



Leading the Marketing Community

Update: SAG/AFTRA

February 13, 2008
Douglas J. Wood
Harry Hawkes

Booz | Allen | Hamilton

ReedSmith

The business of relationships.

The Players



Screen Actors Guild



American Federation of
Television and Radio Artists



Joint Policy Committee
for Broadcast Talent Relations

ReedSmith

The business of relationships.



Joint Policy Committee for Broadcast Talent Relations

15 Appointees from the ANA
15 Appointees from the AAAA
Chief Negotiator
Counsel

ReedSmith

The business of relationships.



Current Contract

SAG and AFTRA - October 31, 2008

ReedSmith

The business of relationships.



The 1950's
3 networks
Affiliates
Independents

The 1990's
8+ networks
Affiliates
Independents
Cable
Satellite
Internet

The New Millennium

Virtual networks

IM
Hotel
Airport
Mobile
Digital
iPods
PC's
Webcasts
TIVO
VOD
Wireless
SMS
Games
PDA's
Satellite
and more...

ReedSmith

The business of relationships.



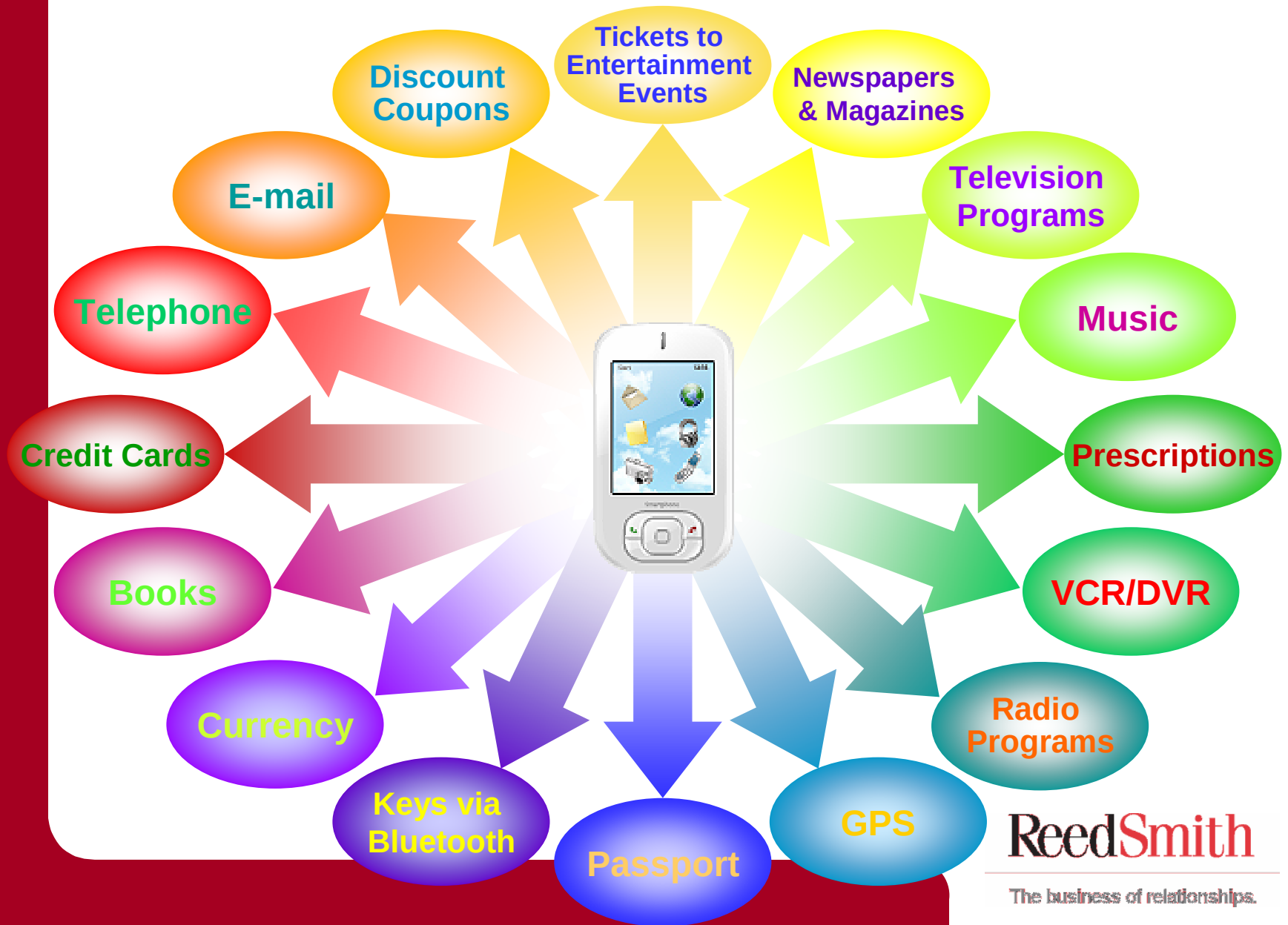
The New Media

- User Generated and User Uploaded Content
- Online/Interactive Advertising
- Podcasts and Webcasts
- Advercasting
- SPAM
- Blogs, Vlogs, RSS Feeds
- Key Words and Metatags
- Social Networking
- Virtual Communities and Reality
- Streaming Music and Video
- Interactive Gaming
- Pre-Roll/Post Roll, Interstitial Advertising
- Search Engine and Optimization Revenue Model
- Viral and Buzz Marketing
- Embedded Players, Gadgets and Widgets
- Cookies: Spyware, Invisible GIFs & Web bugs
- Opt In and Opt Out
- Promercials
- Microsodes, Mobisodes
- Digital Downloads
- CGI and Video FX
- DVRs/On-Demand Programming
- Satellite, Wired, Unwired, WiFi
- Favorites and Bookmarks
- SMS, WAP
- Advergaming
- e-[fill in the blank]

