

Documentary Producers Alliance

GUIDELINES FOR THE DOCUMENTARY WATERFALL

Created and recommended by the
Documentary Producers Alliance (DPA)

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TABLE OF CONTENTS

DOCUMENTARY PRODUCERS ALLIANCE MISSION	3
BACKGROUND	4
GUIDING PRINCIPLES	5
FINANCING TOOLS FOR DOCUMENTARIES	6
THE BUDGET	8
Guidelines On Compensation	8
Guidelines On Additional Budget Items	9
GUIDELINES FOR THE DOCUMENTARY WATERFALL	10
Summary Of Waterfall Positions	11
Sample Waterfall	12
OFF-THE-TOP COSTS	13
FIRST POSITION	14
SECOND POSITION (RECOUPMENT)	14
THIRD POSITION (PREMIUMS)	15
FOURTH POSITION (NET PROFITS)	15
ADDITIONAL CONSIDERATIONS	18
BEST PRACTICES	19
RESOURCES	20
GLOSSARY	21
ENDORSEMENTS	25

DOCUMENTARY PRODUCERS ALLIANCE MISSION

The Documentary Producers Alliance (DPA) was formed in 2016 to address career sustainability challenges affecting documentary filmmakers. Today, the DPA focuses and clarifies its mission to embrace issues pertaining to wage and labor practices, structural inequality in our field, the scarcity of development funds, producer recognition, and the relationship between investors and filmmakers. Additionally, we launched several emergency programs for our members in response to the COVID-19 crisis. In 2019, the DPA released its “[BEST PRACTICES IN DOCUMENTARY CREDITING](#),” which was designed to standardize crediting guidelines for the industry. In the same vein, these Guidelines for the Documentary Waterfall reflect DPA’s collective effort to introduce greater understanding and transparency around the nature of documentary film finance, to standardize film finance structures, and to advocate for financing terms that are sustainable, transparent, and rewarding to investors and filmmakers alike.

BACKGROUND

Over the past decade, funding sources for independent documentaries have increasingly diversified. We have appreciated the commitment of philanthropic funders and investors who have long been active in the field. We are now also encouraged by the increased commercial interest in documentary film and the risks assumed by investors resulting in the influx of new resources.

Despite all of this interest, through our own surveys and research conducted by others, it is also clear that most filmmakers are not adequately compensated in documentary film, which threatens filmmaker sustainability.¹ *The DPA does not support uncompensated filmmaker work at any stage and has been encouraged to find through this research that most industry stakeholders and funders wholeheartedly agree.*²

The DPA was motivated to address current financing and waterfall structures because these structures codify unsustainable industry “norms.” To make up for shortfalls, filmmakers were encouraged to reduce budgets unrealistically and to work unpaid, often believing they would eventually be compensated by the ultimate sale of the film. Once investment emerged as a financing tool, filmmakers were even less likely to be compensated from the sale of the film, with proceeds split among investors. But through properly and thoughtfully structuring a film’s finances, from initial budget through the distribution of a film’s profits, multiple opportunities exist to rectify the tension between maintaining “affordable” budgets and appropriately compensating filmmakers. We believe the Guidelines will also offer greater protection for investors, ensuring filmmakers are deploying investments and revenues responsibly while adhering to common industry standards.

While there are many ways to address fieldwide sustainability, our all-volunteer organization opted to focus our efforts on establishing guidelines for the waterfall within documentary financing as a first step in a larger effort. Accordingly, the DPA Waterfall Committee developed these Guidelines after extensive consultation with major industry stakeholders to serve filmmakers, investors, and donors alike in financial discussions and negotiations. We are incredibly grateful for their wisdom and time. The goal was to identify funding mechanisms and develop best practices that are understandable, reasonable, and sustainable for all parties involved in financing; filmmakers can more easily add investor financing to their toolkit and investors will be rewarded for the risks they take when investing in documentaries.

The recommendations in the pages that follow are crafted as best practices rather than requirements. We recognize that some situations may warrant filmmakers and funders to deviate from these Guidelines. In such circumstances, we encourage filmmakers and funders to use these standards and guiding principles as a starting place, with the specifics of a project dictating where, when, and how exceptions are applied. Ultimately, we are encouraged that establishing robust and common standards will allow for greater long-term sustainability for our ecosystem at large.

