

# 2011 Guild Negotiations Reveal Lingering Anxieties

*By Ryan Bowles*

12-15 minutes

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In fall 2010, formal talks will begin in preparation for negotiations between the studios (represented by the [AMPTP](#)) and the guilds (WGA [[West](#) and [East](#)], [DGA](#), [SAG](#), and [AFTRA](#)). Although current contracts won't run out until late spring and early summer of 2011, the early start to talks reveal anxieties still lingering from the 2007-2008 negotiations, when the WGA struck for 100 days, and SAG worked without a contract for almost an entire year. The resulting halt in production was a major blow to the industry, causing both economic loss and strained business relationships.

Compensation for new media creative labor (both for work done specifically for online, as well as work done for traditional platforms and then distributed online) was a key point of contention in '07-'08, and new media will again take center stage in the 2011 negotiations. Sunset clauses in several existing guild contracts mean issues around new media licensing and distribution will be key for both the guilds and the studios. Heading into the 2011 talks, all eyes are on guild

leaders and studio representatives in the hopes they will be able to overcome starkly different perspectives to arrive at a compromise that keeps production on track.

**Here are five things you need to know about the 2011 guild negotiations:**

1. There have been important changes to the order and timing of the talks.
2. The “future” of new media has arrived, but revenues still don’t meet high hopes.
3. Distinctions between ‘promotion’ and ‘production’ remain murky.
4. Reality TV not a likely replacement in the event of a strike.
5. Bad economy is good for studios.

**1. There have been important changes to the order and timing of the talks.**

With contracts for SAG, AFTRA, WGA, DGA all due to expire, 2010--2011 will see these sister guilds all negotiating at roughly the same time. SAG will lead the way, with SAG-AFTRA talks set to begin in early September and run through to November. This is a break from the past, as the DGA usually negotiates first (an arrangement the AMPTP is rumored to prefer) often setting the precedent for negotiations with other guilds. The change in order results from a seven-week bargaining period written into SAG’s current contract, negotiated in response to their concerns the DGA agreement had set the terms for all other deals. Without the DGA to leading the way, and after SAG’s one-year

de-facto strike during the last round of negotiations, things have the potential to get messy in 2010-11.

These are the key players in the upcoming contract negotiations:

### **Alliance of Motion Picture and Television Producers:**

The official collective bargaining arm for the studios has a new President in Carol Lombardini. Her predecessor, Nick Counter, was top labor negotiator for the majors for 30 years before he passed away in 2009.

### **Screen Actors Guild and American Federation of Television and Radio Artists:**

A rift emerged between the two performers' guilds during the last round of negotiations when, after long delays and SAG's refusal to sign, AFTRA broke a 27-year-old joint bargaining agreement to cut its own primetime deal with the studios.

Despite agreeing to joint negotiations again in 2010, there is some speculation substantial animosity remains between the two guilds.

- Talks set from Sept 27-November 15
- Contract ends June 30, 2011

### **Directors Guild of America:**

In the previous round, the deal negotiated by the DGA set the terms for agreements struck between the studios and

WGA/SAG. The DGA successfully negotiated:

- Notable gains with regard to new media residuals
- New media jurisdiction, meaning DGA members cannot work on non-DGA new media projects
- A doubling of their rate for home video for Electronic Sell Through (EST)
- Heightened access to the studios' books with regard to new media deals
- The establishment of "a gross-based payment in ad-supported streaming while maintaining [their] historic fixed residuals where there is continued uncertainty about actual grosses."

The guild has hired Tom Wolzien, a Wall Street veteran and new-media expert, to help ensure the DGA will be prepared to negotiate deals for new media.

- Talks in mid-November, once SAG talks are completed
- Contract ends June 30, 2011

### **Writers Guild of America:**

Though the WGA's contract ends roughly two months before those of the other guilds it has yet to set a date for negotiations. In the past the WGA has waited to begin talks until just a few months before its contract is due to expire. The DGA and SAG-AFTRA will set the tone before WGA talks begin; though perhaps unlikely, there is a possibility all the sister guilds could strike at once.

- Contract ends May 1, 2011

## **2. The “future” of new media has arrived, but revenues still don’t meet high hopes.**

“What I’m saying is, for a current writer, for six thousand people to give up today’s money for a nonexistent piece of the future is stupid...They can do it in three years. They shouldn’t be doing it now.”

--Michael Eisner on digital compensation, *The Hollywood Reporter*, November 8, 2007

*LAEDC Kyser Report Entertainment 2010.*

New media compensation was central to ‘07-08 negotiations. At stake was a slice of the [widely projected billion-dollar revenues](#) from online media. During the ‘07-08 contract negotiations, moguls such as Michael Eisner and Barry Diller called for patience, suggesting digital revenues were up to three-years away. Three years down the track, however, profits from digital remain elusive. An [Ernst and Young Study](#) released in June of 2010 shows that “despite declining profits...penetration and per-unit sales of digital media are rapidly increasing.” Similarly, a [recent AdAge piece](#) declares Hulu “a towering success—just not financially.” Likewise, while [Jack Kyser's 2010 report](#) predicts “the use of digital media will continue to grow across all demographic groups,” the report concludes that despite “lots of experiments on new ways of distributing filmed content, significant revenue streams have yet to develop.”

