

“Content is king.” — Sumner Redstone ONCE UPON A TIME...

There was Union High School teacher, who too often, had to walk picket lines in sub- zero temperatures to seek fair pay. This was my late father. My name is Rich Talarico and I grew up back in the 1900s. Central New York State. My family lived in a rural working-class town. My cousins, aunts and uncles were all Union members who also had to strike at various times. The importance of fair pay for work and my reverence and respect for Unions runs deep.

In 1992, at the age of 19, I moved to Chicago and took my first improv class from Stephen Colbert, then studied improv with Gurus Del Close and Charna Halpern. I went on the road with Second City’s National touring company and was later hired by The Second City’s resident companies, where I co-wrote five original sketch comedy revues. During this time, I drew a Union wage as a member of Actor’s Equity. Then I joined SAG and AFTRA in 1995 and began working in commercials, TV, and film.

AND EVERY DAY...

Enjoying life in entertainment business under the protection of the Unions, I received fair and reasonable compensation for my work. In 2001, Los Angeles called and I joined the Writer’s Guild, starting my first gig as a writer/producer for *MADtv*. During those three seasons, I served as WGA Show Captain (we had no payment issues.) I worked next for two seasons on SNL as a staff writer and then went back to LA to do *MADtv* for 2 additional seasons. Next I wrote Frank Caliendo’s *Frank TV* on TBS, where I served as WGA Show Captain (we had no payment issues.) Unfortunately, this work was interrupted by the 2007-2008 WGA Strike. I served the Guild as a Strike Captain where we organized pickets and disrupted illegal shoots. And, since I knew how to shoot and edit video, I wrote, shot, and edited a series of strike videos for the Guild, which were featured on the WGA site, unitedhollywood.com. Making these videos I interviewed dozens of striking writers like Matthew Weiner (*Sopranos, Mad Men*) who told me what he thought the core issue of the strike was: **“I make a product and someone is taking my product and not paying me to use it.”**

I learned a lot during the strike. In 2007-2008 we knew that 48% of WGA members are in development at any given time. Royalty payments are not a luxury, they keep writers and their families alive during periods of development and pitching. Residuals are life- blood to writers and go to heirs and heirs of heirs-- so it’s crucial that royalties are fairly calculated and distributed. As Matthew Weiner stated, if someone is using our product, we need to be paid appropriately for that use. Sadly, I would soon become more personally aware of incredibly unfair Company practices that are devastating writers’ livelihoods to this day and are hidden in plain sight.

UNTIL ONE DAY...

I started working for *Key & Peele*. Joining the show as a writer in their Second Season and based on my experience, I was elected by the room to be WGA Show Captain. I soon learned the writers were having payment issues— not receiving regular residual payments. Then the staff noticed that Comedy Central began to violate the contract, (the MBA) specifically regarding promo use of clips, posting to YouTube, segments that exceeded the five minute promotional limit. Comedy Central was rapidly posting clips over the five minute limit, that should have triggered a payment for us (we would never get paid on these violations and they will only get worse as you will hear). At the time, we also become concerned that Comedy Central was uploading a too-high number of promo clips which did not “entice” viewers to buy anything, but to merely keep watching.

By the end of 2013, Comedy Central had uploaded nearly 100 sketches from K&P to YouTube (many more of which violate the five-minute rule), with full sketches also being uploaded to Facebook. K&P’s writers became concerned that this saturation of free clips would displace paid consumption of the show. (Comedy Central ultimately acknowledged this issue and responded by adding interstitials on

clips it uploads, which self-effacingly inform viewers that full episodes of K&P both exist and should be sought out on broadcast television. The interstitials stated “It’s On TV”)

BECAUSE OF THIS...

In December of 2013, the WGA initiated its first grievance action against Viacom on behalf of K&P’s writers for failure to pay royalties. By spring of 2014, Viacom’s persistent non-payment reached an inflection point as K&P’s writers requested a meeting with the WGA to discuss. During this meeting the writers raised not only two years of non-payment, but also the overuse and over-length of online promotional clips (including Viacom’s refusal to remove over-length clips or compensate for their use) and the confusing nature of the few payments being received (including the suspiciously low amount of residuals being generated). Although payments began to trickle in by April of 2014, confusion persisted as to which of the show’s many royalty streams the payments were intended to reflect and how much unallocated revenue ultimately remained outstanding. In September of 2014, the WGA’s legal team settled the two years’ worth of payment issues with Viacom for an underwhelming amount.

In 2015, Viacom seemingly realized it can reap a financial windfall by monetizing so-called promotional clips for itself while sharing none of the revenue with the writers responsible for the content. During this time, K&P’s writers again encountered continuous non-payment from Viacom, an issue we repeatedly broach with both the WGA and Viacom directly (the latter of whom blames imperfect internal systems – a broken printer, and payroll companies for the years-long underpayment or non-payment). K&P writers are subjected to continuous runaround, finger-pointing, mistaken assumptions as to whether issues have been resolved, and promises of impending resolution that invariably go unfulfilled. Problems persisted into 2016, and once payments finally began trickling in, they remained haphazard and suspiciously meager.

