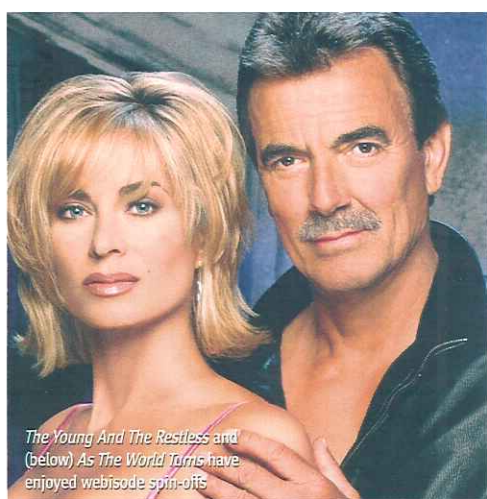




**UNIONS**

# THE BILL OF RIGHTS



*The Young And The Restless and (below) As The World Turns have enjoyed webisode spin-offs*



**T**he start of a new round of labour talks often has Hollywood on edge. But this summer the anxiety level will be higher than usual when representatives of the Writers Guild of America (WGA) and the

Alliance of Motion Picture and Television Producers (AMPTP) begin negotiations over a new contract between film and TV writers and their studio and network employers.

It is not just that the negotiations' July 16 start date leaves only three-and-a-half months before the current WGA contract expires on October 31. Nor that recent tough talk from both sides has raised fears of the first writers' strike since the costly five-month stoppage in 1988.

What is really ramping up the tension is the fact the writers' negotiations will probably set precedents for imminent negotiations involving the US Screen Actors Guild (SAG) and the Directors Guild of America (DGA), whose contracts with producers both expire in summer 2008. And the fact that, by dealing with issues now facing industries across the globe, the whole round of US talks could set precedents for future talks between producers and unions worldwide.

Some of the most crucial issues arise from the changing make-up of the industry's revenue pie. With the theatrical slice of that pie becoming smaller and the ancillary slice

bigger, the WGA for one (neither SAG nor the DGA made representatives available for interview) is determined that new residuals agreements should give their members a bigger share of revenue than the home-video formula to which Hollywood unions agreed in the mid-1980s, when the studios argued that home video was still a developing market.

"We've been down that road and we don't want to go there again," says David Young, executive director of WGA West and the writers' lead negotiator. "We're going to be fair, but we're determined this time to get a deal that works for our members from the beginning."

Producers, meanwhile, want to discuss a 'recoupment formula' that would allow them to cover the cost of a project before any residuals became payable. "We think the time has come

The upcoming union negotiations in the US will be defined by how future digital revenues are shared.

**JOHN HAZELTON** explores what is at stake, while Screen correspondents look at whether the scene is set for a global fight

**TOTAL EARNINGS UNDER WGA WEST CONTRACTS BY AREA OF WORK**

Year	TV		SCREEN		OTHER	
	\$	%ch	\$	%ch	\$	%ch
2000	\$399.9m	-	\$391.5m	-	\$2.6m	-
2001	\$397.4m	-0.6%	\$387.3m	-1.1%	\$2.5m	-3.9%
2002	\$402.8m	+1.4%	\$411.4m	+6.2%	\$1.7m	-32.0%
2003	\$413.9m	+2.8%	\$431.7m	+4.9%	\$1.8m	+5.9%
2004	\$430.9m	+4.1%	\$433.2m	+0.4%	\$2.4m	+33.3%
2005	\$457.6m	+6.2%	\$449.7m	+3.8%	\$2.7m	+12.5%

Source: WGA West annual report 2006

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that we no longer pay residuals until we've recouped our costs," says AMPTP president and chief negotiator Nicholas Counter. "We should be in a position to pay residuals on profits, not on losses."

New media distribution, discussion of which has been largely skirted in the last two rounds of US labour talks, will be a central issue this time, one that will be of particular interest to producers and unions in the rest of the world.

The AMPTP, says Counter, believes "it is too early to know the precise revenue streams and the precise costs" involved in the distribution of film and TV material over the internet or mobile-phone networks. So the most appropriate approach to the issue, he suggests, would be for the two sides to set up a joint study on new media technologies and business models that could present recommendations.

To the writers, says Young, "it makes no sense to wait years to figure out which of those technologies wins out. One or some of them will win out and we need to have a formula in place from the beginning."

New media issues have already come up in a string of specific cases that have yielded a couple of tentative agreements as well as considerable contention.

