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SOME LESSER KNOWN PROVISIONS OF THE WGA 1981 THEATRICAL AND TELEVISION MINIMUM BASIC AGREEMENT

*By Naomi Gurian**

I. INTRODUCTION

The 1980-81 collective bargaining negotiations of the three major talent guilds, the Screen Actors Guild, the Directors Guild of America, and the Writers Guild of America, East & West, focused primarily on compensation for talent for pay and basic cable television revenues. The approach adopted by the Writers Guild of America (hereinafter 'WGA') agreement, varying considerably from those accepted by the other guilds, contains as the centerpiece of its pay television provisions a formula awarding writers a percentage of gross compensation after a recoupment, or "breakeven" figure, is reached.¹ The details of this formula have received considerable attention within the entertainment industry.

The perceived importance of the burgeoning pay television market set the limits within which all other terms of the contract were negotiated. Nevertheless, significant alterations of the previous WGA Theatrical Agreement and the Television Minimum Basic Agreement (hereinafter 'MBA') occurred in other areas also deserving of careful attention. This article will examine several of the most important issues: (1) theatrical provisions regarding paperback publications, and reacquisition of literary material; (2) television provisions regarding the concept of "going rate and bonus", and the exclusive rights period; and (3) grievance and arbitration procedures.

II. THEATRICAL PROVISIONS

A. Paperback Publications

1. The Writer's Exercise of Separable Publication Rights

a. The 1977 Agreement.

In recent years, the publication of paperback books, based upon

* Executive Director, Writers Guild of America, West.

1. See generally Writers Guild of America 1981 Theatrical and Television Basic Agreement, at 112-18. (Hereinafter '1981 Agreement').

and timed to coincide with the release of a motion picture, has increased. Under the 1977 Basic Agreement, the writer entitled to "story by," "written by," or "screen story by" credit and qualified for "separation of rights," became entitled to publication rights.² The separated rights concept, a part of the MBA for over thirty years, essentially reserves to the screenwriter the ability to exploit his work commercially in certain ancillary markets. As a "worker for hire" under the 1976 Copyright Act, however, he is not the copyright holder.³ The rights to the separable material are licensed by the copyright holder (usually the employer) to the writer on an exclusive, royalty-free basis.⁴

Not all writers, though, are entitled to separable rights. In addition, even in those instances where the provisions apply, they are restricted in a variety of ways. Earlier agreements contained "hold-back" clauses, preventing the writer from utilizing separable publication rights so as to compete absent the company's consent, with the general release of the motion picture. Specifically, the writer could not exercise these rights until three years following the expiration of the employment contract, or in the case of material purchased in completed form, three months following the acquisition date. Where neither of the above time periods had passed, but the motion picture had been in release for six months, the writer was also free to exercise separable publication rights. Thus, the period which terminated first served as the relevant measurement.⁵

b. The 1981 Agreement.

The 1981 MBA adds two modifications to this scheme. If principal photography begins during the third year of the hold-back period, the writer may not exercise publication rights until six months after general release of the picture.⁶ This gives the company a modest additional hold-back where production begins during the last year of the period. Additionally, the 1981 MBA provides that, as to hardcover publications only, no hold-back provisions will extend "beyond the commencement of general release."⁷

2. Writers Guild of America 1977 Theatrical and Television Basic Agreement, at 114. (Hereinafter '1977 Agreement').

3. Copyright Act of 1976, Pub. L. No. 94-553, § 201(b), 90 Stat. 2541 (1976).

4. 1977 Agreement at 114.

5. *Id.*

6. 1981 Agreement at 25.

7. *Id.*

2. The Procedures Available to a Company wishing to Publish a Paperback Novelization

a. Regular Procedure.

1. 1977 Agreement.

