

Report on the Progress of Commercials Monitoring During the Term of the SAG/AFTRA 2000 Commercials Contracts

September 29, 2003

Executive Summary

For the first time since the performer unions raised the issue of commercials monitoring in the late 1970's, the advertising industry and the unions have identified common interests with respect to monitoring television and radio commercials and have initiated substantive actions to address the issue.

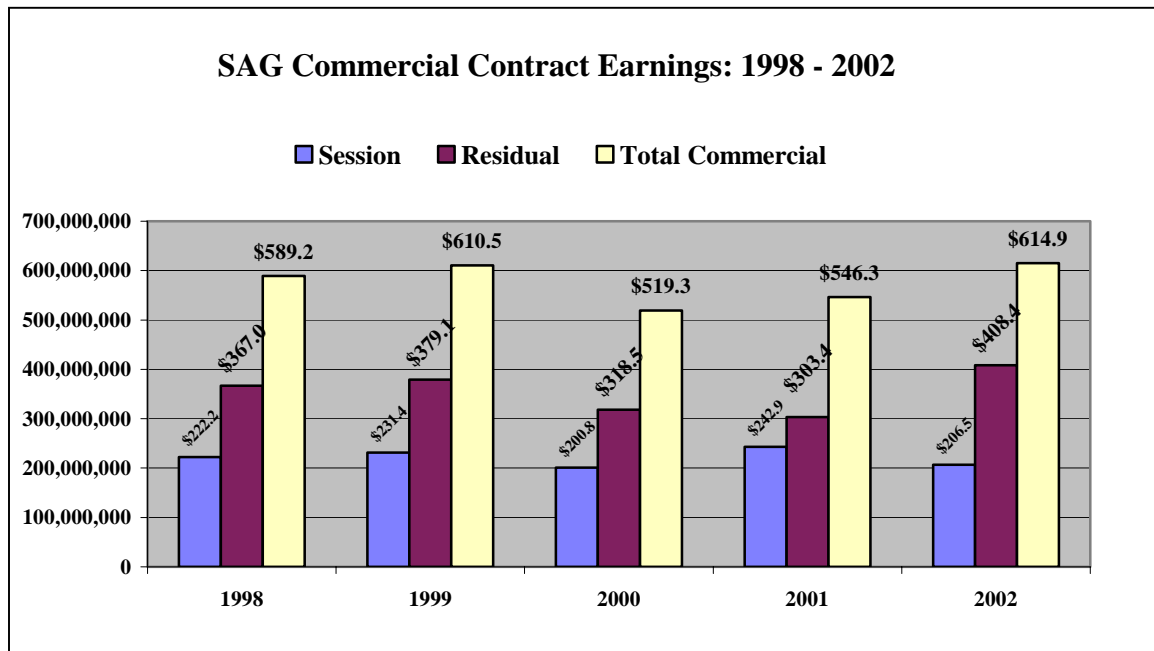
A key union objective in the 2000 Commercials Contracts negotiations centered on the development of a viable and comprehensive method for monitoring the use of commercials to verify proper payment of residuals. Throughout most of the negotiations, however, industry rejected the union proposals on monitoring. The unions continued to press their position, but by the final round of talks in October, 2000, it became clear to both sides that a compromise would be necessary to resolve the issue. The parties ultimately agreed to appoint a Joint Committee to investigate "identification factors for commercials", or possible standards by which specific commercials can be distinguished from one another in order to permit accurate matching of commercials with residuals payment records.

During the course of its work over the past 3 years, the Joint Committee investigated various monitoring technologies and heard presentations from the major vendors of monitoring systems for both television and radio commercials. The discussions on monitoring revealed that a shared interest existed between the industry and unions in pursuing a system to verify commercial media invoicing as well as residuals payments. Agreement was reached also to look into an interim monitoring program focused exclusively on residuals verification.

Accordingly, SAG and AFTRA asked commercials monitoring vendors to submit plans to help create a new commercials residuals monitoring system. The concept is an online searchable database of commercials that can be reviewed by performers in order to reconcile their payment information with actual usage information provided by an independent monitoring vendor. Proposals were proffered to the unions by two major operators of commercials monitoring systems. The proposals were reviewed for technical functionality and the scope of media and markets monitored by each company. On September 24, 2003, a grant application was submitted by the Screen Actors Guild Contracts Division to the SAG-Producers Industry Advancement and Cooperative Fund (IACF), in request of financial resources necessary to design and develop the first broad-based commercials monitoring system.

