



## Changing Landscape

Typically, strikes pit labor against management in a war over numbers—salaries, benefits, staffing levels, and other detailed issues. Rarely do unions strike over concerns about new business models that could eventually transform the industry in question, especially when such transformation lies well in the future and no one is really sure how it will shake out. That is what made the recently ended 100-day television writers strike so unusual.

The main point of dispute between the WGA and the AMPTP member studios was over how to divide future revenues from digital distribution of their work through new electronic media, including the Internet and mobile phone and music players. The WGA said it wanted a better deal than it had previously got for secondary use of its materials, first on videocassette and later on DVD.

For instance, one point of contention was the flat residual payment of \$1,200 which studios gave directors when streaming their shows online for the first year. Writers feared that such an arrangement might encourage studios to offer more shows online rather than rerun episodes on broadcast TV, for which writers earn many times that amount. For example, writers typically earn \$20,000 when a network reruns a one-hour drama they've authored, according to *The Los Angeles Times*.

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now, they seem to have gotten a foothold. The new contract maintains the \$1,200 flat fee for Internet streaming during the first two years of the contract, after which writers get 2 percent of a distributor's gross take. Other provisions of the deal give writers annual pay raises of 3 to 3.5 percent and double residual payments for movies and TV shows downloaded over the Internet. However, the writers dropped their demand for increased residuals from DVD sales.



Media analysts are skeptical. "I am not sure when it will become more than the middling revenue (and not much income) online content generates today, which is more like splitting up a tip jar at Starbucks than raking in big bags of dough from some Hollywood blockbuster," commented *Wall Street Journal* reporter Kara Swisher on the *Journal's* technology blog "All Things Digital." "That is likely to remain true for a while, given that consumers still are not used to paying anything much for what is considered entertainment on the Internet today (which is largely

user-generated content) and that there is still a major piracy problem when it comes to premium stuff."

This talk brings back memories of the 2001 writers' contract, about which WGA was very proud. The writers then had secured a large share of the revenue from pay-per-view and other pay-TV outlets. Unfortunately, pay-per-view media was on the decline even back then as it made way for other forms of new media. What WGA fears about its new contract is that while it may be making an excellent deal for some forms of new media today, it may be ignoring other kinds of new media that will take off tomorrow. The WGA hopes to avoid a repeat of the pay-per-view debacle, but it does not have a good track record at picking winners.

What forms of media should the WGA focus on? DVDs have certainly been the craze of the last five years, but will their phenomenal success continue? Is television over the Internet going to last and become profitable? Those are questions nobody can answer.

"So what to do?" posits the *Journal's* Swisher. "I guess exactly what the writers are doing—banking on the hope that Hollywood will eventually get it right when it comes to digital distribution and asking for their fair share when it does."

The future of digital distribution looks unclear, to put it mildly. Ken Hertz, a Beverly Hills attorney who has worked on digital music, told the *Journal* that, "A strike could in a strange way damage the studios by creating online competitors who come forward to offer the union writers a new model that no one would have otherwise had the time or effort to conceive of." Hertz's proposition makes sense, but as he notes, for any new online distribution model to emerge, someone needs to think of it first.

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tion business model to succeed, either it would need to mesh with the Writers Guild structure, which could constrain efforts at bold experimentation, or the guild's structure would need to adapt to a new business model. That would be extremely difficult because labor unions are typically reluctant to embrace wholesale change. Nevertheless, because Hollywood's unionized writers face a rapidly changing media market, they may have no choice but to adapt—and quickly.

### New Media Uncertainty

The talks between the writers guild and industry producers broke down last December 7 largely over side issues: They included the union's attempt to organize writers for "reality" shows and animated programs and its effort to strike a clause from its current contract preventing it from joining strikes by other Hollywood unions.

But resolution of the strike cannot resolve the many problems affecting the network TV business. "There's a huge transition in our business," said TV producer Steven Bochco, creator of the hits "L.A. Law" and "NYPD Blue," in late 2007. "This may hasten the demise of the model that we've all worked under."

That outdated model, according to a team of *Wall Street Journal* reporters covering the strike, is "an anachronism that dates from the early days of TV, when big fall premiers were more important and Detroit would use them to introduce its new car models." Hollywood is not Detroit, but the need to cut costs in Tinseltown is just as real as in the Motor City.

