Hollywood writers in a battle against powerful talent agencies

By Adam Mclean and David Walsh
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The Writers Guild of America (WGA) has set an April 13 deadline for reaching an agreement with the major Hollywood talent agencies, organized in the Association of Talent Agents (ATA), a group of over 100 firms, on a new code of conduct. If no agreement is reached, the East and West branches of the WGA have said they will instruct the union's 13,000 members to fire their agents.

Talks between the two sides are continuing this week. The original deadline was April 6, but the Guild and the ATA agreed to a one-week extension.

At central issue is a widespread practice, which the WGA's new proposed code would prohibit, known as "packaging." As the Writers Guild explains: "When a writer creates a television series, instead of the agency commissioning ten percent of the writer's pay, the agency negotiates its own compensation directly from the studio producing the series through what is known as a 'package' or 'packaging fee.'" The practice involves "packaging," for example, a writer, an actor and a director from the same agency's pool of clients in exchange for a fee.

The writers have long had concerns about the conflict of interest inherent in an agency receiving compensation directly from a client's employer. In recent years, however, according to the WGA, "agency consolidation and the increased market power of the oligopoly agencies has led to the packaging of nearly all television and online series. According to WGA research, almost 90 percent of scripted series in the 2016- 2017 television season were packaged."

It is far more profitable for the agencies to package all their deals and negotiate higher rates for themselves, at the expense of the artists they nominally represent. According to David Greenblatt, a former Creative Artists Agency (CAA) agent, there has been a strong push to package all deals to achieve the highest profit: "Inside CAA it was always about 'package über alles [package above all]'—that was literally a phrase.'"

The WGA points to the conflict of interest: "Through packaging, an agency can collect tens of millions of dollars from a successful series it played little to no role in creating or producing. The agency collects its packaging fee regardless of how much its clients make, and even collects higher profits if the series' costs—including its own clients' compensation—are lower. This practice leaves the agency with significantly less incentive to increase any individual client's compensation or otherwise advocate on their behalf."

The union alleges that writers have been victimized by this process and that their compensation has been declining. WGA surveys "have found that the median weekly compensation for writer-producers declined 23 percent between 2014 and 2016. The surveys have also revealed declines in the per-episode fees that agents negotiate for television writer-producers. According to WGA data, these per-episode fees are barely higher than they were in the late 1990s and have actually declined when adjusted for inflation."

The "oligopoly" refers to a situation in which four agencies effectively control the talent business in Hollywood. The union points out that collectively, "William Morris Endeavor (WME), Creative Artists Agency (CAA), United Talent Agency (UTA), and International Creative Management Partners (ICM) account for more than 75 percent of WGA member earnings." Furthermore, "the lucrative revenue stream of packaging fees have attracted outside investors. As a result, the largest outside shareholders of the top three agencies are now private equity firms that expect strong returns on their investments."

The WGA details the series of acquisitions of talent agencies by private capital over the last decade. Private equity firm Texas Pacific Group Capital (TPG) bought a majority share of CAA between 2010-11 for about $340 million. At least 31 percent of William Morris Endeavor Entertainment (WME) was bought by Silver Lake Partners for $250 million in 2012, and PSP Investments, a pension investment manager, invested some $200 million into United Talent Agency last year. An additional $3 billion has been invested into WME and CAA from foreign investors.

This is not exactly the world of Broadway Danny Rose, Woody Allen's hapless, well-meaning theatrical agent in the 1984 film of the same title.

David Bonderman, a co-founder of TPG, summed up the firm's motivation for investing in CAA: "We were intrigued by CAA because they're in the middle of the ferment that's going on in this industry, but they've been brokers instead of principals, and we think they have plenty of opportunities to be principals."

Along those lines, WME and CAA, flush with cash from Wall Street and overseas, have expanded into content production and ownership, becoming part of entertainment industry management. As a result of this expansion, explains the WGA, several of the biggest agencies "have now become content producers, in effect employers of their own clients."

On his website, well-known journalist, television writer and producer David Simon (*Homicide: Life on the Street*, *The Wire*, *Treme*, *The Deuce*) angrily and bitterly explains his experience, early in his television career, with packaging.

Simon notes that when negotiating with director Barry Levinson's Baltimore Pictures for the sale of his book that formed the basis of *Homicide: Life on the Streets*, his agency (CAA) neglected to mention that it also represented Levinson and that, in exchange for returning Simon's 7.5 percent commission, the agency was "packaging all of us together in a happy bundle for the network [NBC]."

He sarcastically explains, "Yes, incredibly, to avoid the most overt and untenable conflict-of-interest, they were willing to heroically give back to me a few thousand dollars in exchange for millions of dollars in points on a piece of NBC's *Homicide: Life on the Street* which ran for seven years."

Simon says forthrightly, "Packaging is a lie. It is theft. It is fraud. Why [should the talent agencies] bother to fight for 10 percent of a few dollars more for this story editor or that co-executive producer or some actor or director when to NOT do so means less freight on the operating budgets of the projects that you yourself hope to profit from? … Personally, I'm for filing a civil suit against the ATA and the Big Four for an overt and organized breach of fiduciary duty in which they have effectively pretended to represent clients while taking bribes from studios to keep those clients' salaries and benefits lowered across the board."

The writer-producer suggests that "a curious and ambitious U.S. Attorney might enjoy a deeper dive into the realm of racketeering, because for the life of me, I can't see a difference between packaging and any prosecutable case of bid-rigging or bribery I ever covered as a reporter in federal or state courts."

The response of the WGA has been to insist that the agencies agree to a code of conduct, which, *Variety* explains, "requires that agencies agree to eliminate television packaging fees and ownership interests in production companies—demands that the agents had contended were not feasible."

In effect, the WGA is demanding the talent agencies stop acting like the conglomerates they increasingly are and to disentangle themselves from their connections to Wall Street—a thoroughly futile and utopian undertaking.

In the 100-day writers strike in 2007-08, the WGA demonstrated its essential impotence in the face of the giant media companies that have a stranglehold over the entertainment industry, a stranglehold that has only become more pronounced in the intervening decade.

At the end of that strike in 2008, which the union claimed to be a historic and enduring victory, the WSWS commented, "In general, frankly, many of the 'gains' of the WGA are simply concessions by the companies that it will not continue to carry out certain of the most blatant forms of thievery. The giant firms' lawyers, accountants and assorted financial advisors will now work day and night to figure out new ones."

This is precisely what has happened. It should be noted, however, that the new "forms of thievery" regarding the actions of the talent agencies are not simply the product of the greed and corruption of those firms and their executives, although such qualities are not in short supply.

While the WGA is framing the issue of the changing role of the agencies as a "conflict of interest," there is much more involved here. The creation of what the WGA correctly describes as a "cartel dominated by a few powerful agencies" is being driven by the objective logic of modern-day capitalism. It is an inevitable process under conditions of the near absolute domination of finance capital.

The writers have demonstrated their determination to carry out a fight to defend their working conditions, as evidenced by the recent 95 percent vote on the code of conduct. In 2017, they likewise voted by 96 percent to authorize a strike against the Alliance of Motion Picture and Television Producers, which the WGA averted by reaching a deal at the last minute.

The essential "conflict of interest" here is the conflict between capital and labor and the incompatibility of art and culture with the crisis-ridden profit system. For writers and artists to wage a serious fight for the defense of their living conditions—not to mention a defense of art and culture!—it is necessary to understand the political and economic issues underlying this struggle.