ReedSmith

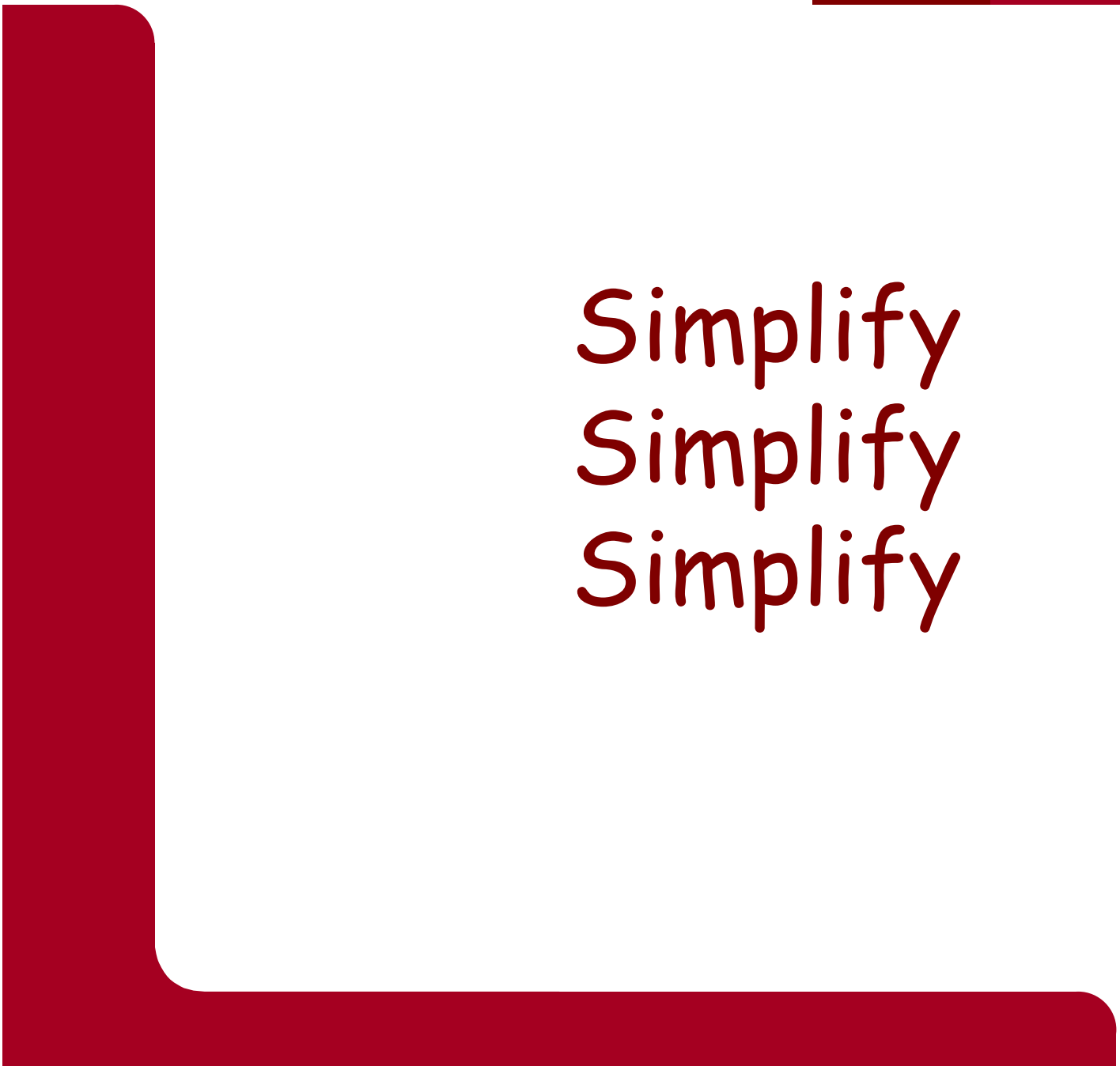
The business of relationships.