The Guild told me in emails that they recognized how we were being paid “pennies on the dollar.” Later the Guild would tell me that Viacom’s record-keeping was “awful” that Viacom is “shady” and what they do is a “shell game.”

In 2015, NY Times Magazine wrote an article that outlined how popular many of Comedy Central’s shows were getting on YouTube and Facebook: ***“The linear broadcast of “Key & Peele,” for instance, attracts an average viewership of around two million people, but the show has received hundreds of millions more views on YouTube. Across two seasons of “Broad City,” linear ratings remained flat, but “multiplatform streams” at places like YouTube, Hulu and the Comedy Central site grew to 25 million from two million. “The success of a show can go beyond the pure rating number,” Alterman (Comedy Central president of content and original programming) said. “The network’s (Viacom’s) ideal digital-viewing plan is the one in which you watch shows on its official site or app. These views are sold to advertisers at an average rate of between \$20 and \$25 for every thousand views, which is actually higher than what Comedy Central charges during first-run linear broadcasts, for which the rate per thousand views is about \$16.”***

Then, in June of 2016, Comedy Central uploaded the entirety of the K&P catalog to its own website (cc.com) and labeled the repository “The Authoritatively & Unequivocally Complete Archive” of Key & Peele (the “Archive”). The writers quickly opened an inquiry with the WGA as to how this will affect our compensation, given that promotional use is clearly off the table. (The MBA states as the Guild acknowledged “Archival Is Not Promotional...”)

The WGA spent the second half of 2016 pushing Viacom to set up royalty payments for the Archive and received silence in return.

BECAUSE OF THIS...

In January of 2017, the WGA claimed it was once again gearing up to pursue legal action against Viacom for non-payment of royalties, this time on the Archive; however neither this action, nor the owed royalties ever materialized. In March of 2017, the writers were provided with an inscrutable spreadsheet from the WGA ostensibly reflecting K&P’s royalty accounting, yet attempts to seek clarification from the Guild or Viacom went unheeded. We have never been allowed to get clarity on

our use and payment, even as our material has been added to as many as 20+ platforms, while payments remain incredibly low. Writers need to hold the WGA accountable for their accounting. The first half of 2018 was marked by a constantly rotating cast of WGA employees inheriting responsibility for K&P's assorted grievance actions, which frustrated investigation into how much the K&P writers were still owed and the propriety of Viacom's ever-shifting royalty calculations, as well as no clear indication of Viacom's calculation methodology. The WGA's legal action against Viacom accelerated in the second half of 2018, and I was informed by the WGA that more than 50 other Viacom properties were being added to the K&P arbitration (on the basis that Viacom was underpaying residuals on all WGA-covered content). This should have been reason to celebrate, finally we were going to band together... However, no Guild effort was made to connect the shows' personnel or to help build our collective case. I literally begged the Guild to connect the Show Captains, as I knew other shows were having similar problems. Why would we not organize? Why would the Guild refuse to connect the shows and grievances? I began make my best grass-roots efforts to connect the shows and was able to successfully reach 12 of the shows. I interviewed writers from these shows to discover we were all in the same boat, suffering a lot of the same issues.

The affected shows were: *@midnight*, *Adam Devine's House Party*, *Another Period*, *Awkward*, *Big Time in Hollywood*, *FL*, *The Breaks*, *Broad City*, *The Burn with Jeff Ross*, *The Colbert Report*, *Crazy Sexy Cool*, *The TLC Story*, *The Daily Show with Jon Stewart*, *The Daily Show with Trevor Noah*, *Daytime Divas*, *Detroiters*, *Drumline*, *A New Beat*, *Eye Candy*, *Faking It*, *Finding Carter*, *Futurama*, *Happyland*, *The Hard Times of RJ Berger*, *The High Court*, *Hindsight*, *Hit The Floor*, *Hood Adjacent with James Davis*, *Idiotsitter*, *Important Things With Demetri Martin*, *Inside Amy Schumer*, *The Jeff Dunham Show*, *The Jeselnik Offensive*, *Jon Benjamin Has a Van*, *Key & Peele*, *Kroll Show*, *Michael & Michael Have Issues*, *Man Up*, *Mind of Mencia*, *Nathan For You*, *Nick Swardson's Pretend Time*, *The Nightly Show*, *Nothin's Easy*, *The Office*, *One Bad Choice*, *The Opposition with Jordan Klepper*, *The President Show*, *Reno 911*, *The Sarah Silverman Program*, *Scream Queens*, *Single Ladies*, *Time Traveling Bong*, *Tosh.0*, *Ugly Americans*, *Why? w. Hannibal Buress*, *Workaholics*, *Teen Wolf*, and *Zach Stone is Gonna Be Famous*. During this time, I continued to be stonewalled in my pursuit of any clarification from the WGA or Viacom as to outstanding monies, historical payments, and royalty rate calculations. While the Guild continued to avoid organizing the Show Captains.

