



**FACT SHEET:**

**THE WGA'S MISLEADING ALLEGATIONS REGARDING NEW MEDIA  
RESIDUALS**

- On November 19th, the Writers Guild of America issued a press release alleging that Hollywood studios “are not paying residuals for writers' work that is reused on new media.”
- The WGA issued its press release just as a federal mediator was about to bring SAG and AMPTP together. In addition, the WGA made its complaint about new media residuals without first asking any of the Companies to help resolve any outstanding issues, as is customary practice.
- The WGA’s press release was highly misleading and seems to have been designed to poison the atmosphere for the federal mediation rather than to actually ensure that residual payments are made to working writers.
- Here are the actual facts, in a nutshell:

**STREAMING**

- Some studios have either made streaming payments to the WGA under the new formula, or are set to make those payments this week. The remaining studios are still working to program their residual systems to incorporate the new formulae. Some will process the payments manually in the meantime. Interest will be paid on any late payments.
- Further, studios have been making residual payments all along for Temporary Downloads, as well as Permanent Downloads (called Electronic Sell-Through, or EST). EST residuals for programs released before February 13, 2008 have been included in the DVD payment structure, contrary to the WGA’s press release that payments were not being made for the reuse of writers’ work on new media.

- Even before the WGA issued its press release, studios had informed the WGA that new systems were being put in place to calculate and distribute streaming residuals. WGA was further informed that even though the new systems were difficult, costly and time-consuming to implement, steady progress was being made. Complexities of the new procedures include:
  - An unprecedented number of new formulas for residual payments for film and television streaming, permanent downloads (EST), and derivative and original made for new media programs that needed to be programmed.
  - Payment systems must account for a variety of new variables, including platform, release window, library vs. current product and allocations to each Guild and Union.
- WGA also knew that, to the extent the difficulties in creating these new systems delayed payments beyond their due dates, the studios would owe interest payments as called for by the labor agreement.
- WGA knew all of this and nonetheless issued its press release.
- The WGA knew all of these facts, but decided to misuse the issue of new media residuals for the Guild's own partisan purposes. Instead of working cooperatively with the Companies to resolve any outstanding issues, the WGA went public on the eve of the crucial SAG-AMPTP federal mediation. This move was blatantly designed to disrupt that mediation and help justify SAG's eventual decision to reject the AMPTP's offer and end the mediation. In short, AMPTP and the studios are dealing with the issue of new media residuals substantively, while WGA is more concerned about playing politics with the issue than with ensuring that working writers receive payment.

#### ELECTRONIC SELL-THROUGH (EST)

- Also on the eve of the federal mediation, the WGA filed an arbitration claim disputing the way AMPTP was interpreting certain language in the new agreement.
  - WGA filed this arbitration claim to generate the kind of media coverage that would poison the atmosphere just prior to the start of federal mediation.
  - The language at issue in the WGA agreement is exactly the same language that was included in each of the Guild and Union contracts negotiated this year. No other Guild or Union has ever questioned the interpretation of the language. No one else has ever suggested that the language means anything other than what it clearly says.

- Here are the specific details on the language that WGA has disputed:
  - The newly-negotiated terms for EST are consistent among the WGA deal and those labor pacts negotiated by the DGA, AFTRA and IATSE. The language (see below) clearly specifies that the terms shall apply to motion pictures (e.g., TV and features) released after the start of the new WGA contract, February 13, 2008.
  - The following is the language on permanent downloads (EST) as laid out in Section 1.b. of the “Sideletter on Exhibition of Motion Pictures Transmitted Via New Media” (as taken from the Final Memorandum of Agreement sent to WGA on Feb. 21, 2008):

‘Paid Permanent Downloads ( ‘Download-to-Own’ or ‘Electronic Sell-Through’) (‘EST’).

The following shall apply to motion pictures released after February 13, 2008:

If the consumer pays for an EST copy of a theatrical motion picture, the Company shall pay residuals to the credited writer(s) at the rate of 1.8% of 20% of Company’s “accountable receipts,” as that term is defined in Paragraph 3 below, for the first 50,000 units and 3.25% thereafter.

If the consumer pays for an EST copy of a television motion picture, the Company shall pay residuals to the credited writer(s) at the rate of 1.8% of 20% of Company’s “accountable receipts,” as that term is defined in Paragraph 3 below, for the first 100,000 units and 3.5% thereafter.”