Consumer Control



ReedSmith

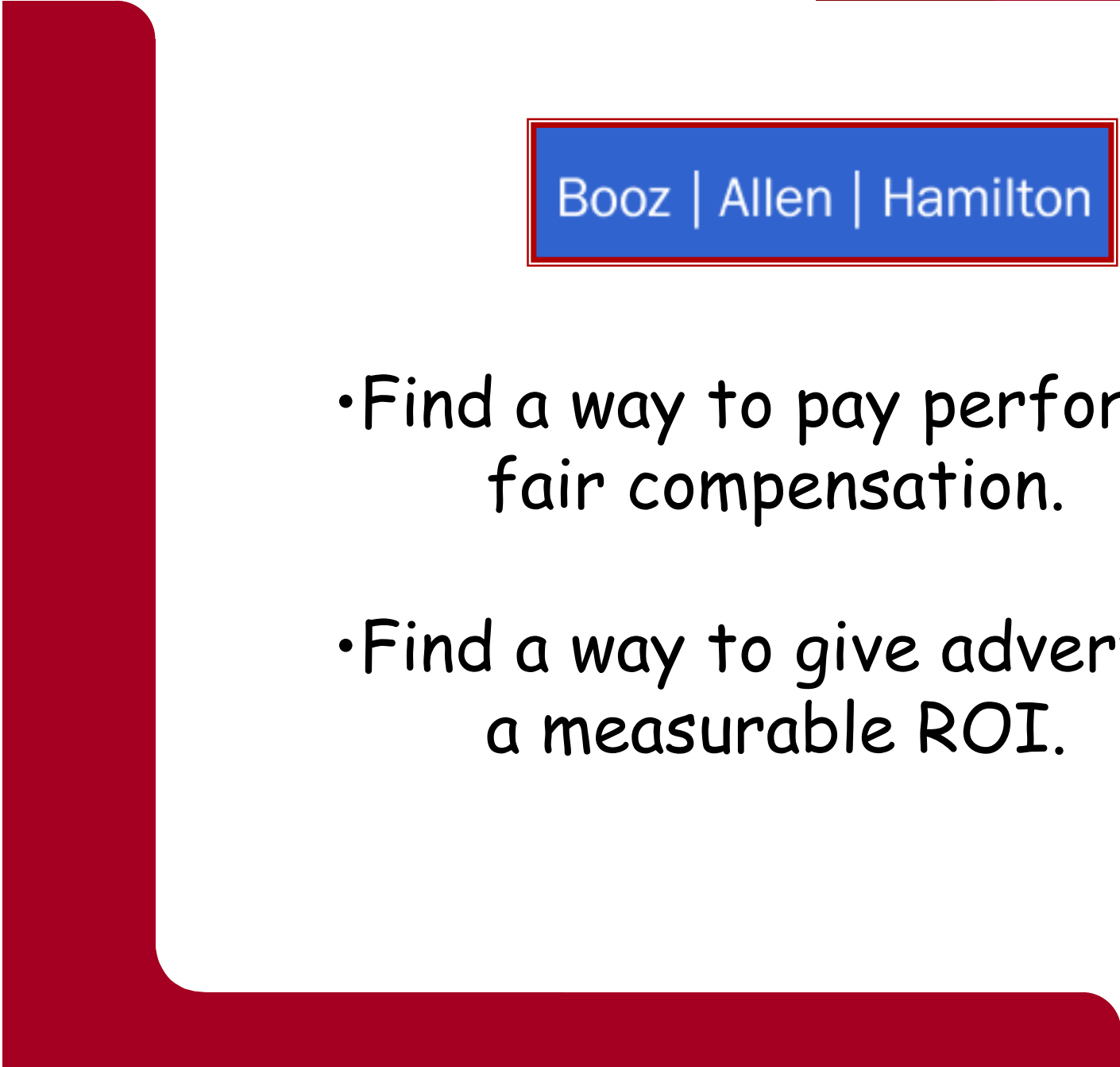
The business of relationships.



Simplify
Simplify
Simplify

ReedSmith

The business of relationships.



Booz | Allen | Hamilton

- Find a way to pay performers fair compensation.
- Find a way to give advertisers a measurable ROI.

ReedSmith

The business of relationships.