In March of 2019, I was informed that we had a November arbitration date, but that the WGA would be pushing for a settlement once all its outstanding subpoenas were answered. I let the Guild know we should be connecting the shows and I began to ask to speak to and connect with our residuals department (no contact was allowed or granted) I also made repeated requests at this time to have David Goodman, our then president, intervene on our behalf. Mr. Goodman would not appear or help us until after the Guild (spoiler alert) took a ridiculously low settlement, which we did not want-- in late 2019. Mr. Goodman only appeared after he and Guild leadership signed away all 50 shows claims without gathering all the grievances. To date, the Guild has only taken one single meeting about this issue and disastrous settlement.

BECAUSE OF THIS...

I continued to try to alert writers as to what was going on. I believed collecting grievances and bringing them to an arbitrator would have been a slam dunk for the writers from all 50 shows being similarly abused by Viacom. It was well known at this point in Hollywood how Viacom was operating. Sumner Redstone head of Viacom was credited for coining (or at least popularizing the phrase) "**Content is king.**" As former MTV News Correspondent Gideon Yago pointed out in his 2020 Vanity Fair article "How Sumner Redstone Really Made His Fortune": "***He ran a sweatshop. A snazzy cable sweatshop. A sweatshop generating record profits year after year, but a sweatshop nonetheless. ...Redstone's business was defined by its allergy toward paying for labor and content. "Music television" (MTV, BET, VH1, CMT) was based on other people (record labels) financing content (music videos), which was given to Viacom to air for free. Its comedy holdings (Comedy Central)***

were built on licensing agreements with clubs that excluded comics themselves from the profits.” and finally, Yago concludes, “...might the contributions of skilled labor be worth more than Sumner Redstone would have had us believe?”

By mid 2019, The WGA also claimed that their investigation of Viacom revealed no outstanding payment issues with respect to K&P beyond the AVOD matter, which I vigorously disputed (noting that all efforts to obtain any insight as to how this conclusion was reached were rebuffed). Multiple attempts to bring then President David Goodman in to help us were refused, requests to meet with residuals department were refused as the Guild shuttered their doors. On November 6, 2019, I was informed by the WGA that the arbitration was off, we would not be bringing any evidence and the Guild would be accepting a \$285,000.00 global settlement to resolve the grievances of all 50+ shows whose claims had been bundled, with each affected writer receiving only \$537.00.

I was floored. None of this made sense. We were not able to present considerable evidence of MBA violations and systemic underpayment to an arbitrator, which have only gotten worse in recent years. We were not able to combine our claims with the other shows. I made my objections known, but the WGA assured me it was the best settlement they could get. A one time flat payment of \$537.00 for years of underpayment and over- promotion. Efforts made over the next several months to convince the WGA to reconsider its strategy were ignored, and the WGA finally informed all the affected writers of the settlement on July 17, 2020, never fully explaining the deal or how it was fair.

I tried my best to contact and organize the 500 affected writers. But with the pandemic just starting and no help from the Guild I was only able to find writers from about a dozen shows. Then, Key & Peele show runner Jay Martel filed a lawsuit on behalf of all 50 shows, a Duty Of Fair Representation claim, but the Guild and Viacom argued we were too late. There’s only a six month window to file such a claim and since I knew in November 2019, the clock had likely expired for me personally. The Guild did not let us organize, did not connect the Show Captains, any and all efforts I made to notify the writers during this time were actually spoiling our class action suit claims.

Good news, currently, PWGA our pension provider is conducting a years long investigation into Central Productions. I am hopeful if I win a seat on the WGA Board, I can help coordinate WGA’s participation into the Viacom/Central Productions investigation.

UNTIL FINALLY...

Summer of 2022, I decide to run for the WGA board. I’ve been working on this issue for 10+ years and I’m not just doing this for K&P writers, I’m doing this for all comedy writers now and in the future, on any network that practices these contract abuses (NBC and SNL clip use for example). With our shows getting “staggering” numbers of views in the promotional space, but earning no compensation for this use, is ridiculous. Writers and their families rely on residuals and as Matthew Weiner said, if someone is using our work, we should be paid for it. Even if I am not elected to the board, I promise to fight this issue until we get a fair deal on this use.

AND EVER SINCE THEN...

What happens next is up to us, the membership. Will there be a “happily ever after” for comedy writers? I hope we can all work together to demand better from our Union and our employers. As writer Andy Gellis told me during the 2007-2008 strike: ***"People need to remember, writers write this stuff. It doesn't come out of the air."***

In Solidarity,

Rich Talarico

WGA Show Captain – Key & Peele