Over the past year, the WGA has reached agreements with Disney's Touchstone Tele-

vision on mobile phone spin-offs from the ABC series *Lost* and with CBS on 'websodes' spun off from the network's daytime soaps *As The World Turns* and *The Young And The Restless*.

But the guild (as well as SAG and the DGA) has clashed with ABC over the network's decision to pay residuals at the home-video rate — rather than the higher pay-TV rate — on iPod downloads of programmes. And it is awaiting an arbitration decision on its dispute with NBC over TV writer-producers asked to work on made-for-internet content associated with such hit series as *The Office* and *Heroes*.

The clashes have contributed to what Ivy Kagan Bierman, an entertainment industry labour attorney and partner at law firm Loeb & Loeb, describes as "a very politically charged and volatile" Hollywood labour relations environment. New WGA West president Patric

Verrone and SAG president Alan Rosenberg "have been very vocal about their efforts to bring about significant changes for their members in the next negotiation," Bierman says.

Though both the WGA and the AMPTP say they are prepared for a strike, a stoppage is only one possible alternative to a quick agreement this summer between the guild and producers. The guild could stay at the negotiating table and instruct its members to continue working without a contract (as they did for five months during the contract talks of 2004). Or it could seek a one-year agreement and then renegotiate next year alongside both SAG and the DGA.

Or the guild and producers could once again put off an agreement on new media issues.

"We're in for a struggle," says veteran entertainment attorney Alan U Schwartz, of Greenberg Traurig, "but it may not be a struggle that's going to get a really satisfactory resolution in the next round."

**'The time has come that we no longer pay residuals until we've recouped our costs'**

Nicholas Counter, AMPTP



NBC and writers are in arbitration over made-for-internet content for *The Office*

## THE NEW MEDIA ISSUE FROM BOTH SIDES

### THE WRITERS GUILD OF AMERICA POSITION

For writers, a simple principle lies at the heart of discussions of new or non-traditional media such as the internet, mobile phones and other digital platforms. "If the companies get paid, we get paid. That's our view," explains WGA West executive director and lead negotiator David Young. "If they don't make money, writers don't make money."

Rather than getting into an examination of different new media technologies and business models, the guild wants to focus on the idea that labour costs are part of the cost of doing business in any sphere.

"Whatever technology wins out, the companies are going to make money from it and when they make that money we get our fair share," says Young.

And that should include a share, say the writers, of revenue from any advertising attached to web material the studios and networks characterise as merely promotional. The guild wants to get the same 2% residual on free streaming video as it gets on cable TV sales.

Writers and producers made some headway on new media issues in their 2001 contract, which gave labour a 1.2% residual — following the model for pay-TV sales — on the licensing agreements for the download rental of material over the internet.

Now the guild wants the same pay-TV residual formula for sales of films and TV shows downloaded over the internet.

Early download sale deals have only offered labour the much lower home-video residual rate.

### THE PRODUCERS' POSITION

Studios and networks argue it is too early to know what kinds of revenues and costs will be associated with new media distribution and the issue therefore needs more study. Precedents for that approach have been set, employers say, in recent agreements between advertisers and SAG, and US film and TV companies and the Canadian actors' unions (see p18).

"The history of bargaining in this industry," says AMPTP president and chief negotiator Nicholas Counter, "has been that at the appropriate point in time the bargaining parties have worked out compensation formulas based on known business models. In this case, the landscape of new media is changing every day. At an appropriate time we're willing to deal this out, but we think it's too soon."

The AMPTP claims the WGA has reneged — in, for example, its dispute with NBC — on an agreement reached during 2001 contract talks that allowed companies to individually negotiate with writers regarding compensation (with a percentage going to the guild's health and pension plan) for additional work on internet material.

The most important use of new delivery mechanisms, Counter maintains, is "to promote our programming, both for the purposes of retaining audience and recapturing audience". The purpose of distributing a TV show or associated 'webisode' over the internet, he says, is to retain the audience for the show: "The mere fact there may be advertising embedded in that webisode, let's say, does not generate additional compensation for anybody. It's retaining the audience and that's good for writers as well as producers."

On internet download sales, or so-called 'electronic sell-through', the AMPTP companies believe the most analogous residual formula is the royalty-based home-video formula.



