



July 18, 2022

JOINT FAQs REGARDING THE 2022 SAG-AFTRA COMMERCIALS CONTRACTS – PART II

GENERAL

1. Q: *Do performers need to be advised whether they are being hired under the Traditional Contract or the new 2022 Contract? If so, at what point?*
A) Between now and December 31, 2022, performers should be notified at the time of booking. Beginning January 1, 2023, all commercials must be produced under the new 2022 Contract payment structure. As a result, beginning January 1, 2023, the only notification that would be required at booking would be whether you are producing under a waiver (e.g., Social Media/YouTube Waiver).
2. Q: *What type of employment contract should be used if a commercial is produced under the Traditional Contract between June 1, 2022 and Dec 31, 2022? What type of employment contract should be used if a commercial is produced under the new 2022 Contract?*
A) The A-1 and A-2 should be used to employ performers under the Traditional Contract. The new Exhibit 1 and Exhibit 2 should be used to employ performers under the new 2022 Contract.
3. Q: *How do I determine the terms, conditions and rates that apply to a commercial?*
A) Once Producer has engaged a performer under a particular contract structure—i.e., the Traditional Contract or the new 2022 Contract— the terms, conditions and rates of the contract structure under which the performer was engaged apply through the end of that commercial's MPU. Producers are not able to switch the contract model that applies unless and until they are renegotiating at the end of the MPU.
4. Q: *Between June 1, 2022 and December 31, 2022, do all performers in a commercial have to be hired under the same structure—i.e., either the Traditional Contract or the new 2022 Contract?*
A) Generally, yes. However because the ACS has expired, if a commercial was produced under the ACS, on May 24, 2022, but the VO is not recorded until June 5, 2022 (after the ACS has expired), the VO could be recorded under either the Traditional Contract or the new 2022 Contract, but NOT the ACS. Similarly, if a commercial was produced under the Traditional Contract in December 2022, but the VO is not recorded until January 2023, the VO would be engaged under the new 2022 Contract while the other performers were engaged under the Traditional Contract.
5. Q: *What contract structure do I use to renew a commercial made under the Traditional Contract (2019 or 2022) or the ACS (2019 or 2022)?*
A) Between now and December 31, 2022, a renewal upon expiration of the MPU would be negotiated with the performer under either the 2022 Traditional Contract or the new 2022 Contract. Beginning January 1, 2023, all renewals upon expiration of the MPU must be negotiated under the new 2022 Contract.

6. Q: *For any renegotiations prior to December 31, 2022, do all performers need to be renegotiated under the same contract structure?*
A) Yes.
7. Q: *If we produce a new commercial under the Traditional Contract in May 2022, but the first airing is after June 1, 2022, can we use the new 2022 Contract structure for use payments? Or would use payments have to be paid under the Traditional Contract because it was produced prior to June 1, 2022?*
A) Once a performer is hired under a particular contract structure, that structure is followed through the MPU. Therefore, the terms, conditions and use payments due under the 2022 Traditional Contract would apply to the commercial through the MPU.
8. Q: *A non-signatory advertiser's non-signatory agency shot still photographs. The advertiser now wants its signatory agency to use the still photos in a commercial. Does the signatory agency need to cover the still photographs under the Contract?*
A) From the MOA, pre-existing photographs not made by or on behalf of Producer are not covered by the Contract. Stills provided by other agencies produced on behalf of the advertiser, used in a manner otherwise covered by the Contract, would be covered.

NEW 2022 CONTRACT STRUCTURE

Maximum Period of Use ("MPU")

9. Q: *For Gaming Platforms/Virtual Worlds/Augmented Reality/Emerging Platforms, is the MPU also freely bargained? What are some examples of these platforms?*
A) No. The MPU is not freely bargained. Session, use and exclusivity may be freely bargained. An example of a type of media that would fall into this category is if a brand created a store in the metaverse and aired a commercial there.
10. Q: *If we have a multi-day shoot, are all performers on the same MPU, with 21 months starting either with the first use or 13 weeks after the last day of the OCP shoot?*
A) Yes.
11. Q: *Does "last production day" mean the last production day for each performer, or the last production day (excluding reshoots and recalls) for the entire production? What if one performer films day 1 of the shoot and another performer films on day 15 of the shoot? Which date would be considered the last production day?*
A) In the above scenario, day 15 is the last production day for the on-camera part of the production, and is, therefore, the "last production day" for purposes of calculating the first fixed cycle and MPU.
12. *Do the days of a production have to be consecutive?*
A) No. Production days do not have to be consecutive.