If the company, for the purpose of publicizing or exploiting the picture, desires to publish a paperback novelization, it may do so by following either regular or expedited procedures. Under the 1977 MBA, the company was required to give written notice of its intention to the Guild and to the writer entitled to separation of rights, listing the names of all publishers acceptable to the company.⁸ The Guild then had 10 days to determine the "Guild-named writer" for the project and to notify the company of that writer's name. The writer entitled to separation of rights qualified as the Guild-named writer, unless he or she declined to write the novelization, in which case another credited writer was substituted. Regardless of how he acquired his/her title, the Guild-named writer retained all payments for the right to publish or cause the publication of the novelization.

Any publication agreement entered into by the Guild-named writer was required to provide that the company controlled the time and locale of publication and release, as well as use of art work, including the cover, title, credits, legends, advertising materials and stills. The company also had the right to arrange for, and retain payment from the publisher for use of such art work.⁹

If the Guild-named writer failed to consummate a publication agreement within 45 days, or if the Guild failed to notify the company of the specific Guild-named writer within the 10 day period, the company could make whatever arrangements it chose for the writing and publication of the paperback. However, when the company contracted with a writer of its own choosing, compensation could not exceed that offered to the Guild-named writer. An exception to this last rule was allowed where the Guild-named writer was first given the opportunity to write the paperback version for such increased compensation.¹⁰

2. The 1981 Agreement.

The 1981 MBA modified this procedure in several ways. The

8. 1977 Agreement at 114-15.

9. *Id.* at 115.

10. *Id.*

company's written notice of its intention to have a paperback published must now include the names of at least three acceptable publishers, not more than one of which may be affiliated with the company.¹¹ This requirement enables the writer to deal with publishers who may be interested in publishing the novelization, rather than with subsidiaries or affiliates of the company. Additionally, if more than one writer shares the "story by," "written by," or "screen story by" credit, they may now determine among themselves which one will negotiate the sale of publication rights for the paperback and which one will author the novelization. If the writers cannot agree, the Guild will make the necessary determinations.¹² The Guild has a ten-day period within which to notify the company of the name of the negotiating writer and the name of the writer who will write the novelization.¹³

The company may submit to the writer(s) a "package proposal." Such proposal may include the right to publish, the right to have the novelization written by any person, and the right to use of the "art work."¹⁴ If the negotiating writer approves the submitted package proposal, paperback publication will proceed on that basis.¹⁵ Should the negotiating writer reach an agreement with a publishing company for both rights and services, the 1981 MBA calls for an allocation of all monies payable for the novelization so that two-thirds are allocated to the right to publish and one-third to services.¹⁶

The 1981 MBA also requires any publication agreement entered into by the negotiating writer to provide that the company controls the time of publication, as well as the time and locale of release. In addition, the company has the exclusive right to arrange and retain payment for any legends, advertising material, stills, and any other "art work" elements furnished by the company, *but not the title and logo*. The publisher selected by the writer has the right to use the title and logo of the motion picture in connection with the novelization, provided the company is paid 25% of the monies for publication rights for such use. The right to use the title and logo does not include the right to use the likeness of characters unless (1) the likeness is an inextricable part of the logo, (2) the company has the right to authorize the use of the likeness, and (3) no additional payment is required of the company

11. 1981 Agreement at 25.

12. *Id.* at 25-26.

13. *Id.* at 26.

14. *Id.* at 25.

15. *Id.* at 26.

16. *Id.*

as a result of the use of the likeness.¹⁷

b. Expedited Procedure.