Television & Radio Commercials Business

The Screen Actors Guild (SAG) and the American Federation of Television & Radio Artists (AFTRA) represent performers in collective bargaining for television & radio commercials employment. SAG has approximately 118,000 active members and AFTRA about 88,000. The number of performers belonging to both unions stands at 44,000. The employer group is the Joint Policy Committee (JPC) of the Association of National Advertisers/American Association of Advertising Agencies (ANA/AAAA), which represents many of the major ad agencies and national advertisers in the U.S. The SAG Pension & Health Plans reports that performers earned nearly \$615 million from television commercials under the SAG Commercials Contract in 2002, \$408.4 million (66%) of which was residuals.



Collective Bargaining History – Monitoring & Residuals Verification

Questions about the accuracy of payments to performers for the use of television commercials containing their performances have arisen repeatedly since the Commercials Contract was first established in 1953. The original section, entitled “Keeping of Records – Enforcement”, doubled in length and detail in the 1955 version, and was re-titled “Enforcement – Required Records and Reports”.

In 1969, the following clause was added to the Commercials Contract as Section 54 “Coding of Commercials”:

“The parties recognize that a system of coding of television commercials would be beneficial to the Industry. Therefore, on notice from the Industry-Guild Standing Committee that an adequate and feasible system or systems for the monitoring of Televised commercials is operative and with the consent of the ANA-AAAA Joint Policy Committee on Broadcast Talent Union Relations and AFTRA, Producer shall take appropriate steps to code all commercials for which such Producer is responsible hereunder, with the necessary identifying data and information.”

That language appears as the first contractual recognition of performers’ concerns that the records used as evidence of the accuracy of residuals payments were the producers’ records, and that no third-party data were available for confirmation. Enforcement difficulties over the years led performers to believe that the system required a method of independent verification.

The “adequate and feasible...systems for monitoring” failed to materialize during that contract period. In 1972, the clause was replaced by Section 38.D, “Verification and Auditing”:

“Producers shall be required to furnish to the Guild on reasonable notice records to verify accuracy of payments to players, including the markets in which commercials are telecast and their use cycle dates or if Class A Program use, individual use dates, and other pertinent information.”

This clause was intended to provide the Union with the ability to audit payment calculations. It remains unchanged in the 2000 Commercials Contract, now in Section 50.C.

Though the Union had begun to utilize “public access” station logs and the primitive syndicated commercial activity monitoring that was available at the time, continued requests from performers for the development of a more accurate and efficient system of verification resulted in the 1975 addition of a clause entitled “Broadcast Reporting Systems”, as subsection F of the “Enforcement – Required Records and Reports” Section 49:

“In recognition of the essential value of developing accurate broadcast reporting systems, Producer agrees to honor reasonable requests from the Guild for data and information necessary to evaluate such systems.

“Industry will make the effort to encourage the utilization of the Industry Standard Commercial Identification (ISCI) coding system. Parties to this Contract endorse the ISCI system as being constructive.”

That clause survives in the 2000 Commercials Contract as section 50.E.

In 1988, the clause was renamed “Broadcast Reporting Systems (Monitoring)” and the following was added:

“Producers shall promptly provide the Union upon its request, a copy of any commercial heretofore or hereafter produced under its collective bargaining agreement. If the commercial is not the subject of a specific claim, Producer shall nevertheless furnish a copy of the commercial to the Union upon request, provided that (a) the commercial has been broadcast and (b) the Union will pay the actual cost for the copy of the commercial.”

In the 2000 Contract the following paragraph was added to the clause:

“The Joint Policy Committee and the Union shall establish a joint committee to investigate identification factors for commercials and the subsequent use of such factors. The committee will issue a report on the results of its investigations no later than April 30, 2001.”

Monitoring Technology

The technical methods described here are currently used to monitor commercial use. These systems were investigated by the Joint Committee as part of its 2000 contractual mandate to look into ways of identifying commercials in order to verify the accuracy of reported use.

Active Monitoring

An *active monitoring system* requires that identifying information must be embedded, or “encoded”, in the transmission stream of the commercial, in a manner that is invisible to the audience but can be detected and interpreted by monitoring equipment. The embedded information may include the specific identity of the commercial and information indicating the way in which the commercial time was purchased, such as whether the commercial is part of a network or syndicated feed, or originated locally. The codes may be a combination of numbers or letters, possibly based on the existing ISCI and Ad-ID codes currently used to identify commercials. Special detection equipment then is used to scan the television signal for the embedded codes, recording the time, date and transmission source for each detected code. Using those records, computers can then automatically reconcile monitored commercials with media invoices and talent payment records.