Each fall has traditionally been the start of a new television season as a line-up of new shows is announced. These shows are the results of a winnowing out process that begins with more than 60 "pilots," i.e., sample productions of prospective TV shows filmed early in the year. Many pilot programs are never aired, yet they are as expensive to produce as actual TV shows. As studios begin to move toward year-round production—often eschewing the traditional summer hiatus—they are shooting pilots at all times of the year in order to avoid the competition for talent that accompanies a frenzy of shooting during the traditional pilot season.



But these changes in production scheduling are prompting the networks to reconsider their front-loaded advertising presentations each spring, when they make elaborate pitches to advertisers selling them about \$9 billion in commercial air time for shows they plan to air in the fall. (CBS announced on February 14, only two days after the strike's end, that it would hold its up-front advertising presentation in New York City on May 14.)

For writers, this process brings only financial uncertainty. Writers' work is typically sporadic, and the compensation is far from lavish. For instance, Craig Hoetger, a 40-year-old screenwriter who joined the strike, told the *Journal* that he made \$200,000 from writing feature film scripts in 2007, but the previous year he only made \$40,000. According to the Writers Guild, one quarter of its members make less than \$37,700 a year, and half make less than \$105,000.

### A Better Way

By contrast, the Directors Guild of America (DGA) contract with the studios expires on June 30. Although the failure to find a prompt resolution to the writers

strike may have roiled the waters for the directors' negotiations, the DGA reached a quick tentative agreement with the AMPTP. After postponing the start of its negotiations to January 12 in a show of solidarity with the writers, the union reached a tentative agreement with the AMPTP on January 17. The DGA's tentative agreement with the studios is still rough and undergoing refinement, but its outline highlights the strategic differences between the two unions.

In its dealings with the motion picture industry, the DGA represents directors, assistant directors, production associates and stage managers. In dealing with television the DGA represents directors, assistant directors, unit production managers and technical coordinators. All this means the union has a much higher percentage of its members who are constantly employed. Compared to the WGA, DGA's membership is very different and this changes the character of the union's representation.

First, many WGA members haven't worked as writers for years and they don't derive most of their income from writing. But they have the same right to vote on

the union's contract as members who work primarily and continually in the entertainment industry. ("If you were employed when the strike began, you should plan to return to work," WGA East president Michael Winship wrote in an email to members at the end of the strike. "If you're not employed at an office or other work site, call or e-mail your employer that you are returning to work. If you have been told not to report to work or resume your services, we recommend that you still notify your employer in writing of your

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availability to do so.")

DGA members are near full employment, and there is rarely much down time for a competent DGA member. As a result, the DGA is comprised of members for whom a strike is very costly. In economist's terms, a strike has a "high opportunity cost." The difference goes a long way in explaining why the WGA was far more willing to go on strike while the DGA was eager to reach a deal with the studios.

Second, the outlook and self-image of the two unions is dramatically different. Writers have a self-image that may make them more willing to strike than bargain. By contrast, the DGA is a craft union: it has some very famous, talented and well-compensated members, but most members are "behind the scenes" workers. So the collective ego of the DGA is not much at issue. Matters of artistic "integrity" (i.e. arrogance) that stereotypically afflict writers and actors are largely absent from the DGA, which is able to make more rational

decisions about its members' needs and demands.

The tentative DGA agreement covers some of the same issues as the Writers' Guild dealing with residual payments for online and other forms of new media. Nevertheless, the DGA was able to keep working and reach a tentative contract, while WGA members lost work.

Hollywood's creative unions usually accept the terms of whichever union finalizes a deal first, a system known as pattern bargaining. It is therefore likely that the WGA contract and the DGA's tentative agreement will smooth the way for a deal between the studios and the Screen Actors Guild (SAG), whose contract also expires on June 30.

#### **Who Wins, Who Loses?**

Because the TV networks knew a WGA strike could drag on well into 2008, they made a strategic decision to stretch out the existing program episodes they had on hand over this past season. Beyond that, however, the strike did not appear to have as much impact on the industry as the torrent of media coverage seemed to suggest.

Disruptions to most TV shows take a while to appear because most shows are produced weeks and even months in advance. The contract that expired on October 31 permitted the studios to use scripts that were approved before the strike—even though they might normally require rewriting during production. At first, the WGA tried to shut down production immediately by getting Teamster union members, who represent truck drivers, location managers, and other logistical workers, to join the writers' work stoppage. But only a few actors and Teamsters honored the picket lines. Some situation comedies, including Warner Bros.' "Two and a Half Men" and Sony's "'Til Death," experienced production shutdowns since they require on-the-set script revisions more than do other types of shows.

