[US] Hollywood strike: writers reach agreement

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In the United States of America (USA), a federal statute from Congress governs copyright law: the Copyright Act. There are also state laws which deal with issues not covered by federal law. According to Section 201, the ownership lies in the author of the work.

However, this general principle knows derogations, among which the "work for hire" principle, as provided by Section 201 (b)

Ultimately, in this scenario, employers become authors and owners of copyright in works created by their employees. Many works produced in this sector fall under the definition of works-made-for-hire. The protection of the rights of creators and performers is ensured by audiovisual collective management organisations, who negotiate collective agreements with studios. For example, the Writers Guild of America (WGA) negotiates on behalf of its members with the Alliance of Motion Picture and Television Producers regarding rights to screen credits.

A massive strike started in May 2023 in Hollywood, bringing together writers and actors asking for better working conditions (especially remuneration conditions for writers). While the actors' strike is still ongoing*, a tentative agreement to amend the 2020 Minimum Basic Agreement (MBA) between the Writers Guild of America and the Alliance of Motion Picture and Television Producers was reached on 24 September 2023. The agreement was ratified on 9 October 2023 by 99% of WGA members, with a term from 25 September 2023 to 1 May 2026. It includes significant gains for remuneration and protections to regulate the use of artificial intelligence (AI).

The 2023 MBA amends parts of the 2020 MBA, such as :

- MBA minimum increases: 5% on ratification of the contract, 4% on 5 February 2024, and 3.5% on 5 February 2025.

- A new viewership-based streaming bonus for "high budget subscription video on demand" series and films: a bonus of 50% of the fixed domestic and foreign residual to be paid to writers when the content is viewed by a minimum 20% of the VOD's audience in the first 90 days of release (or in the first 90 days in any subsequent exhibition year).

- VOD services will provide the WGA with streaming data, subject to a confidentiality agreement.

- For series employment, writers will see their weekly pay increase by the agreed rate under the MBA (5%, 4%, and 3.5%).

- On AI, its use for projects covered by the MBA is now regulated: AI is not a writer, and AI-generated written material is not considered literary material, source material or assigned material under the MBA. While companies cannot require writers to use AI software, a writer may ask the company to use AI when writing as long as the writer follows the company policies. Besides, companies using writers' services shall disclose to writers if materials they received were generated by AI. Finally, on AI, the WGA reserves the right to assert that the exploitation of writers' productions to train AI is prohibited by the MBA or other law.

This last part on AI echoes the current trilogues taking place between the EU institutions, aiming to adopt an AI Act regulating its uses in the internal market. Concerns were voiced by the creative industry, fearing the use of copyrighted data to train AI. For the moment, the interinstitutional negotiations are still ongoing (next trilogue on 24 October 2023).

* At the time of writing (16 October 2023), actors and studios have not yet reached an agreement. See SAG-AFTRA's website: https://www.sagaftrastrike.org/why-we-strike and: https://www.hollywoodreporter.com/business/business-news/sag-aftra-talks-suspended-studios-say-1235616218/ as well as: https://www.theguardian.com/culture/2023/oct/12/actors-union-talks-suspended-sag-aftra-hollywood-strike

WGA's 2023 MBA ratified

https://www.wgacontract2023.org/announcements/2023-mba-ratified

WGA summary of the 2023 MBA

https://www.wgacontract2023.org/the-campaign/what-we-won

USA Copyright Act

https://www.copyright.gov/title17/