1. The 1977 Agreement.

The 1977 MBA set forth an expedited procedure for paperback publication which afforded the company the right to request, at any time, specification of the "Guild-named writer" by the Guild. If such request was prior to a final determination of credits and if more than one participating writer had been involved, the Guild would conduct an expedited hearing to determine the writer preliminarily entitled to separation of rights.¹⁸

If at the time of the company's request there was only one participating writer, then that writer was the "Guild-named writer" and had the right to negotiate with the publisher named by the company. If the company named only a publisher which was an affiliate or subsidiary of the company, the writer had a period of 45 days to negotiate with another publisher of commensurate status in the Industry. When such other publisher presented a better offer, the company-named publisher was given the opportunity to meet this proposal on a first refusal basis. If the company-named publisher did not meet the terms of that better offer, the writer could proceed with a publication agreement with the other publisher. The company could arrange for the paperback to be published only if the Guild-named writer did not enter into a publication agreement within the 45-day period. In this case, the payments which would be due the "Guild-named writer" were forwarded to the Guild for the account of the writer or writers ultimately determined to be entitled to separated rights.¹⁹

2. The 1981 Agreement.

The 1977 Agreement contained certain "gaps," which existed in the prescribed expedited procedure, and could be filled as follows: "If Company elects the expedited procedure . . . , and the Guild-named writer enters into a publication agreement pursuant thereto, in all other respects the provisions of the Regular procedure . . . shall apply including Company's sole control of licensing of the art work."²⁰ The

17. *Id.*

18. 1977 Agreement at 115.

19. *Id.* at 116.

20. *Id.*

addition of the phrase "except for the title and logo" at the end of this passage was the sole alteration made by the 1981 Agreement in the expedited procedure.²¹

3. Payments in the Event of the Guild-Named Writer's Failure to Enter Into the Publication Agreement

The 1977 MBA called for a payment to be made to the writer entitled to separated rights, if the Guild-named writer did not enter into the publication agreement within the applicable period. Pursuant to that provision, the company was required to pay to the writer a \$2,500.00 advance against an amount equal to 35% of the company's adjusted gross receipts from the publisher.²² The advance is increased to \$3,500.00 in the 1981 MBA.²³ The adjusted gross receipts as defined in the 1977 MBA are the total receipts received by the company from the publisher less only (1) the actual money paid for the writing of the novelization and (2) the sum of \$5,000.00 deemed, for this purpose only, the cost of "art work."²⁴ The 1981 MBA increased the \$5,000.00 sum to \$7,000.²⁵

B. Writer's Right to Reacquire Literary Material

The 1981 contract negotiations also resulted in a significant modification of the theatrical provision concerning a writer's ability to reacquire his literary material.

1. The 1977 Agreement

a. In general.

The relevant portions of the 1977 MBA applied only to original literary material, (1) acquired by the company subject to the terms of the 1977, 1973, or 1970 MBA's; (2) which had not been exploited in any medium; and (3) which the company had decided it would not exploit in any medium in the future.²⁶ This last item injected an element of capriciousness into the proceedings, since neither the writer nor the Guild could challenge the Company's assertion that it had decided to

21. 1981 Agreement at 27.

22. 1977 Agreement at 116.

23. 1981 Agreement at 27.

24. 1977 Agreement at 116-17.

25. 1981 Agreement at 27.

26. 1977 Agreement at 128.

utilize the material. The company was not bound by that assertion, should it at a later date decide against the exploitation of the material.²⁷

If the literary material met these conditions and the writer desired to purchase the company's interest in the material, the Guild would notify the company in writing of the situation. The company then had a 30-day period to notify the Guild of the terms and conditions, including price, under which it would allow the writer to reacquire the material. Alternatively, it could notify the Guild that the literary material did not meet the conditions precedent. While the company's decision regarding the terms and conditions of the sale were not subject to challenge by the Guild or the writer, its designated purchase price was limited in several respects. Said price could not exceed the total direct costs incurred by the company in relation to that literary material. These costs included payments for the acquisition of the material and for writing services connected with its development, as well as fringe benefit costs such as Pension and Health and Welfare payments and Social Security payments. Excluded, however, were overhead and costs of any other kind.²⁸

Once the company notified the Guild and the writer of the terms and conditions on which it would sell its interest in the material, the Guild, on behalf of the writer, had thirty days within which to serve written notice of acceptance. This notice enabled the parties to close the transaction. At any time prior to receipt of the notice of acceptance, the company could dispose of the literary material or of any rights therein, or exploit the material. In either such event, the writer lost the right to reacquire the material.²⁹

b. Material Acquired by Company on or After March 2, 1977.