GENERAL NOTE: *Underscored terms are defined in a glossary at the end of the document.*

¹ “Less than a fifth of documentary directors and producers (19%) received a full expected salary from their most recent documentary film. About 36% of filmmakers received no salary at all from their most recent film.” 2018 CMSI State of the Field.

² The DPA is committed to expanding upon our limited knowledge of existing conditions, defining best practices, and to advocating for higher standards. The DPA’s Research and Data Committee, Labor and Economic Sustainability Committee, and Inclusion Committee are actively working on related initiatives.

GUIDING PRINCIPLES

- **Participation by donors and investors is necessary for the continued production of independent documentary films.**
- Both filmmakers and funders take creative and financial risks when embarking on the creation of a documentary film. Film finance structures should acknowledge those risks and **financially reward both investors and filmmakers in the films they create together.**
- **Filmmakers must craft realistic budgets that account for the full life cycle of the film and reflect sustainable wages for all members of the crew.** Funders and investors alike rely on budgets as the bedrock of the financing plan to assess the professionalism of the film team, the feasibility of the film, the financial viability of the investment, and ultimately to track responsible spending.
- **Transparency and honesty** should be the bedrock of the filmmaker/funder relationship. Film finance structures should be clear and understandable and negotiated in good faith, so that an agreement acceptable to both sides can be reached.
- **Not all films will benefit from investment.** The presence of outside investors may introduce additional complexity and legal costs, as well as financial pressure for the film's commercial performance.
- **Not all funders may choose to invest; some may prefer to donate.** Some funders might find the traditional tax-deductible-donation model more advantageous and aligned with their goals and less onerous when considering the support of a film.
- **It is the collective responsibility of filmmakers and funders** alike to ensure the health and welfare of the documentary field at large by valuing filmmaker **sustainability, inclusion, and diversity.**
- **Paying filmmakers for their work at all stages of filmmaking** ensures that a diverse range of experiences and perspectives are reflected in the films we create together. Diverse perspectives and experiences enhance the landscape of documentary film.
- **The Guidelines were developed to encompass a range of funding scenarios and may not all be implemented or relevant for every project.** Rather, the Guidelines offer an array of solutions and guiding principles to filmmakers and investors to consider as they negotiate each deal and relationship.

FINANCING TOOLS FOR DOCUMENTARIES

These Guidelines use the term “[funder](#)” to refer to the providers of any source of money that is used to make a film. Funders will be further divided into two subcategories: “Donors,” who do not expect to receive a financial reward as a result of their contribution to the film; and “investors,” who do. Of course, investors may expect to additionally receive non-financial rewards, such as promoting social awareness of a particular issue, exposure to new audiences, and support for under-represented artists, similar to donors. This is particularly the case for [double- and triple-bottom line films](#).

There are a number of financial tools currently being deployed as important pieces of the financing equation for documentary films: [Investments](#), [loans](#), [recoupable grants](#) or [no-premium investments](#) or [no-back end investments](#) (investors), [cash advance by filmmaker](#), and [grants](#) or [donations](#) (donors). Each has its own benefits and drawbacks for both filmmakers and funders depending on the specifics of the film and the needs of its funders. Often a special legal entity is specifically created for the film (aka a “special purpose entity” or “SPE”) such as an LLC or corporation (see addenda) to handle all funding and legal responsibility. Investment documentation (whether promissory notes, LLC agreements, or investment agreements) may also address other issues, such as the credit the funder is expected to receive and the film’s production schedule and budget.

For clarity, and in an effort to introduce common industry language, the DPA defines the most widely used financial tools as follows:

	TAX DEDUCTIBLE (NO PREMIUM)	RECOUPMENT	PREMIUM %	NET PROFIT PARTICIPATION	REPAYMENT OBLIGATION
CASH ADVANCE BY FILMMAKER		✘	✘	✘	Repayment is contractually expected in first position or converts to investment
LOAN		✘	✘		Repayment is contractually expected
INVESTMENT		✘	✘	✘	Repayment expected only if film exceeds certain income thresholds
RECOUPABLE GRANT / NO-PREMIUM INVESTMENT		✘		✘	Repayment expected only if film exceeds certain income thresholds (some funders may require profit participation)
RECOUPABLE GRANT / NO-BACK END INVESTMENT		✘	✘		Repayment expected only if film exceeds certain income thresholds (some funders may require premium)
GRANTS & DONATIONS	✘				No repayment expected

KEY

- ✘ Always required with this type of financing.
- ✘ May or may not be required depending on the specific agreement.