13. Q: What should payroll companies use as the "Last Production Date" if they are not advised what the last day is?

A) It is the signatory company's responsibility to provide such information and just as the first day of the production had to be identified to the payroll company so too must the last

Holding Fees

14. Q: If Producer is paying holding fees for a commercial under either the Linear + Digital or the Digital structure, can Producer take a break from airing the spot during the MPU and then restart Traditional Digital (or other use)?

A) Yes. You may use a spot in non-consecutive use cycles when you are paying holding fees.

15. Q: If Producer was paying holding fees for a commercial but then releases the commercial during the MPU and is no longer paying holding fees, can Producer still use the commercial on Traditional Digital through the remainder of the MPU?

A) There has been no change to the rules regarding releasing a commercial. You must either be paying holding fees or a use payment in order to retain the rights to a commercial during the MPU.

16. Q: When crediting session or holding fees against a use that is less than a session fee, can Producer credit the remaining amount towards another use type that starts within that same 13-week cycle? For example, a 4-week dealer cycle is \$700. Could we credit \$700 and credit the remaining \$83.10 towards another use that starts within that same cycle?

A) Yes. You could credit the \$700 against dealer use and credit the remaining \$83.10 against another use occurring in the cycle.

17. Q: Under Linear + Digital, if Producer does not require exclusivity for the full MPU or have a need to initiate further use beyond the initial holding cycle, can they release the spot and continue active use cycles through the end of those use cycles? In other words, could Producer pay a session fee, initiate a 1-year Traditional Digital cycle, release the spot at the end of the 13-week holding fee cycle (that was credited against the 1-year of Traditional Digital use), and use the commercial in Traditional Digital for the full 1-year use cycle?

A) Yes. Producer could continue to use the commercial in Traditional Digital for the remainder of the 1-year use cycle.

Use Cycles

18. Q: Can you upgrade from a shorter use cycle to a longer use cycle within the same use type by paying the difference between the two?

A) Yes. Provided you are in an active use cycle, you may pay the difference to upgrade to the longer use cycle. The start date of the original, shorter use cycle will be considered the start date for the longer cycle.

19. Q: If Producer paid for a 13-week or 1-year use cycle of local cable use, and also wants to purchase a 4-week national cable cycle with dates that fall within the 13-week or 1-year local cable cycle dates, can Producer purchase an independent 4-week national cable use cycle? Or do you have to upgrade to national for the entire cycle?

- A) Yes. You would purchase the 4-week national cable cycle and would not have to upgrade the existing local cable cycle.
20. Q: *Is the Late Night Waiver now included in "All Other North American Use"?*
A) No. There has been no change to the Late Night Waiver. Late Night would still be paid as Class A at the reduced rate.
21. Q: *Canadian program usage has traditionally been paid as Class B. Is it now covered under All Other North American Use? Is there any kind of discount for wild spot or program use for Canadian Usage only?*
A) Class B is now covered under All Other North America Use. No changes have been made in how wild spot or program use in Canada is compensated.
22. Q: *Does dealer cover local cable as well as wild spot?*
A) There has been no change. Dealer covers wild spot use but does not cover local cable.
23. Q: *Is it still true that the dealers have to purchase the local media in order to qualify for Dealer Use payment?*
A) Dealer A and Dealer B have been collapsed into one dealer use category. There have been no other changes.
24. Q: *Does Spanish Program use now include the Spanish Cable networks? If not, which Spanish networks are included in the Spanish Program payment?*
A) Spanish cable is paid at the same rates as national cable. Telemundo is an example of a Spanish network.