With respect only to literary material acquired by the company on or after March 2, 1977, the writer had additional rights. Upon certain conditions, he or she was entitled to reacquisition if five years had passed since (1) the company's purchase or license of the literary material, or (2) completion of the writer's services rendered in connection with the literary material. The relevant conditions were the company's failure to engage additional writing services, otherwise actively develop the literary material, or enter into negotiations for the sale or license of

27. *Id.*

28. *Id.*

29. *Id.* at 128-9.

the material.³⁰

The Agreement also addressed a related situation: where a company had engaged in negotiations for the sale or license of literary material but had not arranged for additional writing services rendered or otherwise actively developed the material. Here, if the negotiations did not, in fact, result in a sale or license, then the writer could reacquire upon the conclusion of the negotiations. Finally, if none of the above applied, the right to reacquisition arose upon expiration of the seven-year period following the company's purchase or license of the literary material, or upon completion of the writer's services rendered in connection with the literary material.³¹

At any time during the two-year period immediately following expiration of the applicable time periods set forth above, the Guild could give written notice of the writer's desire to reacquire the material. The company had a 30-day period to give its written notice to the Guild, stating the terms and conditions upon which it would sell its interest in the material, including the purchase price. At this time, the company would state that they had decided not to exploit the material in any medium in the future. The purchase price designated could not be in excess of the total direct cost previously incurred by the company. The company was then precluded from exploiting, producing, selling, or disposing of that material for a period of 120 days. During that period, the Guild, on behalf of the writer, could serve a written notice of acceptance of the company's terms and conditions. Failure to purchase by the conclusion of the two years following expiration of the applicable time period resulted in forfeiture of the writer's right to reacquire. Within the two year period, however, the Guild could repeat the notice one or more times.³²

2. The 1981 Agreement

The 1981 MBA modified the reacquisition provisions in significant ways which, for ease of understanding, will be discussed in three parts. The first relates to material subject to the terms of the 1970 or 1973 MBA's, the second to material subject to the terms of the 1977 MBA, and the third part to literary material acquired by the company on or after March 2, 1981. Regardless of which MBA governs, however, only literary material (1) which is original (i.e., not based on any preexisting

30. *Id.* at 129.

31. *Id.*

32. *Id.* at 129-30.

material), and (2) which has not been exploited in any medium, is covered by these provisions.³³

a. Material Subject to Terms of 1970 or 1973 MBA's.

A writer may wish to purchase the company's interest in the literary material acquired subject to the terms of either the 1970 or 1973 MBA's. If so, after the Guild files written notice with the company, the company has 90 days to notify the Guild of the terms and conditions, including price, under which it will sell the material. The company may instead notify the Guild that the literary material does not meet the conditions precedent or that the literary material is in active development. If the Guild disputes the factual basis for the company's claim, such dispute is subject to the grievance and arbitration provisions of the MBA. This modification effectively removes the element of capriciousness inherent in the conditions precedent to reacquisition set out in the 1977 Agreement. However, the company's decision regarding the terms and conditions of the sale continues to be immune to challenge by the Guild or the writer, just as under the 1977 MBA.³⁴

Material acquired on or after March 2, 1977, but prior to March 2, 1981, remains governed by the terms of the 1977 MBA, unmodified in any way. However, literary material acquired by the company on or after March 2, 1981, receives wholly different treatment. The writer may reacquire such material five years after (1) the company's purchase or license of the covered literary material, or (2) completion of the writer's services (whichever occurs later). This right to reacquire accrues only if the material is not in active development at the time procedures for reacquisition are instituted. Examples of active development include employment of (A) a writer to re-write the literary material, (B) a director, major actor, or other key above-the-line element on a pay-or-play basis, (C) a production designer, production manager, or other supervisor, in active preparation for the production of the motion picture, (D) a unit production manager or other person to prepare a budget for the picture. Commencement of production will also, of course, be considered active development.³⁵

Reacquisition requires repayment of all funds expended by the company as compensation to the writer for his writing services, or for the purchase or license of the material. Additionally, the writer must

33. 1981 Agreement at 27.