Although individual advertisers have over the years used active monitoring in a limited manner to verify their own media placements, there are complex issues involved in attempting to expand any existing system for use on all union jurisdiction commercials. Questions must be addressed of technical feasibility and of permissions from broadcasters and the Federal Communications Commission for the transmission of coded information, as well as legal and anti-trust issues related to mandating the use of any particular embedding and detecting technology. There is concern that personal video recording devices, such as Tivo, that are capable of accelerating through commercials or skipping them altogether, may make use of codes embedded in commercials in order to improve or expand those functions. Moreover, a fully operational active monitoring system may not be possible at all until the conversion to the digital (DTV) television transmission standard is completed. The embedding technology and the contents of the underlying coding system are examples of the “identification factors” referenced in the monitoring agreement.

Passive Monitoring

A *passive monitoring system* is a method of monitoring that does not add any identifying information to a commercial and, consequently, is more difficult to automate. The technology is known as “pattern recognition”. Here, sophisticated computers with artificial intelligence programs review the monitored transmission stream, looking for patterns in the signal that have already been determined to be part of commercials previously received and for events likely to be new commercials. For each newly detected commercial, a set of patterns in the electronic signal of the commercial are established as a “signature” of the commercial and put in a database of signatures for all detected commercials. That database enables the computers to recognize a commercial when it occurs again, and thus to track all future monitored repeats of the same commercial.

A weakness of the passive technology is that it has no way of knowing what the advertiser’s ID is for the commercials it tracks. For newly detected commercials, human technicians must check videotapes of the monitored signals to determine what is being advertised and to set descriptive and machine-tracking identifiers. Further, it is far more difficult to match monitored commercials against payment records in order to verify either residuals payments or media billing, because there is no common identification factor to enable automated comparison of the monitored use with the advertiser’s or broadcaster’s records. That reconciliation must be done manually.

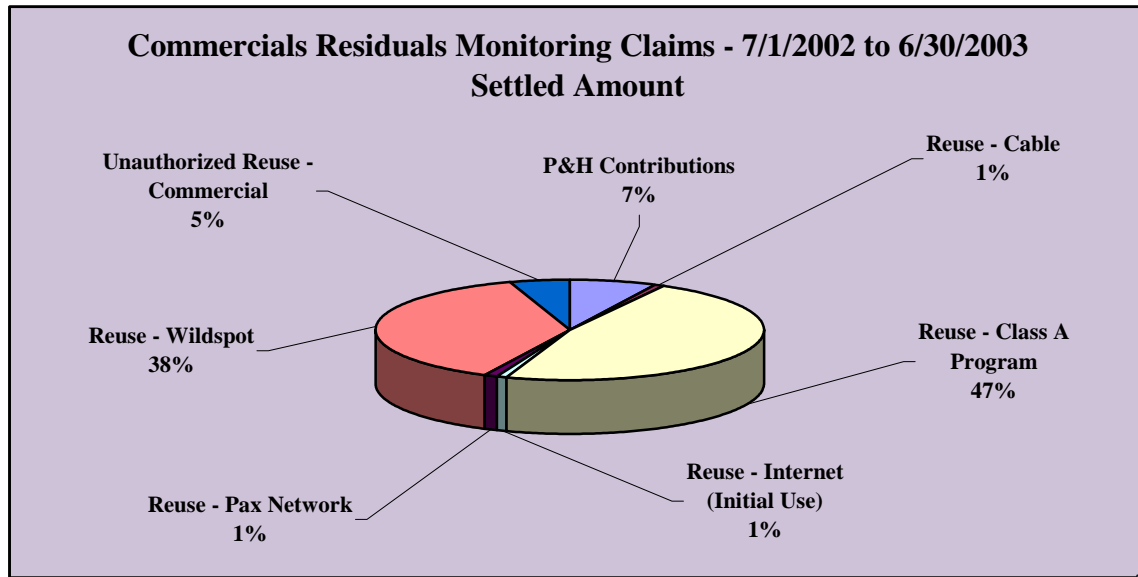
Although the available technology for monitoring radio commercials is far less advanced than the systems that track television spots, the objective of implementing effective residuals verification for radio performers is part of the mission of the Joint Committee. AFTRA successfully achieved similar language in its 2000 Radio Recorded Commercials Contract to explore this technology along with television commercials.