CASH ADVANCES BY FILMMAKERS: Filmmakers sometimes advance funds, also called [producer's cash](#), to cover the hard expenses of filmmaking while in development (incl. travel, crew expenses, meals, etc.). These expenses are expected to be repaid once financing flows into the project. Preferably, they are included in the production budget. Alternatively, the recoupment of these expenses needs to be accounted for through the Waterfall structure.

DONATION: A tax-deductible gift typically made by individuals through a fiscal sponsor and re-granted to a film, that does not require recoupment, premiums, or net profit participation to be paid to the funding party.

GRANT: Funding provided for philanthropic reasons typically made by granting organizations adhering to IRS non-profit guidelines, that does not require recoupment, premiums, or net profit participation to be paid to the funding party.

INVESTMENT: Financing that includes recoupment, a premium, and net profit participation. An investment carries the right to receive “upside” in a project, however an investor will only receive a financial reward if the film exceeds certain income thresholds.

LOANS: Debt-based financial tools typically governed by a promissory note or loan agreement. Loans typically outline specific terms requiring recoupment due date(s) as well as additional interest payments on top of the principal loan amount. Some loans may require security or collateral, though that is not a defining feature of a loan. Whether a film succeeds or fails commercially, a loan will be repaid or result in default. However, loans do not participate in net profits.

NO-BACK END INVESTMENT: A financial tool that, similar to a standard investment as described above, carries the right to recoup the investment, and in some cases receive a premium, if the film exceeds certain income thresholds; however the investor does not require any net profit participation or back end on his/her/their investment.

NO-PREMIUM INVESTMENTS: A financial tool that, similar to a standard investment as described above, carries the right to recoup the investment, and in some cases participate in net profits if the film exceeds certain income thresholds; however the investor does not require any premium on his/her/their investment.

RECOUPABLE GRANT: This refers to interest-free giving, recoupable by the granting organization only if the film exceeds certain income thresholds and, in some cases, participates in premium and/or net profits. Recoupable grants are utilized by organizations with a charitable purpose.

It is worth noting, many funders are exploring various models that work to bring more flexibility into recoupment and net profit participation including no recoupment of principal, recoupment with no premium, recoupment with no net profit participation, and rolling some or all of recoupment, premium or net profits back to the filmmaker or into outreach and impact for the film. We want to acknowledge and applaud these creative solutions to drive financing – and sustainability – back into supported projects and filmmakers.

A note about pre-sales and co-productions: *These can be significant pieces of a project's financing and can include licensing agreements that grant distribution rights to the Licensor. The specific nature of each deal, the terms, territories, and laws (including international) will potentially influence profitability, all rights distribution, and recoupment. These terms may need to be factored into financing agreements and the Waterfall for the film.*

THE BUDGET

While detailed film budgeting guidance is outside the scope of these Guidelines, the importance of responsible budgeting cannot be overstated. Film budgets and trust are the bedrock of all financier/filmmaker relationships. Funders rely on the professional expertise of filmmakers to determine the real costs of bringing a film idea to fruition. Minimizing costs or deflating budgets to attract financiers inevitably causes friction in the filmmaker/funder relationship and may jeopardize a project's ability to reach completion. Accurate budgeting and responsible spending breeds trust even when projects experience the unexpected.

As funders and filmmakers evaluate proposed budgets, it is incumbent on both parties to ensure that **those regularly working on the film are earning a reasonable living wage** and that film budgets reflect that reality. Often the challenges of budget shortfalls or budget increases lead filmmakers to cut their own fees even when those budgets are agreed upon by both funders and filmmakers. The DPA urges filmmakers and funders to reconsider this practice as it sets harmful precedents that threaten filmmaker sustainability and the field at large.