Scope of Booz Allen Initiative

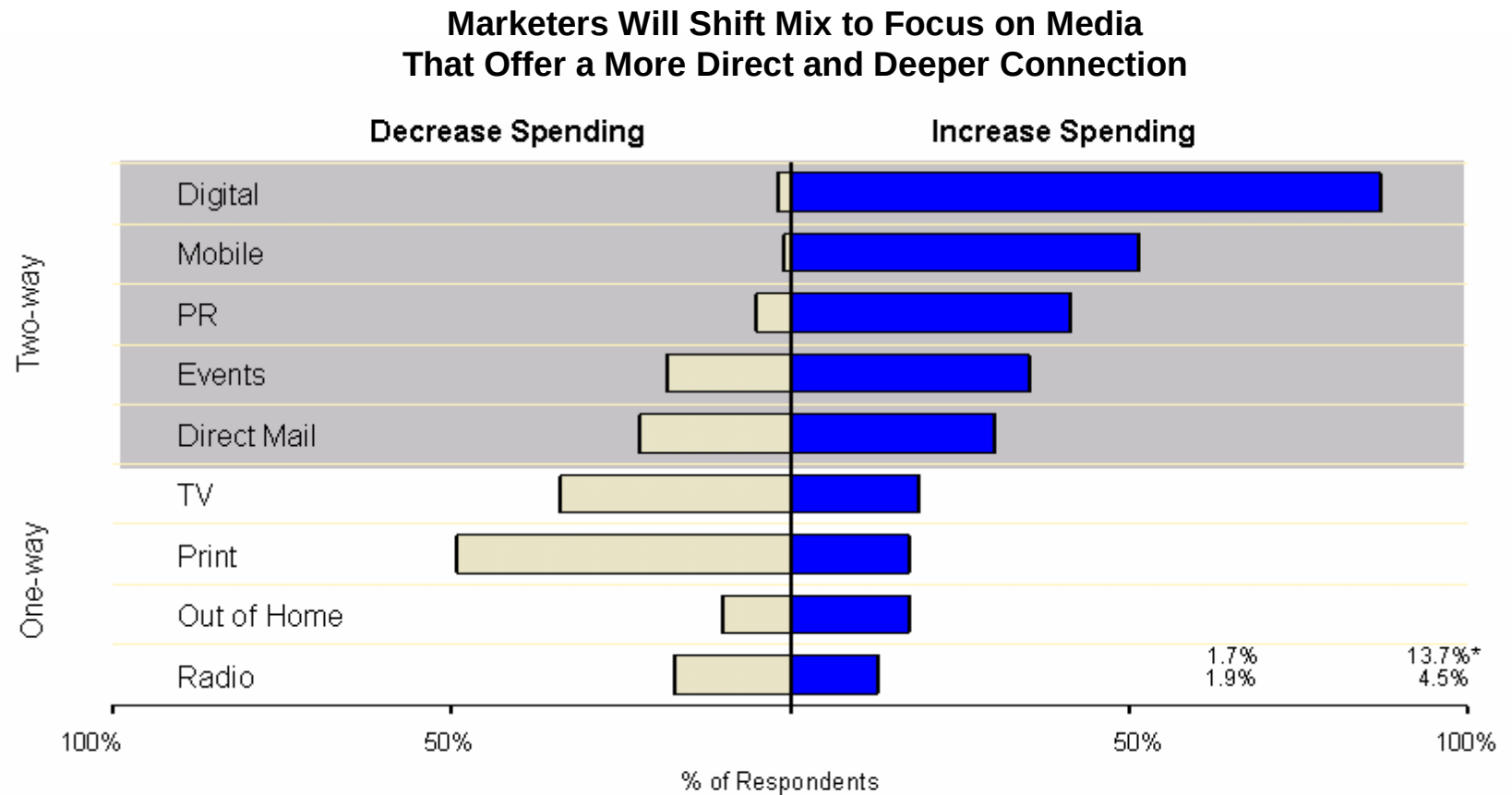
In-Scope Contract Provisions

- ▶ Provisions related to compensation of principal performers for English or Spanish language commercials, including use in various broadcast channels, session fees, editing, etc.
- ▶ Geographic scope of the contract
- ▶ Exclusivity policies

Out of Scope Contract Provisions

- ▶ Any provision related to working conditions or labor policies, e.g., policies around meals periods, non-discrimination policies, policies for working with animals
- ▶ Provisions related to health or pension benefits
- ▶ Provisions related to extras

Future marketing spend shifts



ReedSmith

The business of relationships.



Overview of Approach to Compensation Recommendations

Adjusting Tiers Model

- ▶ Simplify existing terms and increase equity across Class A and Cable
- ▶ Introduce greater predictability for both advertisers and talent
- ▶ Minimize tracking complexities of pay-per-play in Class A
- ▶ Consolidate or eliminate legacy use categories such as Dealer A/B, etc.

GRP Model

- ▶ Dramatically simplify the contract structure and eliminate current silos
- ▶ Utilize GRP as a means to link advertiser value to talent compensation
- ▶ Minimize tracking complexities of pay-per-play in Class A
- ▶ Create impression-driven variability in rates for internet and new media
- ▶ Consolidate or eliminate legacy use categories such as Dealer A/B, etc.

Editing

- ▶ Increase flexibility and improve economics for advertisers to entice editing opportunities
- ▶ Ensure adequate compensation to talent for exposure with protection against exclusivity conflicts
- ▶ Address need for increased frequency of Editing in internet and new media
- ▶ Simplify Section 26 of TV contract

The adjusting tiers model prescribes a pre-payment for national TV use for a given period of time

Talent Compensation =

1 Session and Other Fixed Fees			2 Rates for National TV Networks (HH Ratings & CPM-based Tiering)						
Session Fees*	Per Session, TV	\$567	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Tags / Versions	2 – 25	\$158	▶ ABC ▶ CBS ▶ FOX ▶ NBC	▶ COM ▶ CW ▶ DISC ▶ ESPC ▶ ESPN ▶ LIFE ▶ MTV ▶ NAN ▶ NICK ▶ OXYG ▶ SPD ▶ TNT ▶ USA ▶ Telefutera ▶ Telemundo ▶ Univision	▶ BRAV ▶ CNBC ▶ FOOD ▶ FX ▶ G4 ▶ MTV2 ▶ SCFI ▶ SPK ▶ TBS ▶ TLC ▶ VH-1 ▶ WE	▶ A&E ▶ AFAM ▶ AMC ▶ BET ▶ CNN ▶ ESP2 ▶ FNEW ▶ HGTV ▶ NGC ▶ THC ▶ TOON ▶ TVL	▶ ANPL ▶ CMT ▶ CORT ▶ DSCH ▶ EI ▶ GOLF ▶ GSN ▶ HLN ▶ LMN ▶ MSNB ▶ TDIS ▶ TRAV ▶ TWC	▶ TBD – Minor Cable Networks	▶ TBD – Minor Cable Networks
	26 - 50	\$88							
	51+	\$48							
Holding Fees	Per cycle	\$567							
Principal			\$1,567 / Network / Cycle	\$400 / Network / Cycle	\$252 / Network / Cycle	\$178 / Network / Cycle	\$89 / Network / Cycle	\$44 / Network / Cycle	\$30 / Network / Cycle

* To be treated as a payment for services rendered

Methodology: Based on current contract fees

Note: Cycle = 13 weeks, MPU = 21 months

X 3 Weight by Role

Role	On Camera	Off Camera
Principal	100%	75%
Group 3-5	73%	42%
Group 6-8	65%	37%
Groups >8	54%	30%

Fees for Excessive Use and a Tier 2 – 7 Cap are built into model

ReedSmith

The business of relationships.

