

# Gavin Polone on TV's Dirty Secret: Your Agent Gets Money for Nothing (Guest Column)

8:00 AM PDT 3/26/2015 by Gavin Polone



Illustration by: Lars Leetaru

"Package fees," which can allow agencies to make more money from a TV hit than the show's actual creator, are an embarrassment to Hollywood.

*This story first appeared in the April 10 issue of The Hollywood Reporter magazine.*

I'm all for increased efficiency when it comes to producing filmed entertainment. I embrace moving a production to where it can be made more cheaply, cutting a schedule to the minimum necessary to realize the project's vision and doing away with decadent perks. I even understand why my fees and profit participations have been reduced, in line with other producers, over the years; and I accept that it was necessary for some of my friends to lose their jobs during the recent rounds of layoffs at major studios and networks. Pruning dead branches allows the tree to keep growing. But what I can't abide is how those same companies, which ask us to make do with less and find it expedient to de-job those who have served them loyally for years, continue to tolerate the most deplorable cost associated with creating their product: the television package fee.

If you are unfamiliar with what packaging fees are, I'll give you more details in a bit, but in short, it is a large upfront payment and an even larger back-end participation that talent agencies receive for doing exactly what they are supposed to do for the regular 10 percent commission they charge their clients.

I'm not writing this to bash the agencies. It isn't any more their fault than it would be mine if I were to put my house up for sale at five times what it's worth and someone acceded to my demand. Understandably, nobody is willing to overpay for my house, but close to 100 percent of broadcast network scripted TV shows generate package fees for talent agencies. And I promise you, the only reason those fees are paid is out of fear that the agency will kill a deal if its agents don't get to wet their beaks, rather than because they did any extra work or "packaging."

A good example of this dynamic was evident on a project I recently sold. I had breakfast with a couple of network executives and pitched them an idea, which they liked. I told them I wanted to work with a specific writer (with whom I did not discuss this idea before meeting with the executives). They didn't know him, so I sent them his writing sample, which they enjoyed. The writer and I then pitched out a complete story. The executives officially bought the show. The writer then told his agents of the sale after it was sold. His agents then negotiated with the studio, which was a sister company of the network, and got him a deal with which he was happy. Then they asked for a package fee.

I told the network I would not go along with them getting a fee because they had nothing to do with the show. The writer also told his agents that it didn't make sense for them to receive a package fee. His agent told him she would not close the deal — despite his direction to do so — without the agency getting its fee. He then asked his lawyer to close the deal and the lawyer also refused, probably not wanting to take on the agents. I called the network and told the executives to just say it was "take it or leave it" and they'd have to close because the client wanted it closed. One of the executives told me that I'd have to work it out with the agency myself. I said that they weren't my agents (I am not represented by an agency), so I had no way of influencing them. He said the network/studio would rather pay the fee, which could total millions of dollars in success, instead of jeopardizing its relationship with a major agency. In the end, the agency got its fee.

It's amazing to me why major TV studios are willing to pay hundreds of millions of dollars for what amounts to extortion. But while the studios and networks have most of the responsibility for this boondoggle, some part can be shared by the agency clients, most of whom have neither

an idea what a package fee is nor its economic impact on the production and, surprisingly, themselves. Since you probably don't know either, I'll explain.

In exchange for supposedly "packaging" a TV show — sometimes that means putting together a writer with an actor or director or property the agency represents, and sometimes it just means negotiating a client's deal (and maybe not even that, as lawyers often do the negotiating) — the production company pays the agency a fixed percentage (usually 3 percent) of the network base license fee after each episode is produced, an equal amount deferred out of profits (if any) and a percentage of the profits (usually 10 percent). So, on a typical network hour drama, we could be talking about \$30,000 per episode going to a talent agency for every episode produced plus, in success, another \$30,000 per episode that had been deferred. These figures escalate in subsequent years in step with the prenegotiated bumps in the base license fee that the network pays the studio or production company.