One of the strike's most high-profile casualties was the 2008 Golden Globe awards show, which was downgraded from a TV extravaganza to a press conference after WGA members threatened to picket the awards dinner. The Los Angeles De-

velopment Corporation's Jack Kyser estimates losses from the Globes' cancellation at around \$60 million. Chris Heltai, owner of a limo service named Home James told the Associated Press that he expected to lose about \$10,000 from the cancellation of Golden Globes-related events and parties.

The Academy Awards show, scheduled for February 24, was headed to a similar fate because writers were necessary to produce the program. Academy president Sid Ganis announced in January that the Academy would plan two shows: "The show we would love to do and... a show we would prefer not to do." In the end, the producers of the Oscars awards show escaped the strike.

The strike abruptly shut down production in mid-season. While the broadcast networks did have some episodes of their regular programs in the can, they did not have a full season's worth. Had the strike dragged on further, they would have run out of new content for the spring. There was talk of contingency plans to air content from cable and foreign production companies to fill out the prime-time schedule. In December, NBC announced it would air the crime dramas "Monk" and "Psych," which normally air on NBC's sibling cable network USA. CBS announced it would consider picking up (sanitized) episodes of its controversial serial-killer drama "Dexter," which airs on CBS' premium cable network Showtime.

In late December, network late-night talk show hosts agreed to return to the air in January—without writers and under severe restrictions as to what they could and could not do. For example, the show hosts, many of whom are Writers Guild members, could not offer "writing services" during the strike, which means that they would have to forgo an opening monologue. Talk show producers hoped they could fill up the time with more celebrity interviews, but those proved hard to book, since few actors wanted to be first to cross WGA picket lines.

Most late-night talk shows weathered the storm, however awkwardly, with these special arrangements. David Letterman's Worldwide Pants, Inc.—which owns the Letterman show and the "Late Late Show

with Craig Ferguson,” both on CBS—the first to reach an interim agreement with its writers independently of the other studios. The strike barely affected its ratings. “The Tonight Show with Jay Leno” on NBC averaged 5.9 million viewers during its first three weeks back on the air, which was 16 percent above its pre-strike season average, according to Nielsen Media Research. “Late Night with Conan O’Brien,” also on NBC, saw its viewership increase by 23 percent, “despite Mr. O’Brien killing time by dancing with lasers and showing rambling videos about his own staff,” according to the *Journal*. On the other hand, Comedy Central’s “The Daily Show” with Jon Stewart did not fare as well, suffering a 20 percent decline in viewers. Within the Writers Guild there were divisions over how to respond to the talk shows’ return. Some hard-line members argued against having the Guild reach a separate deal with Letterman’s Worldwide Pants, Inc., or they said the Guild should agree only to binding, not interim,

agreements.

These disputes could create future problems for the WGA, particularly if the networks retain and even expand “reality” show programming, a form that requires minimal writing—and therefore less need for writers’ services. As Irwin Gottlieb, chief executive of GroupM, the media buying unit of the marketing conglomerate WPP (which also includes Nielsen), told *The Economist*: “Television survived the strike, but it needs more diversity of content.” The studios and networks principal concern is to have viewers tune in to their shows. They know that as long as the viewers tune in, the advertisers don’t care who’s writing the shows, or whether anyone is writing the shows.

#### Uncertain Future

Hollywood just dodged the bullet—but it’s not the last one it’s likely to face. The screenwriters strike was a challenge to an industry that is beset by new competition from new media—from the Internet to

DVDs. The unionized writers, sensed the shift, and they are trying to get ahead of the curve by winning a contract that takes account of the possible new sources of industry revenue.

Whether they—or the networks—can meet these challenges remains to be seen. All they know is that the new media technologies will not wait for them learn what they need to do to survive.