The GRP model determines residual compensation based on the commercial's GRP

Talent Compensation =

① Session and Other Fixed Fees +

Session Fees*	Per Session, TV	\$567
Tags / Versions	2 - 25	\$158
	26 - 50	\$88
	51+	\$48
Holding Fees	Per cycle	\$567

* To be treated as a payment for services rendered
Methodology: Based on current contract fees

② \$ per GRP

GRP Level	\$ per GRP	Total Cost of Tier
1st GRP	\$100	\$100
2nd GRP	\$100	\$100
3-140	\$21	\$2,898
141-280	\$11	\$1,529
281-560	\$11	\$3,069
560+	\$4	-

③ Role Weight

Role	%
Principal on camera	100%
Groups 3-5 on camera	73%
Groups 6-8 on camera	65%
Groups > 9 on camera	54%

X

④ GRP

TV Media GRP	200
--------------	-----

ReedSmith

The business of relationships.

We developed three options for internet compensation – we recommend the site-based approach

Flat Rate

- ▶ Ads can be shown online anywhere
- ▶ No tracking required – pre-payment per cycle is for unlimited use

Tier	Use – Sessions for a 13 weeks
Video	
Video – Unrestricted Use	1.0
Audio	
Streamed Audio (any outlet)	0.5

(1) Top 5 US websites are currently Google, Yahoo!, Myspace, YouTube and Facebook based on Alexa web traffic data

Site-Based

- ▶ Links payment to type of use - talent is more expensive for widely distributed ads
- ▶ Allows advertisers to control cost by providing greater flexibility
- ▶ Limits risk of click fraud
- ▶ Limits need for tracking relative to impression-based model
- ▶ Relatively easy for talent to verify
- ▶ Affordable for small advertisers

Category	Use – Sessions for a 13 weeks
Video	
Advertiser's website	0.25
Traffic drivers used on advertiser's website	0.25
Each top 5 site ¹	0.25
1-10 3 rd Party sites (outside top 5)	0.25
> 10 3 rd party sites (outside top 5)	0.125
Syndicated ad network	0.50
Unlimited	1.5
Audio	
Streamed Audio (any outlet)	0.5

Impression-Based

- ▶ Links payment to type of use - talent is more expensive for heavily used ads
- ▶ Pays a flat price for a range of impressions
- ▶ Tiers assessed annually to verify range of impressions and pricing per tier
- ▶ Affordable for small advertisers

Tier	Impressions	Use – Sessions for a 13 weeks
Video		
1	Over 10MM	1.5
2	Up to 10MM	1.0
3	Up to 5MM	0.75
4	Up to 2.5MM	0.5
5	Up to 100K	0.25
Audio		
Streamed Audio (any outlet)	All	0.5

ReedSmith

The business of relationships.



FTP Server Instructions

1.) You can connect using Internet Explorer via the link below:

<ftp://BAHFinalComp:Models@files145.cyberlynk.net>

This will allow for dragging/dropping capabilities on any windows machine.

2.) You can also connect to the FTP server using any standard FTP Client such as FTPVoyager, WSFTP, or CuteFTP. To connect using your FTP Client use the settings below.

FTP Host: files145.cyberlynk.net

Username: BAHFinalComp

Password: Models

If you do not have an FTP client you can purchase or download a FREE trial copy via the link below:

<http://www.ftpclientlisting.com>

3.) You can also use the Web Based JAVA FTP Client from any Windows computer:

<http://files145.cyberlynk.net/client>

Username: BAHFinalComp

Password: Models

ReedSmith

The business of relationships.

**WRITERS GUILD
OF AMERICA**

ON STRIKE



Alliance of Motion Picture and Television Producers

ReedSmith

The business of relationships.



2000 Redux?

ReedSmith

The business of relationships.