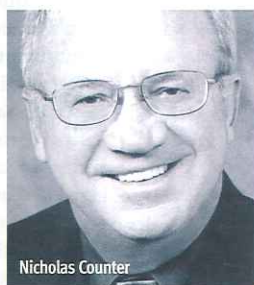
TALKING POINTS

# Any other business?

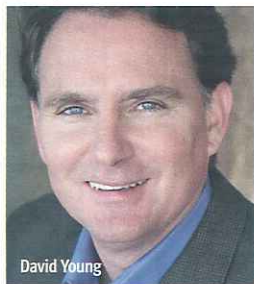
Sharing digital revenues may be the hot-button issue in the US labour talks. But what else is on the agenda? **JOHN HAZELTON** reports

**Home-video residuals**

The home-video residual formula established in the mid-1980s before the video market took off has been a thorn in the guilds' sides ever since. The formula is variously characterised as being based on the 20% royalty on video sales that goes to the producer of a film, or as excluding 80% of video revenues attributed to packaging and other costs. Guilds see the formula as antiquated, but they have never managed to get it updated. For the WGA, says David Young, the formula is "still a very important issue, and we will take another serious run at it in this negotiation". The AMPTP is prepared to discuss the issue, says Nicholas Counter, but only in the context of a radical new approach to recoupment: "We believe we shouldn't have to pay any residuals on home video because we have not recouped our costs by that window. Ninety-nine percent of the movies out today have not broken even by the time they're distributed on cassette and DVD."



Nicholas Counter



David Young

**Jurisdiction**

Under its new leadership, the WGA is pushing for jurisdiction over areas of film and TV writing not covered by its contracts with employers. In traditional television, the areas include animation and reality programming. Last year, the guild helped 12 reality writers file a Cali-

**'We have to have jurisdiction over new digital platforms, and we don't yet have it'**

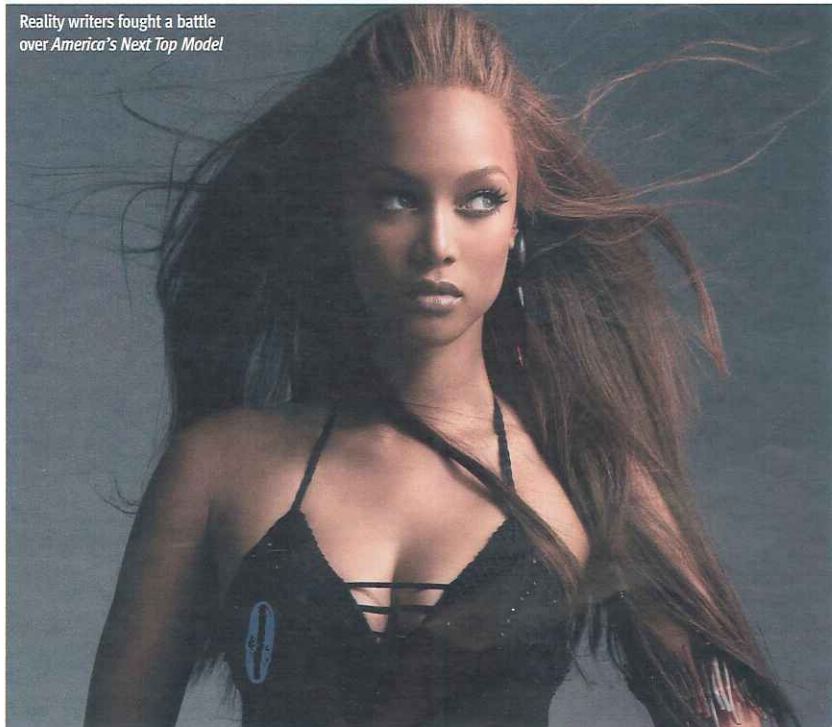
David Young, WGA West

fornia class-action suit against eight TV networks and production companies; but it lost its struggle to wrest jurisdiction over reality hit *America's Next Top Model* from the International Alliance of Theatrical Stage Employees union. The next jurisdiction frontier is new digital platforms. As the internet becomes the TV of the future, says WGA West's David Young, "We have to have jurisdiction over that, and we don't yet have it."

**Product placement**

Last year, SAG, the WGA and the AMPTP had some heated clashes over product placement in TV shows. The unions staged protests calling for creative talent to have more control over product integration. The AMPTP retorted with an open letter to the WGA warning the union not to "underestimate our resolve to keep the entertainment industry healthy and competitive in today's rapidly changing and highly challenging global marketplace". Going into this year's contract talks the WGA, says Young, is "trying to protect the quality of the content". The AMPTP, says Counter, sees product integration as "another way to offset the deficits we incur in making movies and television programmes. This is a revenue stream that is clearly important to be able to produce these programmes."