Clear communication between filmmakers and funders on the “true costs” of a film and the ability to reach clarity on an approved budget is a critical component in both the health of the film's finances and the relationship between filmmakers and funders.

Guidelines On Compensation

- **RESEARCH AND DEVELOPMENT (R&D) WORK:** The DPA recommends that filmmaker fees in the R&D phase be included in the production budget. It is the filmmaker's responsibility to track time and expenses related to R&D and present these numbers in writing at the time the investor documentation is being negotiated to find an equitable way for this work to be compensated.
- **LONG-TERM PRODUCING WORK:** Producing, directing, and other [above-the-line](#) fees must be agreed upon both in terms of scope and amount in financing agreements. If increases are needed when the scope of the work changes, they need to be addressed in writing. These increases, like all other fees, should be fair, clear, and reflect livable wages for the time spent working on the film³.
- **PRODUCING TERM:** It is essential that all documents are clear as to when the budget starts and ends and how much post-premiere work—if any—is already accounted for in the original budget. These deal terms should be made explicit to investors to the extent they impact the waterfall. In certain cases, if the scope of work is expanded (such as cutting down or re-editing a film for a sale), a new budget should be agreed upon for the additional producing work.

³ The DPA is committed to expanding upon our limited knowledge of existing conditions, defining best practices, and to advocating for higher standards. The DPA's Research and Data Committee, Labor and Economic Sustainability Committee, and Inclusion Committee are actively working on related initiatives.

Guidelines On Additional Budget Items

- **Cash advances by filmmakers:** Filmmakers often advance funds, sometimes known as “Producer’s Cash”, to the production in early stages to cover the hard expenses of filmmaking while in development (incl. travel, crew expenses, meals, etc.). The funds allow filmmakers to capture early or time-sensitive footage before outside financing is secured which is often used to attract financing. In the interest of transparency, it is preferable to include these expenses in the production budget.
- **All budgets should include a contingency** to account for unforeseen expenses reasonably expected in the production process (commonly up to 10%). At the outset of funder negotiations, given the unpredictable trajectory of many documentaries, it is helpful to formulate a plan that prepares for the possibility of budget overages or unanticipated expenses even beyond the contingency. At times, filmmakers will seek new sources of funding to close the budget gap. At times, the existing funders might opt to cover the overage. The filmmaking team should consult investors if unforeseen circumstances require additional financing, loans, or other sources of funding beyond the approved budget that could impact the waterfall as amendments to the original investor agreements may be necessary.
- In addition to filmmaker fees, budgets typically include line items for necessary overhead fees or a “Production Company Fee” (reflecting customary or pro-rated rent for offices housing the production staff, accounting, utilities, etc.) associated with producing films, generally 10% of the film’s overall budget.
- The DPA strongly recommends including reasonable distribution, deliverable and festival premiere costs in the production budget.
 - Common deliverable costs should encompass:
 - Delivery for a festival premiere.
 - Delivery to a domestic distributor.
 - Delivery to a foreign sales company.
 - Common premiere costs should include:
 - One US and one international festival premiere (or more if critical to the sale of the film).
 - Travel and lodging for two film-team members to the festival premieres.
 - Traveling of subjects, talent, or additional crew to be mutually agreed.
 - Festival publicity and promotion expenses (i.e.: publicist, social media, trailer, poster, and postcards, if needed; this generally excludes awards campaigns or publicity provided by a distributor).

GUIDELINES FOR THE DOCUMENTARY WATERFALL

The film’s financial “[waterfall](#)” describes the flow of [gross revenues](#) that a project receives and how these gross revenues, or the “pie,” are distributed amongst those with a financial interest in the project.

Gross revenue sources may include but are not limited to all-rights deals, broadcast deals, theatrical rentals, streaming platform licenses, educational and non-theatrical distribution, home entertainment and VOD, TV, international sales, merchandising, soundtrack, derivative-rights payments, remake rights, etc. Note that the revenues that a project generates are often far removed from the ultimate gross revenues received. For example, a film that generates \$5 million in [domestic box office](#) (DBO) does not receive \$5 million in revenues as there are significant distribution expenses and fees incurred by the distributor.