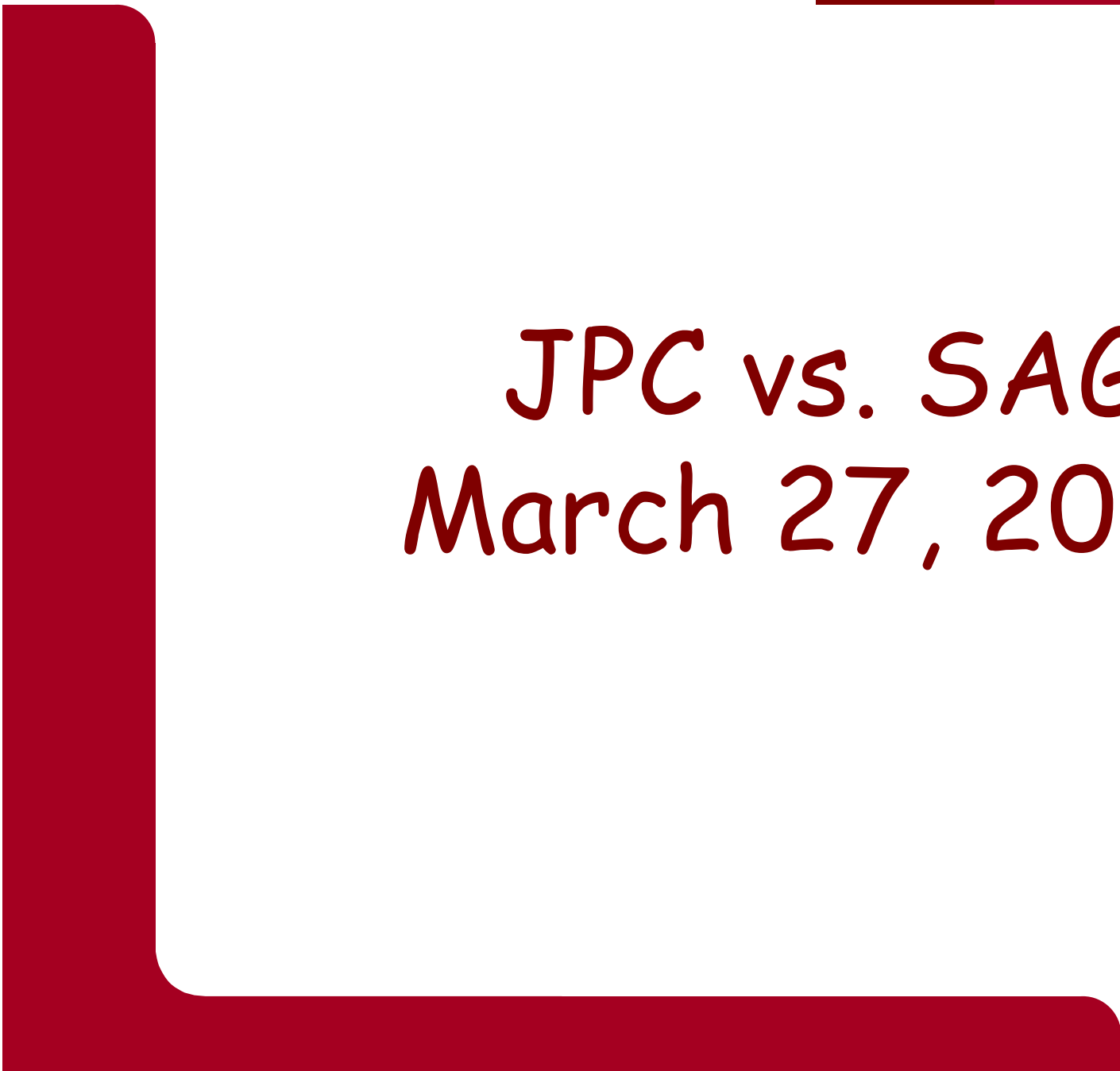


In the Courthouse

ReedSmith

The business of relationships.

- 
- 
- Joint Policy Committee vs. SAG
 - Calloway and Daily & Associates vs. SAG and SAG-Producer's Pension and Health Plans
 - SAG-Producer's Pension Plan vs. Accenture and Young & Rubicam
 - SAG-Producer's Pension Plan vs. TaylorMade and NYCA



JPC vs. SAG

March 27, 2008

ReedSmith

The business of relationships.



What's at Issue?

- Celebrity contracts must allocate compensation between SAG covered and non-SAG covered services, e.g., commercials vs. print.
- Allocation to SAG covered services must not be lower than performers "customary salary" for doing commercials.
- Amount allocated subject to 14.8% Pension & Health Fund Contribution.



What's at Issue?

- Historically, SAG has approached the allocation from a percentage perspective despite lack of relationship to “customary salary”.
- In multi-services contracts, percentage allocations have ranged from 10% to 80%, depending upon the nature of the services.



What Happened?

- SAG P&H Trustees, without consultation with the JPC, proposed official guidelines on how to determine the percentage to be allocated between covered and non covered services.
- JPC objected, claiming that the Trustees lack the legal authority under their enabling documents to issue guidelines and that SAG's enforcement would be an unfair labor practice since no negotiations occurred.



What Happened?

- Despite objection, Trustees issued guidelines and SAG audits have raised the demands by 30%-50% more than allocated in the past.
- JPC filed an arbitration to vacate the issuance of the guidelines and mandate that SAG bargain.



What's are the Politics?

- Advertisers pay approximately 40% of the P&H contributions.
- Unlike the TV and Motion Picture Contracts, the Commercials Contract has no cap on compensation subject to P&H contributions.
- SAG Pension Plan is a defined benefit plan subject to strict federal minimum funding level rules.



What's are the Politics?

- Trustees composed of 50% from SAG and 50% from industry.
- Industry representatives roughly divided one third each between television, motion picture, and commercial producers (JPC has one additional member due to higher contributions).
- If a material shift occurs, television and motion picture producers may be forced to pay more so the "vote" naturally weighs against interests of advertisers



Why Does It Matter?

- The JPC has no privity of contract with the Trustees.
- The Trustees are not the bargaining agent for the actors.
- If permitted, there is nothing to prevent Trustees from constantly increasing the minimum allocations.
- Trustee argument that they are only “guidelines” and not mandatory is irrelevant. They don’t have the authority to issue them in the first place and, in practice, they do become minimums.



Why Does It Matter?

- As the allocations increase, the burden on advertisers to support the P&H fund becomes increasingly disproportionate to the contributions of the television and motion picture producers.
- All compensation matters are subjects of mandatory bargaining, not unilateral imposition.



Why Does It Matter?

The impact can be significant in a major contract

Athlete with \$5 million Contract

Allocation	P&H	Difference
10%	\$74,000	
25%	\$185,000	\$111,000
50%	\$370,000	\$296,000
80%	\$592,000	\$518,000

Actor with \$3 million Contract

Allocation	P&H	Difference
10%	\$44,400	
25%	\$111,000	\$66,600
50%	\$222,000	\$177,600
80%	\$355,200	\$310,800

The impact on an aggregate basis is in the millions of dollars

ReedSmith

The business of relationships.

