literary material."

**(10) What if a production company must stop production because of the strike, must it continue to make payments to non-writers who are not on strike?**

Generally, not. If a production is cancelled because of the writers' strike, it is not obligated to continue to pay non-writers unless there is an express contractual obligation to the contrary. It is extremely important to give the appropriate notice to the non-writers and to review any written agreements. Most written agreements contain a *force majeure* clause under which the obligations of the parties are either suspended or cancelled in the event of a labor action.

**(11) What happens in the event a WGA writer has submitted a completed script for a program that is not yet produced?**

The WGA has advised its members that all writing work must cease during the strike. So, a WGA member is prohibited from doing any further work on the script. Additionally, the WGA has announced a "Script Validation" program under which writers are required to provide the WGA with



a copy of script so that "there is a record of the status of all MBA-covered writing at the point the work stoppage begins" and which will allow the Guild to determine if someone has provided writing services to the producer during the strike. This WGA rule has placed writers in a uncomfortable position because a number of studios, including Fox most notably, has advised writers that it would consider compliance with this rule of a breach of the writers duty to preserve the confidentiality of script submissions.

**(12) What if a producer/production is a WGA signatory but not a member of the Alliance of Motion Picture and Television Producers (AMPTP)?**

Technically, the strike is only against the AMPTP and the WGA has listed the companies against which it will strike ([http://www.wga.org/subpage\\_member.aspx?id=2537](http://www.wga.org/subpage_member.aspx?id=2537)). If your production company is not on this list, you should review your agreement carefully to determine if the strike applies to your company.

**(13) What about writers who also work as producers and directors?**

Writer-directors and writer-producers -- also known as hyphenates -- would be allowed to do "non-writing" during a strike, although there's considerable disagreement over how this is defined.

The guild says "writing services" include cutting a production for time, making changes in technical or stage directions, reassigning lines because of cast changes and making casual, minor adjustments in dialogue or narration just before or during a shoot. But the Alliance of Motion Picture and Television Producers, which represents studios and networks, say all of those are "non-writing services."

**(14) What if a Writers Guild member continues to work during the strike?**

The guild constitution says that such a member "may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign, be censured, fined or otherwise disciplined, or any combination of the foregoing."

But producers note that federal law gives union members the right to continue to work without the threat of fines if they resign full membership in the union and instead elect "financial core" status. In this situation, the writer would pay equivalent dues and fees as a member but would not have any guild voting rights.

**(15) What if a nonunion writer crosses the picket line?**

The Writers Guild says it "can and will bar that writer from future Guild membership." But such writers would have a legal right to work under financial core status.



**(16) What is “financial core” status? Why is it important to the strike?**

Financial Core" is the status of a writer who is not a member of the WGA, not having applied for membership, but who tenders and pays dues. Such a person may work for signatories, and in such event is entitled to all of the benefits of membership, including pension and health benefits, other than the right to vote on Guild matters.

A Guild member who works ("scabs") during the strike is subject to discipline, including fine and loss of membership, in which event they would not be entitled to Guild benefits.

A financial core writer, who has elected that status before a strike, can work during the strike and may not be disciplined by the Guild. This includes working for a signatory, in which event the writer is entitled to full benefits.

A writer who works during a strike, and has not previously elected financial core status or tendered dues, may be "blacklisted", i.e. denied membership, but can not be prevented from working, even for a signatory.