Reality writers fought a battle over *America's Next Top Model*



TERRITORY REPORT

## THE UK

The threats and opportunities of the digital revolution are a major issue for UK unions. **GEOFFREY MACNAB** reports

The UK's film unions regard the digital revolution with a mix of excitement and trepidation. In the short term, there is the threat of job losses. Lab technicians and cinema projectionists are among those already affected by moves away from celluloid. Production crews are also experiencing change as new technology blurs job definitions. However, digital promises new distribution outlets as well as a shake-up of the way rights are handled.

Actors' union Equity says digital rights are currently its main interest. "We have sections dealing with the new digital platforms in all our collective agreements," a spokesperson says, pointing out that "no-one [unions, employers etc] knows where this digital revolution is headed. So all agreements on new platforms need perforce to be preliminary."

As BECTU's assistant general secretary Martin Spence puts it: "We are concerned about the disappointingly low level of production that we are looking at, at the moment. We fear that one of the possible outcomes of the new tax credit and the new cultural test is that we may end up being a production base not for all or most of the production of an internationally financed film, but for odd bits of it."

Protecting directors' rights is a key challenge. There is already an agreement in place with broadcasters to ensure television directors receive appropriate remuneration for the exploitation of the secondary rights of their work. No such agreement exists for film directors.

"Feelings are very, very high," says Spence. "What freelance film directors face in this country, just

like all our other freelance members, is the sheer difficulty of getting an organised handle on the issue."

However, there now looks to be a chance for directors to strengthen their position. UK director Michael Apted, president of the Directors Guild of America, wrote in *The Observer* newspaper recently of his efforts "to sort out a version of a guild here for British directors" and to ensure film-makers "speak with one voice". Many of his colleagues agree the time is ripe for such a move.



Martin Spence

"There's a massive arena for discussion concerning the rights of directors that doesn't have any precedent," says film-maker Don Boyd.

"In a way, we're in as strong a position as we have ever been. We can say you don't own those

[digital] rights and you are going to have to negotiate them properly. Those arguments about how much a songwriter should make from iTunes, or how much they should make for a contribution to a website that's paying royalties — the same will apply to the creators of film."

**AT A GLANCE**

- › The largest film union is BECTU, whose 27,000 members range from electricians to directors, from clapper loaders to make-up artists — ie, everybody working behind the camera.
- › Directors are represented by the Directors Guild of Great Britain, writers by the Writers Guild of Great Britain and actors by Equity. PACT represents producers' interests.
- › The Directors and Producers' Rights Society (DPRS) and the Authors' Licensing and Collecting Society (ALCS) have an increasingly close working relationship with the unions, as they attempt to secure their position in the new digital world.

← continued from page 17

Actor Eric Peterson addresses his Canadian colleagues represented by ACTRA



#### AT A GLANCE

▶ The Canadian Film and Television Production Association (CFTPA) negotiates collective agreements with unions and guilds on behalf of the production community. Quebec is handled by the Association des producteurs de films et de télévision du Québec (APFTQ). The CFTPA and the APFTQ jointly negotiate the national ACTRA agreement which also covers English-language production in Quebec. British Columbia labour has many of its own representative bodies with separate agreements.

▶ Quebec's Alliance québécoise des techniciens de l'image et du son (AQTS) is involved in a dispute with the larger US-based IATSE over representation of film technicians in the province. The dispute is blamed for dissuading larger US shoots from going to Quebec. Last month, with the help of a government moderator, the two sides came to a temporary agreement but the issue is not resolved.

#### TERRITORY REPORT

## WAS THIS THE OPENING SALVO?

Canada's strike may be seen as the first battle in the rights war. **DENIS SEGUIN** reports

Earlier this year Canada's performers' union, the Alliance of Canadian Television, Cinema and Radio Artists (ACTRA), held its first-ever strike. The six-week stoppage may come to be seen as one of the initial skirmishes in the North America digital rights war.

### With no compensation model to guide negotiations, neither side was willing to concede

ACTRA, representing 21,000 performers across the country, is the most aggressive labour representative, a reflection of its size and the importance of Canadian actors to soft-money financing in the nation. Its perennial complaint is the disparity between wages paid to US performers versus Canadian performers. But when ACTRA's collective agreement with the Canadian Film and Television Production Association expired

at the end of 2006, the major sticking point towards ratifying a new agreement was digital rights.

New media means new platforms and new means of delivery; a proliferation and fragmentation of the traditional windows. With no compensation model to guide negotiations, neither side was willing to concede and set a precedent for future exploitation. The home-entertainment deals of the 1980s rest heavily in the collective memory on the labour side. Conversely,

US producers, who are a powerful presence behind the scenes in Canada, did not want to provide ammunition for the US Screen Actors Guild (SAG) when its collective agreement expires in 2008.