- 
- 
- Calloway and Daily & Associates vs. SAG and SAG-Producer's Pension and Health Plans
 - SAG-Producer's Pension Plan vs. Accenture and Young & Rubicam
 - SAG-Producer's Pension Plan vs. TaylorMade and NYCA



Callaway - Phil Mickelson



TaylorMade - Fred Couples



Accenture - Tiger Woods

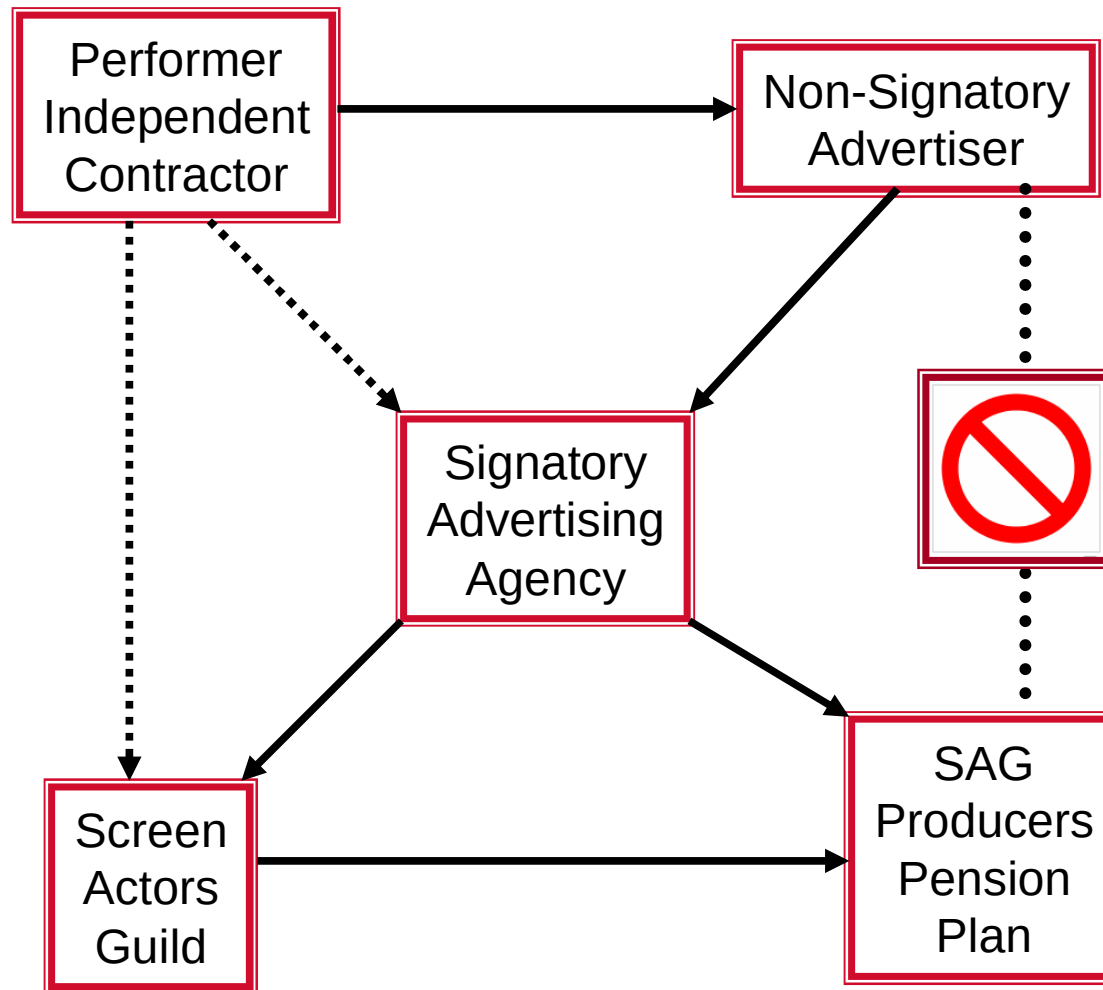


What's at Stake

Can the SAG Pension Plans collect contributions for services rendered by independent contractors who are hired by non-signatories?

ReedSmith

The business of relationships.





Current Status

Callaway and Dailey & Associates vs. SAG-
Producer's Pension Plan
(In Discovery)

SAG-Producer's Pension Plan vs. Accenture and
Young & Rubicam
(Motion to Dismiss Denied)

SAG-Producer's Pension Plan vs. TaylorMade and
NYCA
(Motion to Dismiss Granted)

ReedSmith

The business of relationships.



Callaway vs. SAG-Producer's Pension Plan

•Callaway:

- Golfers are independent contractors with no obligation to make contributions;
- Contributions to the Plan were correctly calculated in the endorsement agreements;
- Plan is not a third party beneficiary and Callaway and its agency are not "joint employers";
- Plan applied "guidelines" in an arbitrary and capricious fashion;
- Plan lacks the authority to set "guidelines" or enforce them; and
- Callaway is entitled to restitution of all contributions.



Callaway vs. SAG-Producer's Pension Plan

•Plan:

- To compel audit entry to determine contributions due;
- To hold Plaintiffs liable as "joint employers";
- To hold Plaintiffs liable for contributions under third party beneficiary theories; and
- Additional contributions, liquidated damages, interest, attorney' fees and expenses.



SAG-Producer's Pension Plan vs. Accenture (Motion to Dismiss Denied)

- Plan –
 - Accenture and Y&R “deliberately hid” Woods’ total compensation;
 - Contract between Woods and Accenture specified Accenture would pay required contributions;
 - Accenture and Y&R are “joint employers” bound by the CBA and Plan obligations; and
 - Plans are third party beneficiaries of contracts between Y&R, Accenture, and Woods.



SAG-Producer's Pension Plan vs. Accenture (Motion to Dismiss Denied)

- Y&R - Not an "employer", i.e., no direct contract with Woods;
- Accenture
 - No liability as nonsignatory to CBA or Plans; and
 - No recognition of "joint employer" under ERISA laws.