34. *Id.* at 27-8.

35. *Id.* at 28-9.

obligate the acquiring company to reimburse the original company for any other direct costs previously incurred by the latter. This sum is to be taken from the first revenues after recovery of production costs.³⁶

In summary, the reacquisition provisions of the 1981 MBA have eliminated the capricious nature of the conditions precedent to reacquisition of material covered by the 1970 and 1973 MBA's, reduced the time period of reacquisition from a possible seven years to five years, and established that once the five-year period has passed, the company cannot prevent the writer from reacquiring his literary material unless that material is in active development.

III. TELEVISION PROVISIONS

A. *Elimination of Concept of "Going Rate and Bonus"*

One of the most important items negotiated in the 1981 collective bargaining agreement was the elimination of the concept of "going rate" and "bonus" payments to the "genre" writer.

1. The 1973 Agreement

The 1973 MBA brought into existence formulas affording additional or premium compensation payable for network prime-time episodic series (other than pilots) to genre writers.³⁷ A genre writer was defined as a writer who had previously written at least once within the genre of the particular program (e.g., comedy, drama) and had received compensation therefor in certain specific areas. These amounts were equal to certain rates specified in the contract, or to those received by a writer who had previously written at least twice within the genre of the particular program.³⁸

The additional compensation awarded a genre writer was paid only for the writing of both story and teleplay, whether by option or otherwise. It was not dependent upon credit or the production of the teleplay. A writer would not receive the additional compensation if his story did not serve as the base for any subsequent teleplay. On the other hand, if a writer wrote a story and another writer was assigned to write the teleplay, the original writer was entitled to his or her share of the "bonus," whether or not the other writer actually wrote the tele-

36. *Id.* at 29.

37. *See generally* Writers Guild of America 1973 Theatrical and Television Basic Agreement, at 19-19e.

38. *Id.* at 19c.

play. The additional compensation was to be paid to the original writer of the story and to the original writer of the first teleplay based on the story, not to any writers of the re-writes of such teleplay.³⁹

Where such additional compensation was called for, the 1973 MBA set forth a table of "going rates" and a table of "bonus payments." The going rate included and was in no case less than the minimum rate.⁴⁰

If the story and teleplay were written by the same writer, total compensation to be paid to that writer consisted of the "going rate" (which included within it the minimum rate) plus a "bonus."⁴¹ When different writers wrote the story and the teleplay, the 1973 MBA distinguished between writers under term employment and free-lance writers.⁴² Additionally, the 1973 MBA provided that neither the "bonus" nor the part of the "going rate" in excess of minimum was to be considered part of the applicable minimum compensation referred to in article 15B, dealing with television reruns. Nor was it deemed to be part of "initial compensation" for the purposes of article 17, contributions to the Pension Fund.⁴³

It can readily be seen from the following example that the concepts of "going rate" and "bonus" added greatly to the minimums payable to a genre writer of prime-time episodic television programs. From June 16, 1972, to June 15, 1973, compensation for a 60-minute story was \$956.00. Compensation for a 60-minute teleplay for the same period was \$2,549.00. From March 6, 1973, to September 15, 1974, after the institution of the 1973 MBA, minimum compensation for a 60-minute story was \$1,471.00 and minimum compensation for a 60-minute teleplay was \$2,872.00. For the same period of time, the "going rate" for a 60-minute episode was \$4,500.00 and the "bonus" for a 60-minute episode during that period was \$2,500.00.⁴⁴

2. The 1981 Agreement

By eliminating the concepts of "going rate" and "bonus" in the 1981 MBA, the Writers Guild has eliminated the concept of "genre" writer and has succeeded largely in rolling into television minimums

39. *Id.* at 19b-19c.