When ACTRA called the strike on January 8, it was in a strong position. Its larger US sister unions, SAG and the Alliance of Film, Television and Radio Artists (AFTRA) were quick to offer their support, warning

their own members against breaking the strike. Productions were offered the opportunity to sign interim agreements — which included the new media provisions ACTRA was seeking — with the result that although there was technically a strike, there were no actual stoppages. Despite the combative rhetoric of the CFTPA, its member producers were capitulating in droves.

On February 21, the US producers consented to a new independent production agreement that will pay 3.6% of revenues received from the use of productions on the internet. Made-for-new media productions will have a six-month online exploitation window in up to five different guises before a 3.6% first-dollar revenue-sharing scheme kicks in.

However, those US producers have the option of deferring payment on new media — with interest — until January 1, 2009, at which point they and SAG will presumably have fought the next battle in the digital rights war.

#### TERRITORY REPORT

## AUSTRALIA

Production agreements see a period of calm — for now.

**SANDY GEORGE** reports

#### AT A GLANCE

- ▶ MEAA represents actors, entertainment industry employees and journalists on industrial and professional matters. About 9,500 of its 36,000 members are actors.
- ▶ SPAA represents 400 independent producers and service and facility companies, on all issues affecting their businesses. Their priority is to secure fairer terms of trade with broadcasters.
- ▶ Both writers and directors are represented by associations, not traditional unions.

The agreements covering film production in Australia are in place until 2009, so all is calm between the unions right now. Digital and new media is not an issue — yet — because the agreements in place already capture the small amount of money flowing from new technologies.

Actors' fees are based on a film's Australian theatrical release and additional loadings cover a range of other rights, which producers buy up-front. A 20% loading for ancillary and Australian pay-TV

rights includes digital media. Crews receive fees only.

"Broadband use is permitted and performers get residuals from any money made," says Simon Whipp, Media Entertainment and Arts Alliance (MEAA) federal secretary.

Geoff Brown, executive director of the Screen Producers Association of Australia (SPAA), points out that agreements should be technology — and platform — neutral. "It should only be about what money comes in

and how it's carved up."

But negotiations are taking place on the television front. It could transpire that broadcasters are allowed to fully exploit their programmes, but only for 30 days after the first television transmission.

Most of the Australian industry, including the unions, are focused on whether the government will agree to introduce tax rebates on production as part of the May 8 budget. This should result in more private investment.

#### TERRITORY REPORT

## FRANCE

French writers are already remunerated for digital use.

**NANCY TARTAGLIONE-VIALATTE** reports

France's union system differs greatly from the US. While there are lobby groups and associations, there are no guilds per se which resemble the Hollywood heavies such as the WGA, DGA and SAG. The closest thing to those organisations is the Societe des Auteurs et Compositeurs Dramatiques (SACD) which represents all of France's writers — who are often directors as well.

Neither is the issue of digital revenues causing sleepless nights. Rules surrounding ancillary payments and residuals have already been legislated at the state level. The groups that are the most active lobbyists, the SACD, the association of writers, directors and producers (ARP) and others work as collectives which generally band together to lobby the culture minister. In short, protest and outrage may be common but a general writers' strike would be almost unheard of in a country that reveres rights holders.

On the digital question Pascal Rogard, head of the SACD, explains that an agreement was reached with internet service providers about six months ago, with regard to video on demand, for the whole of his outfit's membership. "For the moment, the evolution of digital is being followed, but writers benefit from a system of remuneration which they get directly from the ISPs," says Rogard.

That deal was fostered through talks between the SACD and the service providers who are now required, by law, to put a percentage of their revenues into local and European film production — much as is the case with, for example, cable television powerhouse Canal Plus.

Michel Gomez of writers-directors-producers lobby group ARP, says that one "preoccupation that is shared on both sides of the Atlantic is authors' rights but in the context of a different logic. In the US, it's economic; in France, the principles are in the law and then it becomes a collective issue."

#### AT A GLANCE

- ▶ The Societe des Auteurs et Compositeurs Dramatiques (SACD) has the biggest membership of any representative group in France, with 40,000 subscribers.
- ▶ Other major unions include ARP (an association of writers, directors and producers) and Bureau de Liaison des Industries Cinematographiques (Buc), a group of independent producers.
- ▶ The Association of Cinema Producers was created in April to advise producers on legal or fiscal issues and rights.