Creative workers and studio execs are equally invested in the development of a healthy online market, but the disjuncture between the promoted potential value of digital offerings and the actual revenues received strained relations greatly during '07-08 negotiations. The combination of relentless hope for a new media payday and ongoing uncertainty about its arrival date will surely cause more strife in 2011.

### **3. Distinctions between 'promotion' and 'production' remain murky.**

#### *WGA Guide to New Media*

The distinction between "promotion" and "production" is a key sticking point in negotiations around new media. The current agreement between the AMPTP and WGA specifies a 17-day window during which shows can be streamed on the Internet and considered "new-media reuse" and "promotion" rather than "production." But if promotional content, on day 18 of its streaming, can suddenly begin earning residuals as production, wasn't it actually production all along?

That depends who you ask. The structure of the agreement reflects a disagreement about what actually defines production: where the AMPTP sees limited screenings within digital space as promotion, WGA and SAG view them as the same production being circulated in a different space. The two parties stand on opposite sides of what each sees as a very clear line, and have come to a compromise that, away from the bargaining table,

seems quite arbitrary.

Part of the reality of new media negotiations is that there will be conflicting opinions about how to map “traditional” definitions of labor and pay onto new media space. The 17-day window agreement sets precedent for compromise from both parties, but also might give bargaining power to the guilds who, right out of the gate, can show that online streaming has been treated not just as promotion, but as production as well.

*(Read more - [WGA Guide to New Media](#))*

#### **4. Reality TV not a likely replacement in the event of a strike.**



A popular assumption has been that in case of a strike, reality TV could serve as “[Plan B](#)” for studios and networks left without new content to fill empty timeslots. But in upcoming talks, reality stars and workers are now aligned with the guilds, and positioned to be more friend than foe.

Even before the WGA strike was official, studio execs planned to use reality, news, and sports programming when new scripted episodes ran out. TV permits issued during the strike declined 31% from 604 to 417 during the same period the year prior.

Once the strike began, FOX announced they would use reality and unscripted programming once they ran out of new scripted episodes. Variety noted the number of “sitcoms fell from 64 to 20 and dramas slid from 278 to 91 while reality-- which [wasn’t] covered by the WGA, stayed unaffected by the strike and rose to 178 from 161.” (*Variety*, “TV production slow to rebound,” March 3, 2008). Even after writers went back to work, scripted TV production was slow to make a comeback.

Actors have long framed reality stars as the enemy, concerned that the proliferation of reality TV was reducing opportunities for work in scripted programming. Even before the WGA strike, some writers were thinking ahead, noting [the WGA too should worry about reality TV](#). In 2005, the Writers Guild launched [a campaign](#) to organize reality writers, producers, and editors. The goal to unionize reality show workers had not been achieved by the time of the strike, and was put briefly on hold, but in 2008 the WGA continued its [push to organize reality shows](#) (subscription required), attempting to turn public attention to the labor of writers for perhaps the most high-profile reality show, American Idol.

Today, both the WGA and SAG have unionized reality show workers. Reality and late-night hosts are now card-holding members of SAG. The [WGA’s Minimum Basic Agreement](#) covers everything from docu-soaps to comedy-variety shows to competition shows, and “all types of written material...can be covered” — [not just conventional scripts](#). In the event of a strike in 2011, the studios would not be able to rely on reality to solve their programming problems.



## 5. Bad economy is good for studios.

The impact of a strike during an economic downturn is a significant bargaining point for the AMPTP and studios. The California economy played a key role in getting SAG to sign in 2008, with a strike framed by the AMPTP as selfish and harmful to both industry and the citizenry. The dire straits of the California economy in 2010 can only work in the studios' favor this time around.

The economic impact of the WGA strike will certainly be a specter at the bargaining table. A 2008 report by economic think-tank Milken Institute, identifies the WGA strike as a major contributing factor pushing California into economic recession. (A PDF or hardcopy of the report can be accessed [here](#) for a fee.) The Institute calculated the strike cost California more than \$2 billion in output and 37,000 jobs, along with \$830 million in retail sales before the end of 2007. In addition, the report predicted total personal income in California would drop by \$3 billion as a direct result of the strike. This claim is disputed by Jack Kyser, chief economist with the Los Angeles County Economic Development Corp., who conceded the fiscal impact of the WGA strike was about \$2.5 million, but [took issue with the claim](#) the strike played a significant role in sending California into economic recession.

Fear over the potential impact of another strike resulted in backlash when SAG representatives threatened to call for a strike vote during their 2008 contract negotiations, an action framed as “harmful and unnecessary.” In an October 1 statement, the [AMPTP criticized SAG’s timing](#), arguing that in a

“time of historic economic crisis” the business was “suffering” and Americans were most in need of the “diversions of movies and television.” The studio-backed group estimated a SAG strike could cost union members up to \$2.5 million per day, and the California economy \$23 million per day.

Industry strikes impact workers both above and below the line, but they also also affect workers “beyond the line.” When SAG negotiations were flailing, outside businesses that serve the media industries—“dry cleaners, lumberyards, florists, restaurants”—[warned the guild](#) they too would be hurt by another strike. As talks begin this fall, the story will likely show two sides, divided—the creative workers represented by the unions, and the studios represented by the AMPTP. However, there is just as much if not more at stake for those who are not represented at the bargaining table but who still rely on the industries’ smooth functioning for their very livelihood.