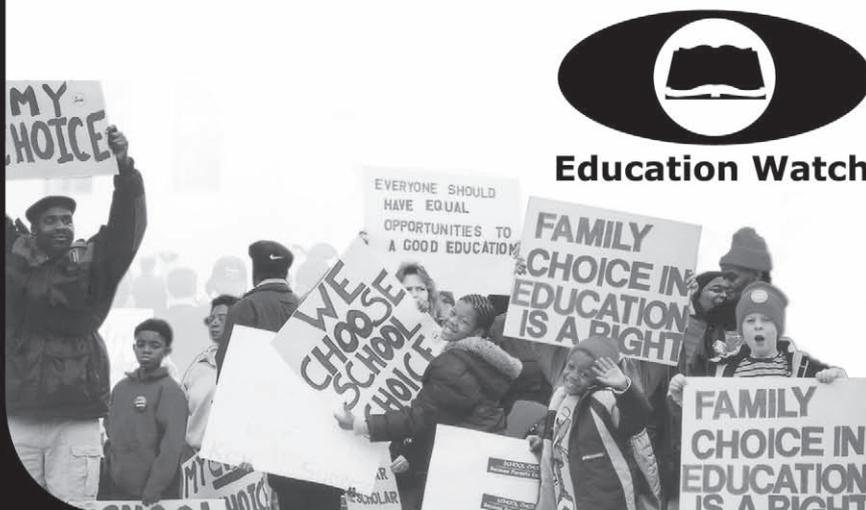
Meanwhile, Hollywood’s TV and film industry faces more labor negotiations: Members of the Screen Actors Guild will start to negotiate new contracts, which expire in June.

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# Labor Notes

## **Unions Could Obstruct Proposed Delta-Northwest Merger**

Delta and Northwest airlines want to merge, creating the world's largest airline, but the U.S. Justice Department's antitrust division may not be the largest hurdle. Labor unions are hinting at opposition; the AFL-CIO's airline union leaders met in February and publicly pledged to "use any and all options... to ensure this latest merger mania doesn't harm this industry, its employees, passengers and communities." Unions are reportedly pressuring lawmakers like Rep. Dan Lipinski (D-IL) and Steven LaTourette (R-OH), both members of the House Aviation Subcommittee, and Transportation Committee chairman James Oberstar (D-MN) to oppose the merger. The airlines hope talks between their pilot unions about merging their memberships will help smooth the way. Meanwhile, Delta's flight attendants last month officially requested an election to unionize under the Association of Flight Attendants, an affiliate of the Communications Workers of America.

## **Union Endorsements No Help to Clinton in Democratic Primaries**

Labor union endorsements helped save the Democratic presidential nominations of Walter Mondale over Gary Hart in 1984 and Al Gore over Bill Bradley in 2000. But *Washington Post* columnist David Broder sees no way unions will rescue Hillary Clinton from Barack Obama. The unions are divided over their picks for president and last month Obama secured the important support of the Change to Win Federation, including the influential Service Employees International Union. Exit polls in mid-February show union members chose Clinton in eight states and Obama in six, with virtual ties in four states.

## **After Criticism, Obama Appeals to Auto Workers**

In appealing to environmentalists to support his presidential bid, Sen. Barack Obama has been sharply critical of the Big Three automakers for failing to produce more fuel-efficient vehicles. "The auto industry is on a path that is unacceptable and unsustainable," he said last May. But last month Obama was flanked by gas-guzzling SUVs as he tried to woo blue-collar workers in Janesville, Wisconsin, at General Motors' oldest production plant. He pledged \$210 billion in government assistance to help automakers and construction companies "retool and make this transition" to environment-friendly practices, generating cheers from many union members. However, Michigan AFL-CIO chief Mark Gaffney was not impressed, telling *The Detroit News* that Obama's hope-filled rhetoric "often means a de-emphasis on manufacturing."

## **Unions Express 'Alarm' As Colombia FTA Languishes in Congress**

Warnings by Rep. Charles Rangel (D-NY) that Congress is hostile to the Colombian free trade agreement negotiated by the Bush administration were reinforced when a delegation of union officials visited Colombia last month and declared it "the only country in this hemisphere where the rights of workers to negotiate with employers is even lower than in the U.S.," according to Communications Workers of America president Larry Cohen. The delegation claims 470 union activists have been murdered in Colombia since 2002—almost all unsolved killings without clear ties to union activity—so the comparison to the U.S. is hardly warranted. U.S. Trade Representative Susan Schwab is meeting with congressional leaders but reports no breakthrough leading to a vote for the pact.

## **AFL-CIO's Sweeney Appeals to Investors**

Last month AFL-CIO president John Sweeney addressed 480 corporate leaders and state treasurers at a United Nations conference called by the Investor Network on Climate Risk (INCR), a group of global investors assessing the risks and benefits of investing in climate change. Sweeney sounded like a capitalist, urging investors to seek profits and more job creation. "The colossal challenge of dealing with energy scarcity means opportunity... opportunities for investors across every asset class, and opportunities for workers, potentially high-quality job opportunities for millions of workers," he said. Tom Borelli of Action Fund Management told Greenwire that Sweeney was hawking "profiteering schemes." "We're concerned about what may happen when the global warming bubble they're creating bursts like the subprime bubble," he said.