Committee Positions

In the initial phase of the process, the Joint Committee members reviewed their respective positions. The unions contended that, because Guild staff had uncovered broad and substantive evidence of failure to pay residuals, the capability to verify correct payment to performers must be a requirement for any system that emerged from the process. The unions cited the results of a 1999 special commercials monitoring project that was conducted by the Guild in preparation for the 2000 negotiations. That project studied a selected pool of 30 commercials and found unreported use in 18 cases and, though it took three years to complete the process, eventually recovered a total of \$388,529.06 in unpaid residuals, P&H contributions and late payment damages for 156 commercial performers.

Moreover, commercials monitoring and enforcement activity at SAG is ongoing. During the period from July 1, 2002 through June 30, 2003, SAG contract representatives and research analysts recovered \$394,166.06 in unpaid residuals and P&H contributions.

Commercials Residuals Monitoring Claims - 7/1/2002 to 6/30/2003	
Claim Type	Settled Amount
P&H Contributions	\$28,968.67
Reuse - Cable	\$2,987.05
Reuse - Class A Program	\$186,400.14
Reuse - Internet (Initial Use)	\$2,558.52
Reuse - Pax Network	\$4,875.00
Reuse - Wildspot	\$148,431.88
Unauthorized Reuse - Commercial	\$19,944.80
Total	\$394,166.06



The JPC suggested that the study was not statistically reliable, though they acknowledged that a trend toward greater complexity in advertiser-agency relationships has caused an increase in communication “disconnects” and human error. Still, they recognized the monitoring project results as well as the annual volume of residuals payments recovered by the unions. The remedy suggested by the JPC during contract negotiations involved linking residuals payments to broadcast media vouchers. The unions noted that this approach relied on documents the advertisers themselves had reason to doubt and did not provide for independent verification of use. It was clear that no discussion of a topic as narrow as “identification factors for commercials” could be productive without giving serious consideration to the full scope of the monitoring problem.

Committee Actions

The Joint Committee reviewed information on the various types of monitoring technologies and discussed ways to create a system that served mutual interests. The group first convened on February 28, 2001, to review the scope of the monitoring agreement and frame the agenda for the coming months. In the committee meeting of November 8, 2001, representatives of Nielsen Media Research, Competitive Media Reports (CMR) and the new technical vendor Audible Magic, gave presentations to the committee on their respective monitoring systems and capabilities.

The JPC indicated their interest in the development of a monitoring system capable of verifying the accuracy of all commercial placements, so that broadcast media vouchers could be accurately validated. Despite the growing use of the Internet for business-to-business communication, the process of broadcast verification still relies predominantly

on paper affidavits to support media billing. However, in order for any monitoring service to garner the good faith support of the broadcast industry, its accuracy must be virtually perfect. The scope of this service must cover all broadcast and cable markets in the country. In theory, such a system would resolve any payment disputes that might arise between the advertising agencies or media buying services on the one hand, and the broadcast networks, cable networks or local stations on the other. Essentially, the industry was suggesting that only an “electronic clearinghouse”, utilizing a perfect, universal and relatively inexpensive monitoring technology could serve the needs of the advertisers and broadcasters. Most importantly for the unions, it would verify commercial use for residuals payment purposes.

In the event that an active monitoring system is judged to be the best likely means to achieve the objective of validating both media invoices and talent payments, it is possible that the initiative by the ANA/AAAA to establish Ad-ID as the accepted industry standard for advertising media meta-data, may in addition provide a uniform method of capturing a broad range of detailed information about the advertising asset, within the codes that would be embedded in commercials.

SAG and AFTRA representatives noted that the standards and scope of the project posed formidable technical, financial and political challenges. The absence of any possible model for the system meant that developing it from scratch would take time, cost money and involve business risks that could not easily be quantified. Still, the unions expressed willingness to explore that approach, while also specifying that they would continue working toward a system that may more immediately be implemented, making use of existing passive monitoring technology. That system would specifically serve the union requirement for independent verification of residuals payment accuracy, without attempting also to resolve billing issues within the advertiser-broadcaster relationship.

The unions proposed that the committee continue its efforts on both approaches:

- 1) investigate a system for the sole purpose of verifying residuals payments; and
- 2) investigate the requirements and technologies needed to enable the creation of an industry-wide clearinghouse.

It was agreed that this “2-track” approach would serve as a template for the work ahead.

