

DRAFT PROPOSED WAIVER BETWEEN SAG-AFTRA AND AEA

The below understandings shall be operative during the “Pandemic Period,” which shall end on April 30, 2021, unless extended by our unions by mutual agreement.

1. SAG-AFTRA hereby grants the necessary waiver permitting, during the Pandemic Period, AEA to enter into agreements with existing Equity bargaining partners to cover work that is produced to be exhibited on a digital platform, either as a replacement for specific live theater productions that cannot take place because of the pandemic, or for a partially virtual/digital audience that supplements a live audience during the Pandemic Period, provided that all of the following conditions are met:
 - a. The work may include live readings, staged readings, live theater, and other performances in the general nature of theater;
 - b. The performance is intended to be similar to those offered for live performance, and any editing of the recording is limited to only minor editing;
 - c. The digital platform on which the work is to be exhibited must be a restricted platform that can be accessed only by ticketholders or subscribers of the existing Equity bargaining partner. Exhibition on streaming services that offer access to recorded programming is specifically prohibited, including but not limited to Netflix, Hulu, YouTube and its affiliates, HBO Max, Disney+, AppleTV+, CBS All Access, Peacock, etc.
 - d. The Equity bargaining partner may only offer as many works simultaneously as it has separate theater spaces, replicating the live theater business model. For example, if a bargaining partner has two theaters, it may offer no more than two simultaneous productions, and must close one production before offering another. If the bargaining partner traditionally offers productions in repertory or other supplemental productions, the bargaining partner may offer no more than two simultaneous productions per performance space.
 - e. The total audience permitted to view the performance does not exceed, in the aggregate, the following: the full, unrestricted seating capacity in the corresponding theater of the Equity bargaining partner, plus an additional amount equal to 100% of that capacity not to exceed 950 persons, all of the foregoing multiplied by the normal number of performances presented in that theater, not to exceed eight performances per week, multiplied by the number of weeks the performance is offered. AEA must secure the advance consent of SAG-AFTRA prior to authorizing any bargaining partner to exceed these limitations by more than 10%;
 - f. The foregoing shall not include work that is more in the nature of a television show or movie, including work that is shot out of chronological order, or that is substantially edited prior to exhibition, or that includes visual effects or other elements that could not be replicated in a live manner.
 - g. Any production that AEA has contracted for with a bargaining partner pursuant to this waiver may complete its scheduled run notwithstanding the expiration or termination of this waiver, provided that scheduled run does not extend more than six months past the expiration or termination date of this waiver.

2. The parties acknowledge and agree that work done for recorded or broadcast/livestreamed media falls within SAG-AFTRA’s exclusive jurisdiction. Actors’ Equity acknowledges that SAG-AFTRA’s position and the historical practice of the parties is that such jurisdiction includes the transmission of a live theater performance outside the theater itself, or the recording of a performance for such purpose. SAG-AFTRA acknowledges that live theatre performances generally fall within Actors’ Equity’s exclusive jurisdiction, but that provisions in some AEA collective bargaining agreements do involve limited recording and/or transmission of Equity productions by Equity employers. Actors’ Equity agrees that it will not use this Agreement or the fact of any Actors’ Equity coverage of work that is recorded for transmission to an outside audience during the Pandemic Period or thereafter as evidence of Actors’ Equity’s jurisdiction. These acknowledgements shall be binding and shall not expire with the end of the Pandemic Period.

DRAFT PROPOSED WAIVER BETWEEN SAG-AFTRA AND AEA (cont'd)

3. During the Pandemic Period, SAG-AFTRA will refer back to AEA any existing AEA signatory employer that approaches SAG-AFTRA seeking to cover work described in Paragraph 1. SAG-AFTRA and AEA will continue their longstanding practice of referring back to the other union work that clearly falls within the other union's traditional jurisdiction.
4. This Agreement may be terminated by either party upon sixty (60) days notice, provided, however, that the provisions of subparagraph 1(g) and paragraph 2 will remain in effect.
5. SAG-AFTRA and Actors' Equity agree that a small senior staff working group will regularly meet to discuss work performed under paragraph 1 and any issues that arise. The working group may refer issues to leadership for further discussion and resolution.

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