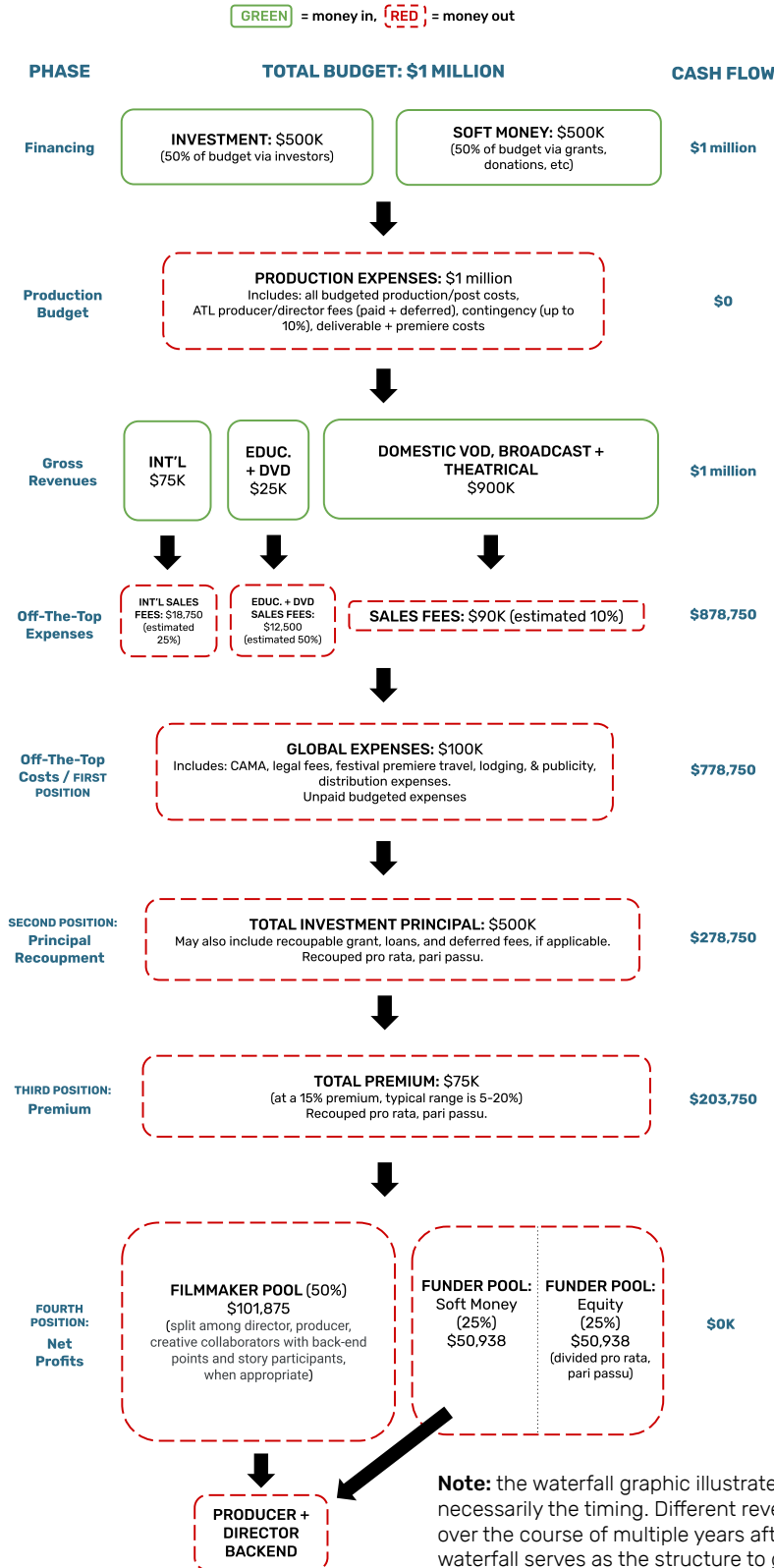
Determining how much investment financing to take on and the structuring of investment deals—specifically the waterfall itself—impacts the potential for investor recoupment and can make an investment more or less appealing. The amount of funding required will be impacted not only by the film’s budget, but by pre-sales, general market conditions, and the filmmaker’s overall distribution and impact strategy. Some deals include [investment caps](#), which limit the amount of investment that a film can take on. Creating too many tiers and/or deductions in the waterfall may limit a film’s ability to attract financiers who may not want to sit in lower positions. Creating too few tiers and/or deductions can result in structures that are too financially onerous for filmmakers. In crafting these Guidelines for the Documentary Waterfall, we worked to weigh various competing financial interests so that everyone is fairly positioned in the original budget, on the “[front end](#)” and on the “[back end](#)” to benefit from the profitability of the films they work together to create.

