

SUPPORT THE FAIR ACT

AB 1385 Frequently Asked Questions

Who does the FAIR Act help?

The FAIR Act is particularly directed toward two groups of artists: television and new media (e.g., streaming) series actors and music artists under recording contract with labels.

What are options and exclusivity clauses?

An option clause gives the producer or studio the sole right, or “option,” to extend a contract for an additional period of time. This commits the actor to working on the subsequent television or new media season or commits the recording artist to another album.

The exclusivity clause means the artist can only work for the identified employer (a producer, studio or label) during the term of the contract, including between seasons or albums.

Together, these boilerplate provisions in actors’ and recording artists’ contracts keep them off the market—often without compensation—and prohibit them from working. Particularly problematic is that producers and studios can exercise options without confirming a start date for the next engagement. This means that an artist can be kept in limbo for months or years, not knowing when they will return to work on their show or work on their next album, and unable to take additional work.

What is the “Seven-Year” statute?

The “Seven-Year” statute has, for decades, protected Californians from being trapped in long-term employment contracts by prohibiting those contracts from lasting more than seven years. The Seven-Year Statute was made famous by Olivia de Havilland who, in 1943, relied on the law in her successful lawsuit against Warner Bros Pictures. The California Court of Appeals, in 1944, confirmed the prevailing view that seven years from the commencement of service means seven calendar years. The Seven-Year Statute applied equally to all Californians until 1987.

Why aren’t recording artists protected by California’s “Seven-Year” statute?

In 1987, the recording industry lobbied to have the Seven-Year Statute amended to include special protection for the record labels, at the expense of recording artists. As a result of this amendment, recording artists are effectively excluded from the protection of the Seven-Year Statute. The 1987 amendment provides that if an artist seeks the shelter of the Seven-Year Statute, the artist is liable for damages to the label including lost profits on undelivered albums. And the amount of damages the artist owes does not take into account the profits the label has already made from the artist, any delay in delivering albums caused by the label or whether the label has even committed to any undelivered albums. It is unfair that the labels used their power to make recording artists the only Californians excluded from the protection of the Seven-Year Statute.

Why do we need the FAIR Act (AB 1385)?

Contract terms that hold actors and recording artists off the market, sometimes for years at a time, inhibit an artist's ability to work and earn a living in what is many times a short career window. The FAIR Act sets a maximum length of time that actors and recording artists can be held off the market by these onerous provisions. If the employer does not exercise the option and work cannot be completed in a timely manner, the actor or recording artist can terminate the agreement, freeing them to take other work.

For recording artists, it restores the original intent of the Seven-Year Statute: to protect all Californians from being stuck in long-term contracts with onerous terms. The FAIR Act repeals the unfair amendment from the 1980s that requires artists to write a check to their labels if the artists want to terminate their contracts under the Seven-Year Statute. It also limits the time in which the label can exercise its unilateral right to extend the contract for subsequent albums, freeing artists to decide how to release music to their fans.

Aren't actors and recording artists well paid? Why do they need this help?

Famous and high-paid performers make up a small percentage of those you see on television or hear on the radio. The majority are making far less and are only paid when they are actually working. These contract provisions hold them off the market, unable to earn a living for months or even years, at the very time when they need to be working. Losing money in the moment isn't the only impact—an actor's career is dependent upon keeping up career momentum and being seen—if actors aren't able to work, it becomes increasingly difficult to progress in their career. Recording artists make disproportionately less than record labels from the sale of their music; the FAIR Act provides them with the opportunity to reduce that disparity.

Can't actors and recording artists just negotiate better contract terms?

If only it was so simple. SAG-AFTRA has reviewed artists' contracts with all of the major companies in both industries.

In television, options and exclusivity provisions are standard in all of the television actor contracts we have reviewed. They are terms that not even the most recognizable actors have the power to negotiate away completely.

In music, because of the special provision the record companies had inserted into the Seven-Year Statute in 1987, even successful artists do not have the same leverage as the labels to renegotiate their long-term contracts during the term. When labels renegotiate to improve some terms in recording contracts, they will almost always insist that the artist agree to deliver additional records beyond those already owed.

What makes it worse is that these contracts are frequently negotiated early in an actor's or recording artist's career, often long before they have established themselves. They are entering into a multi-year contract at a time when they have very little bargaining power and, because of the special record company protection, recording artists don't have the ability to renegotiate with equal bargaining power after seven years.

Is this a problem in California only?

This is a television industry and music industry problem. California's robust public policy favors employee mobility and that concept is already well established in California law. This is a California proposal, but we are using it to change business practices nationwide. We will establish strong limits on studios' and labels' ability to hold artists off the market and keep them unpaid for extended periods of time.

Why do producers insist on these provisions?

Producers argue that they need these draconian options and exclusivity restraints because the talent is a “capital investment,” and they don’t want competitors to use the same “asset.” Artists are humans, not assets; people shouldn’t be treated like property.

It is absurd to argue that a viewer will stop watching their favorite show simply because an actor plays a different character in another show. Today’s consumers don’t watch one favorite show in a time slot over which they have no control. They watch what they want, when they want.

The explosion of television and music streaming have caused producers and record labels to adapt their business practices and production schedules. Due to streaming services, record companies have reduced costs (no manufacturing) and historic revenues. With no corresponding update to artist contracts, they are doing this at the expense of the artists.

Why should I care?

This is a working actor issue, not a Hollywood star issue. And working actor issues are worker issues. You should care about any scenario that allows an employer to both stop paying its workers and keep them from finding paying work elsewhere. Because if it’s allowed in one industry, it can happen in any of them.

What can I do to support the FAIR Act (AB 1385)?

Sign up to support the bill and receive regular updates at sagaftra.org/fairact. And be sure to share your support on Twitter and Facebook. We will keep you updated on how you can help. The fight has only just begun.