In many cases, the total payments to the agency are more than what the agency's client — on whose back it leveraged the package — makes on the show. Let me say that again: The agency can make more than its client. One would think that the client would be unhappy with this arrangement, but he almost never is. That's because the agency usually explains to the client that he is getting a good deal, since the agency doesn't take its usual 10 percent commission of its client's income when it is getting a package fee on a show, and the clients generally believe their agents. This explanation is true — in the same way it is true that it's a good deal for a big gambler to get his room comped by a Las Vegas casino. And if you are a profit participant on a show that is "packaged" by an agency other than your own, and therefore are not given any commission relief, it is like gambling at a casino and not even getting a free buffet.

There is so much that agency clients don't understand. If a show creator is making \$40,000 an episode on a show and is saving \$4,000 an episode in commission, that might total \$400,000 on a show that runs 100 episodes (this could be higher or lower if he renegotiates or leaves the show before the end). Let's call it \$500,000 in savings, assuming he gets raises. If that show were to profit, the agency will have received, maybe, \$7 million in upfront and deferred fees (including escalations as the license fee increases yearly). Add to that interest and overhead charged on production expenses, and the number is more like \$9 million.

Even worse, that \$9 million is a deductible expense from gross profit and could be large enough to eat up some or even the entire amount the client would have received in profit, since it is deducted *before* the client's profit kicks in.

But even if our imaginary writer/producer is on a show with a large gross profit, he loses out. Assuming he is to receive 15 percent of the defined proceeds and he doesn't have to pay commission to his agents, his profit is still reduced by that of the agency, as its profit is an "off-the-top" expense, meaning that everyone's profit is reduced proportionally by the agency's payment. So, if the show has \$100 million in gross defined proceeds, that amount is reduced by the \$10 million (10 percent of the profit) paid to the agency, so the client gets 15 percent of \$90 million, or \$13.5 million: the same amount as if there were no package agreement with the agency and he had paid his normal 10 percent commission. *But*, the upfront and deferred fees still would reduce his profit by 15 percent of \$9 million, or \$1,350,000, for a net loss of \$850,000, after adding back the commission he didn't have to pay on his fees. This is a rough and somewhat confusing example, and there are plenty of variances that could push the

outcome in either direction, but if you were to ask a studio accountant familiar with package fees and profit participations, he or she would surely agree that my example is representative.

Of course, a writer of a TV show could reason that most shows don't make it to profitability and saving 10 percent commission would add up to a significant sum on a show that ran a couple of years and didn't go further. But that would be a myopic view. I, and anyone who has produced anything in Hollywood, know that there are many variables that make shows work, and some of them are not super-prominent but may still be super-significant.

I have never watched anything I've produced where I didn't think, "That scene would have been better if we had more money for ..." a better song, more background actors, better VFX, our first choice of location, an above-scale actor for a small part or many other things that often cost less than \$30,000. Budgets are finite, and if you add a \$30,000 cost that doesn't connect to anything that goes onscreen, you necessarily lose something else that would have. So that package fee, which saves the writer his commission on an unprofitable show, might be the exact reason his show was canceled in the first place and never made it to profit; and that is a pretty unequitable exchange.

Giving out package fees on TV series is bad business for everyone but talent agencies, and they can survive just fine without them. When I was an agent, I asked for package fees and had them in deals but almost never collected any; and still, I made a good living. I understand why studios and networks fear losing projects if they ban this practice, but that excuse is bullshit. Movies are packaged by agents in the same way as TV shows, without the incentive of a bribe going to the agency from whomever elects to finance the project.

If one network/studio stopped paying these fees, it might lose a project or two at first, but agents would be hard-pressed to repeatedly explain to their clients why not to take a show to ABC/ABC Studios or Fox/20th Century Fox TV because of their own self-interest rather than the good of the show. As soon as the network/studio that stopped paying those fees developed a hit, which it certainly would do, all the others would follow suit and the package fee would be dead.

But good television would be more alive than ever.

*Polone is a producer, television director and former talent agent.*