40. *Id.* at 19c.

41. *Id.*

42. *Id.* at 19d.

43. *Id.*

44. *Id.* at 19c.

the quantum gains made in 1973 without continuing a cumbersome and increasingly more complicated premium compensation formula. The significance of these rate increases is apparent when it is realized that minimums in the pay television area are based on free television minimums, both prime time and non prime time.

B. Reduction of the Exclusive Rights Period in Television

1. The 1973 Agreement

The separation of rights concept also appears on the television side of the MBA. With one important exception, noted below, the 1981 Agreement retains most of the provisions of the 1977 MBA in this area. The conditions that a writer must meet in order to qualify for separation of rights are set forth in the 1977 MBA, Article 16B, Section 1. Section 2 of Article 16B defines the elements of the company's exclusive ownership in film television literary material. Under this provision, the company retains exclusive ownership for a period of four years. Thereafter, writer and company each have a non-exclusive right to utilize and exploit the film television rights. The non-exclusive rights on the part of the company include the right to continue to exploit and exhibit the television film and to remake the film for television purposes, subject only to contractual provisions requiring additional compensation for the writer.⁴⁵

The exclusive television rights do not include television sequel rights, except as specifically provided below.⁴⁶ Sequel rights are defined as "the right to use the leading character or characters of a work participating in a substantially different story in an 'episodic series' or 'serial' type filmed television program or radio program."⁴⁷ The 1977 MBA sets forth the specifics regarding the company's exclusive right to the production of a television sequel. The company must commence to exploit those rights within three years from the delivery of the story, or story and teleplay, to which separation of rights apply. If a film based on the story and teleplay is broadcast within the three-year period, then the time limit is extended to three years from the date of broadcast. Finally, if a second pilot film is made, the company must begin to exploit its sequel rights within four years from the delivery of the story, or story and teleplay, or within three years from the release of the pilot film, whichever shall be earlier. If the company exploits the television

45. 1977 Agreement at 132.

46. *Id.*

47. *Id.* at 11.

sequel rights, it is required to pay to the writer a sequel payment for each episode produced and broadcast.⁴⁸ If the company does not commence the exploitation of television sequel rights within the proper time period, said rights revert to the writer or writers entitled to separation of rights. The company then has no further interest in any possible sequel.⁴⁹

2. The 1981 Agreement

The 1981 MBA significantly advances the writer's interests by reducing the period of the company's exclusive film television rights from four years to three years after delivery of the literary material or after the date of acquisition, so long as the material is not in active development at that time. The reduction of the company's period of exclusive film television rights does not apply to non-topical material intended for a "long form" program of more than 60 minutes in length.⁵⁰

IV. GRIEVANCE AND ARBITRATION

The Grievance and Arbitration provisions serve as the bedrock for enforcement of the many provisions of the collective bargaining agreement. Matters which are subject to grievance and arbitration include (1) any dispute between the Guild and the company concerning the interpretation of any of the terms of the MBA and the application and effect of such terms, (2) any alleged breach of any of the terms or provisions of the MBA by the Guild or the company, and (3) any claim by the Guild and a writer against a company for unpaid compensation or payment, excluding however, any claim not related to the writer's services as a writer, or not related to the sale of literary material.⁵¹

The Grievance Committee and the arbitrator are subject to a jurisdictional maximum as to the amount of an award for compensation or payment. Under the 1977 MBA, that jurisdictional maximum was \$75,000.00 for theatrical employment or purchase and \$35,000.00 for television.⁵² Those sums have been raised in the 1981 MBA to \$150,000.00 and \$75,000.00, respectively.⁵³ If a compensation claim exceeds the jurisdiction maximum, the claim may nevertheless be submit-

48. *Id.* at 132.

49. *Id.* at 133.

50. 1981 Agreement at 29.

51. 1977 Agreement at 28.