Public Service Announcements ("PSAs")

25. Q: *Regarding the additional one-year use period for PSAs, is the only requirement that Producer pays the session fee?*
A) Yes. Notice to, and consent from, the performer is not required.
26. Q: *Are additional years free if the performer agrees to waive payment?*
A) Producers now have an automatic right to a second year, without performer or union consent, for the payment of a session fee (just like year one). The third and any subsequent years require union approval of the continued waiver and the performers' agreement to waive use. This is the same practice and procedure that was previously required for year two and all subsequent years.
27. Q: *Can we pay the second year at the time of renewal or does it get paid up front?*
A) The session fee for year two is due upon the expiration of year one and commencement of year two.
28. Q: *Must the second year of use be consecutive?*
A) Yes.

29. Q: *Does the Ad Council have to supply the Union all three of the required documents to avoid paying for unauthorized usage?*
A) Yes. all three of the documents must be presented.

Statute of Limitations

30. Q: *Does the Statute of Limitations apply to any and all claims for unpaid use filed on or after April 1, 2022, regardless of when the commercial was produced?*
A) Yes.
31. Q: *For the Statute of Limitations on claims for unpaid use, is it correct to say that no claims for unpaid use can be filed after 6 months of either the release from exclusivity or from the end-date of the MPU? Or, is it the case that any damages awarded for unpaid use will not exceed 6 months of use fees, regardless of when the claim is filed?*
A) Claims for unpaid use will be time barred if they are filed more than 6 months after either the release from exclusivity or the end date of the MPU. It is not a limitation on damages.
32. Q: *How is unpaid use that occurs after the end of the MPU handled? What's the time frame for making a claim on this kind of use?*
A) Unpaid use that occurs after the expiration of the MPU is unauthorized use. There is a limitation on damages for unauthorized use on social media and YouTube after the MPU (see Section 17). There is a general four (4) year statute of limitations ("SOL") on claims under the collective bargaining agreement. Except for the areas specifically stated in the collective bargaining agreement, the SOL would not begin to run until the performer knew or should have known that the claim existed.

Digital Doubles

33. Q: *If Producer uses a robotic voice (e.g., TikTok videos) where the voice is entirely created by computer and not based on a human voice, is that now covered?*
A) No. An example of what you may not do is record a performer for a single VO and then use that recording to create a digital double of performer's voice that you use without compensation to the performer for future commercials.
34. Q: *If we hire on-camera extras, can we double them to fill a stadium, concert, etc.? Or, do we still need to hire a minimum of 45 extras?*
A) You need to hire a minimum of 45 union extras.

Theatrical/Industrial

35. Q: *If you are paying for Foreign Use in a particular territory (e.g., the UK), do you separately pay for theatrical/industrial use?*
A) Foreign use in a given territory covers all use in that territory, including Traditional Digital (if geofenced for the territory), Streaming, linear and theatrical/industrial use.

36. Q: *Is industrial use paid under “All Other North American Use” under the new 2022 structure like it was under the ACS?*
A) No. It is paid per Section 43.
37. Q: *Does the clarification on industrial use being worldwide apply only to spots produced on or after April 1, 2022?*
A) No. The clarification is effective immediately for all commercials.

P&H

38. Q: *Was there a change to the due date for P&H contributions? Is the P&H contribution now due within 30 days from the date wages are due or the date wages are paid? Is this a change in the requirement for making timely contributions?*
A) There was no change in the requirement for making timely contributions. The language relating to the date wages are due refers to the date that scale performers working on standard employment contracts are contractually required to be paid. The payment date is still the date that would be used for calculating the due date for contributions due on installments for multiservice and other guaranteed contracts.

Editing

39. Q: *Producer filmed a commercial in April 2022 under the Traditional Contract. Additional executions will air in June or later. Can they be paid under the new 2022 Contract? If so, does Producer need consent from Talent, or can Producer just proceed with paying under the new 2022 Contract?*
A) Since the original commercial was produced under the Traditional Contract, editing of the original commercial is under Section 26. If the additional executions were created as a result of “unpermitted edits” under Section 26, such additional executions would be considered new commercials for use purposes. If use of such “new” commercials occurred after June 1, use may be paid under the new 2022 Contract, provided: i) you provide notice to the performers, and ii) the MPU still would follow the original commercial. If instead the additional executions were separate commercials at the time of production, then the use of such additional executions would be under the Traditional Contract.
40. Q: *If footage from a commercial produced under the Traditional Contract is lifted into a commercial produced under the new 2022 Contract, under what contract are the principal performers in the Traditional Contract footage be paid for the new commercial? Is the answer the same for using footage produced under the new 2022 Contract in a spot produced under the Traditional Contract?*
A) Under both scenarios, the principal performers whose performance is contained in the lifted footage would be paid for the new commercial according to the structure under which the new commercial was produced.