SAG-Producer's Pension Plan vs. Accenture (Motion to Dismiss Denied)

- Court - Status of Y&R as an "employer" is fact intensive and "a non-signatory may be liable under ERISA for a signatory's contractual obligations where the interests of the nonsignatory and signatory parties are materially inseparable."



“Employee”

- Skill required
- Source of instrumentalities and tools
- Location of work
- Duration of relationship
- Right of employer to assign hired party additional projects
- Employer's discretion over when and how long hired party works
- Method of payment
- Hired party's role in hiring and paying assistants
- Whether the work performed is part of employer's regular business activities
- The provision of employee benefits
- Tax treatment of hired party



SAG-Producer's Pension Plan vs. TaylorMade (Motion to Dismiss Granted)

- Plan –
 - Challenged 30% allocation as insufficient under multiple contracts with Couples and instituted audit;
 - NYCA and TaylorMade exercised sufficient control over Couples such that [they] were Couples' "joint employers" for purposes of federal labor laws; and
 - Plan third party beneficiary.



SAG-Producer's Pension Plan vs. TaylorMade (Motion to Dismiss Granted)

- Court –
 - “Joint employer” exists only where (1) nonsignatory is an alter ego of the signatory or (2) signatory and nonsignatory engaged in a fraudulent scheme to deprive the plans of contributions;
 - “Every published decision to consider this issue has rejected ‘joint employer’ as a basis for finding a nonsignatory bound under ERISA.”



SAG-Producer's Pension Plan vs. TaylorMade (Motion to Dismiss Granted)

- Court -
 - As to [NYCA] - "The 'joint employer' doctrine does not make a nonsignatory [to the Couples'/TaylorMade contracts] ... liable for contracts it neither signed nor assumed."
 - As to third party beneficiary through NYCA - NYCA paid precisely what the contract specified and even if third party beneficiary status applied, NYCA complied with the contractual obligations.



Resources

ReedSmith

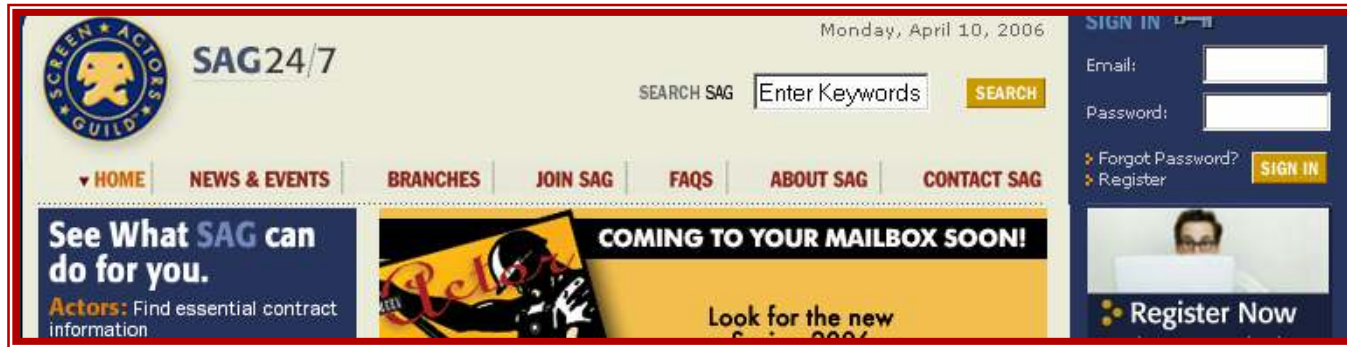
The business of relationships.



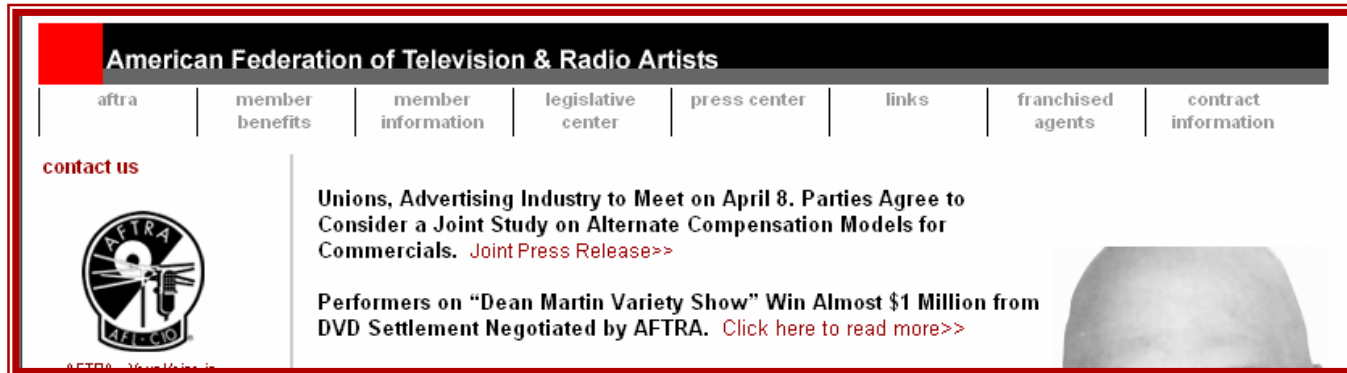
www.adlawbyrequest.com

ReedSmith

The business of relationships.



www.sag.org



www.aftra.org

ReedSmith

The business of relationships.



Questions?

ReedSmith

The business of relationships.