52. *Id.* at 29.

53. 1981 Agreement at 6.

ted to grievance and arbitration. By such submission, however, the Guild and the writer waive any amount exceeding that maximum. The collective bargaining agreement precludes splitting claims for compensation in order to avoid this waiver of the excess amount.⁵⁴

The grievance provisions call for a two-step procedure. Step 1 is an "informal" conference. A representative of the Guild, usually an attorney in the Guild's Law Department, and a representative of the company, are required to meet in a good faith attempt to settle the dispute. If that meeting fails to settle the dispute within seven days after the matter is first communicated to the opposite party, then it may be referred to Step 2 grievance, discussed below.⁵⁵

One change in the grievance proceedings instituted by the 1981 MBA affords participants a potentially speedier resolution of problems. Under the new agreement, either complainant or respondent may waive the grievance procedures. The dispute is then submitted directly to arbitration.⁵⁶ Under the 1977 MBA, waiver of the grievance steps was possible, but only by mutual consent of the parties.⁵⁷ By affording the parties a unilateral right to waive grievance, the new agreement allows for avoidance of the lengthy delays sometimes attendant upon the grievance procedure.

Where a dispute proceeded to the Step 2 grievance level, under the 1977 MBA, a grievance panel was convened, consisting of three members selected by the respondent and three members by the complainant.⁵⁸ Pursuant to the 1981 MBA, the grievance committee may, by mutual agreement of the parties, consist of two representatives chosen by respondent and two representatives chosen by complainant.⁵⁹

Arbitration is necessary when a matter cannot be resolved at the second step grievance proceeding, when one of the parties waives the grievance step, or when a matter is not subject to grievance and must be submitted directly to arbitration. The procedure is initiated by the complainant's written notice. This notice, which sets forth the particularities of the claim, is sent to respondent by certified or registered mail.⁶⁰ Under the 1981 MBA, respondent must now provide complainant with a written response to the charges not later than 10 days prior

54. 1977 Agreement at 29.

55. *Id.* at 35.

56. 1981 Agreement at 7.

57. 1977 Agreement at 36.

58. *Id.* at 35.

59. 1981 Agreement at 7.

60. 1977 Agreement at 36.

to the date set for the arbitration hearing.⁶¹ The requirement for an answer to the claim should assist the parties in narrowing and defining the issues for the hearing. The 1981 MBA also requires that the parties exchange information prior to the hearing regarding the expected utilization of documents and witnesses.⁶²

Article 11A, governing grievance and arbitration rules and procedures, has an additional subsection 10 under the 1981 MBA, entitled "Withdrawal of Services." It reads as follows: "Notwithstanding any provision of any personal service contract (including a memorandum agreement) or of the MBA to the contrary, it shall not be a violation thereof for the Guild or any employee (at the direction of the Guild) to withhold services from the company if the company fails or refuses to abide by the final award of an arbitrator for any reason whatsoever."⁶³ This provision gives the Guild a double-edged weapon against a defaulting company. Should a company fail to meet its obligation to pay the final award of an arbitrator, the Guild may instruct any writer employed by that company to withhold services from it. In this way, the company faces added pressure to settle the arbitration award. Additionally, the provision allows the Guild to protect the employed writer against a company whose ability to pay its obligations has been put in question.

V. CONCLUSION

The foregoing summary has touched on some, but by no means all, of the changes negotiated in the 1981 MBA, a lengthy and complex document. The new technologies of pay television and basic cable may receive a disproportionate amount of attention. Nevertheless, we would be ill-advised to forget that the theatrical film and free television markets are mature, alive, and inextricably bound up with the new delivery systems. Newly-negotiated or newly-revised provisions, such as those cited above, afford writers increased compensation and retention of rights in their work. Therefore, they may prove to have lasting and significant importance, with considerable carry-over effect in the new areas of pay television.

61. 1981 Agreement at 8.

62. *Id.*

63. *Id.* at 7.