41. Q: *Will shorter/longer version fees and/or paid edit fees need to be paid on spots being renewed under the new 2022 Contract that previously included unlimited or extended editing rights for internet & new media under the 2019 Contract? Would all existing versions be renewed as separate commercials under the new structure?*
- A) When you renew the original (“mother”) spot produced under the 2019 Contract with a right to unlimited/extended editing rights, the mother spot and all already existing versions would be considered one commercial for use purposes under the new 2022 Contract. As of June 1, any future versions created would be subject to the editing structure of the new 2022 Contract.
42. Q: *Excluding addressable edits, can extras still be integrated into an unlimited number of commercials for the same advertiser for a single integration fee?*
- A) Extras are only paid for addressable edits. They do not receive any payment for shorter/longer versions or paid edits. They only receive a one-time integration fee when an unpermitted edit creates a “new” commercial for use purposes.
43. Q: *How does the elimination of Section 26 affect tagging?*
- A) There is no change to the commonly understood definition of tags. In addition, tag rates remain the same, and tag changes are considered permitted changes.
44. Q: *Does the new 2022 Contract allow for dealer commercials to have their promo info in the beginning, middle and end without those changes being considered new commercials?*
- A) Yes. These would be permitted changes.
45. Q: *Can you have a limited offer run, replaced by an “evergreen” offer with the same exact picture, different supers and VO, and pay as a single commercial within the dealer use cycle?*
- A) Yes. These would be permitted changes.
46. Q: *Are the editing rates paid on a “per” edit basis? Or a flat fee for a certain amount of edits in those bundles/buckets.*
- A) Shorter/longer versions are paid per edit based on the performer. Paid edits are paid per edit based on the performer. Addressable edits are paid as a flat fee for an unlimited number of addressable edits. The Advertiser Library or Asset Library fee is paid as a flat fee for an unlimited number of edits that may be used in Traditional Digital.
47. Q: *How is a change to the off-camera message (a permitted change) different from a change to the commercial message (an unpermitted edit)?*
- A) Examples of changes to the off-camera message include a voiceover change, a new tag, or a music change. Changing the commercial message refers, for example, to changing the product that you are selling (e.g., soda versus sparkling water). Please refer to editing examples in the MOA.
48. Q: *Can all of your paid edits have different tags?*
- A) Yes. Changing the tag is a permitted change.

49. Q: *Where would you indicate on a contract that the performer is being hired for Addressable?*
A) You are not required to notify a performer that you will (or might) do addressable edits. You are required to pay the performers the required addressable edit fee.
50. Q: *If stock footage is changed in a commercial but nothing else changes, and the new version replaces the old, can it be paid as the same spot?*
A) It would depend on the change and the stock footage.
51. Q: *Can you add stock footage into a version without creating an unpermitted edit if the rest of the footage is from the same production?*
A) It would depend on the change and the stock footage.

Audio Commercials Contract

52. Q: *Is wild spot weighted by market?*
A) Yes. There has been no change under the Audio Commercials Contract.
53. Q: *Currently there are no edits unless you pay under the Audio ACS. Will shorter/longer versions now be allowed for audio commercials?*
A) No. There has been no change.
54. Q: *Are third-party signatories allowed to produce under the Audio ACS?*
A) Yes.
55. Q: *How long is the MPU for commercials produced under the Audio ACS?*
A) 1 year.
56. Q: *Are Internet and New Media collapsed as of June 1, 2022 for the Audio Commercials Contract?*
A) No.
57. Q: *Were there any changes to dealer use under the Audio Commercials Contract or the Audio ACS?*
A) No.