Interim Solution

Although active systems are preferable due to their superior detail, accuracy, and potential efficiency, it appears unlikely that one can be deployed in the near future. The Guild therefore proposed a possible short-term alternative solution. It would provide an improved means of linking the tracking records from passive monitoring with residuals payment records and therefore may make it possible to increase the number of

commercials that can be verified, even before automation of the process can be accomplished, by enlisting the performers themselves in the process.

For this idea to succeed, two important components are needed: a system for linking the monitoring company's identifiers of commercials with the advertisers' identifiers, and a computer application to interpret monitored use data into the Commercials Contract terms of use and 13-week cycles, so that performers may compare the summaries with the reports they receive from the advertisers. The plan involves the creation of a searchable database containing videos of all the commercials that have been detected. Using an Internet connection, commercial performers could locate and identify the commercials in which they have a residuals interest. The performers themselves might then receive periodic reports of the monitored use of each commercial, summarized in contract terms, for comparison with the payment reports the performers receive from the advertisers. Performers who have identified possible discrepancies would contact the union to have a determination made as to whether there is apparent unpaid use and if a claim should be initiated. It potentially attains cost-efficiency by enlisting performers directly in the process of validating the accuracy of their own residuals payments. If effective, it could provide a broad monitoring capability for the unions until any more ambitious clearinghouse system can be developed.

Acquisition & Review Of Vendor Proposals

Taking action on the proposed interim monitoring solution, the unions issued a request for proposals (copy attached as Exhibit A) in September, 2002, seeking vendors interested in developing the desired video database and computer application to summarize commercial use. Both CMR and Nielsen submitted formal proposals in April, 2003. The SAG Research and Information Technology Departments subjected both proposals to a detailed evaluation process that centered on 3 critical issues:

- 1) the electronic sampling rate of each system, or how much commercial audio and video data, per second, is captured from the broadcast stream (in pattern recognition systems, the advantage of increased speed in the electronic capture function is that commercials of shorter length, typically 10 or 15 seconds, can more accurately be identified);
- 2) the scope of broadcast markets that each system is capable of monitoring (broadcast markets are known as Designated Market Areas (DMA), or delineated geographic areas that include cities, clusters of cities and/or suburban areas that lie within the broadcast reach of specific television stations in those areas---the requirement here is to monitor the greatest possible number of DMA); and
- 3) the estimated cost of design and development.

Although a concurrent review of the vendor proposals by the JPC was still in progress at the time the unions had completed their evaluation, SAG and AFTRA decided to draft

and submit a grant application to the IACF in order to meet the September filing deadline necessary for the application to be placed on the agenda of the October, 2003 meeting of the Fund's Board of Trustees. The IACF is a trust created by the Guild and the employers that is jointly administrated by industry and union trustees. Employers contribute 100% of IACF funding at a collectively bargained percentage of earnings.

The method of developing the proposed system is expected to be a "best practices" design process involving iterations of the applicable business rules, business processes and workflows necessary to describe what is known in information technology as "system requirements", which are essentially the features and functionalities of the computer application and database that are necessary to deliver the desired results. While the proposed system will employ some existing technical elements that are already operational and demonstrated to be robust, other key aspects of it represent innovations requiring detailed offline testing and strict change controls, in order to ensure effective and predictable operation. Based on the cost estimates proposed by the vendors and the quality standards required by the unions, the application submitted to the IACF requested a grant in the amount of \$1.5 million over the first 3 years of development.

Next Steps

Consistent with the stated objectives of the Joint Committee, the unions are making preparations to issue an additional request for proposals in search of an organization capable of conducting a comprehensive study of all the requirements and interests that should be served by an active monitoring system. The committee has been advised that actual code embedding becomes technically simple once the conversion to digital broadcasting is complete. The greater challenge seems to be designing the system to include all the information desired by the different participants in the process; advertisers, broadcasters, syndicators, program producers, unwired networks, cablecasters, satellite distributors, performers, etc. It is anticipated that such a project may be financed also through the IACF.

Ultimately, the endorsement of use verification as a shared objective represents a potentially significant advancement in the collective bargaining relationship. The concept of a commercials clearinghouse is a variation on an established market principle that employs modern interactive technology. Although dispute resolution is necessary to the viability of free and fair markets, the processes associated with it can sometimes be inefficient and costly for all parties. An increasingly global advertising industry that demands sophisticated information management is certainly hobbled by obsolete practices that currently result in expensive and cumbersome payment disputes with the broadcast media and professional talent who are vital to its success. Through the Joint Committee forum, the unions and industry have identified the problem and set themselves to the hard task of finding solutions.