The DPA’s Documentary Waterfall Guidelines call for fair recoupment and profits for all parties in the distribution of revenues in the waterfall.

Summary Of Waterfall Positions

- [Off-the-top](#) costs (prior to recoupment):
 - Customary deductions may include sales agent fees, actual costs in connection with licensing and exploiting the film, residuals to guilds, legal fees for distribution agreements, [CAMA fees](#), and additional accounting fees.
 - Distribution and festival expenses not included in the production budget.
- First position:
 - Budgeted fees unpaid because of cash flow, also known as [deferred fees](#).
 - Preferential loans and [cash advances by filmmakers](#) sometimes called “producer’s cash”.
- Second position [pro rata pari passu](#):
 - Investor principal recoupment.
 - Some recoupable grants.
 - Non-preferential loans.
 - Unpaid / deferred fees/ cash advances by filmmakers, if not recouped in first position, converted to “[sweat equity](#)” investment.
- Third position pro rata pari passu:
 - Premiums on investment.
 - Recoupable grants that participate in premiums
- Fourth position pro rata pari passu:
 - Net profits, shared between the [Funder Pool](#) and the [Filmmaker Pool](#).
 - Recoupable grants that participate in net profits.
 - There is no set industry standard for how to allocate the distribution of the Filmmaker Pool. To the extent the filmmaker seeks to retain discretion to grant additional distributions at the end of the project, careful attention must be given to contractual promises to crew and story participants, when appropriate, regarding any back-end participation.

Sample Waterfall



OFF-THE-TOP COSTS

- [Off-the-top](#) costs may include sales agent fees, actual costs in connection with licensing and exploiting the film, residuals to guilds, legal fees for distribution agreements, [CAMA](#) fees, and additional accounting fees.
- Festival premiere travel expenses are often necessary to offer the film for sale in the marketplace. Similarly, delivery expenses are required to complete the contractual sale and delivery of the film. As such, if they are not already included in the budget, the associated additional expenses should be treated as off-the-top costs deducted from [gross revenues](#). Expenses may include but not be limited to:
 - Foreign language reversioning for an international sale.
 - Re-edit for a broadcast cutdown including fees to the editor(s), the cost of the edit room, re-mastering, music, graphics, sound mix, subtitles, or dubbing, etc.
 - Filmmaker compensation should be included at a reasonable and agreed-upon rate for delivering additional versions beyond those stipulated in the original budget and deal terms.
 - It is worth noting that the rise of global distribution often requires a wide range of deliverables with multiple languages and formats that may well exceed common delivery budgets but should also be paid “off-the-top” to complete contractual sale and delivery.
- Filmmakers and funders may determine that certain additional distribution and promotional expenses not included in the budget (or not being covered by distributors) would prove valuable to the future life of the film. These may include but are not limited to: **outreach & impact campaigns, promotion, and self-distribution** (in the event that a film is not picked up by a distributor). It is worth noting, not all films benefit from these additional phases of work. If the parties agree these phases will be beneficial, the filmmakers should approach funding parties impacted by the additional costs and potential changes in the waterfall with a plan and budget, inclusive of expenses and filmmaker fees to compensate for this new phase of work. At times this will trigger a new fundraising effort. At other times, funders may want to contribute an additional donation/investment or treat it as an off-the-top expense. All fees, terms, and payment should be agreed upon prior to commencing the work.
- All parties should agree on an adequate reserve on funds paid out from gross receipts after [sales sunset](#) to cover future allowable expenses such as legal, accounting, masters storage, and additional administrative fees.

FIRST POSITION

It is the DPA's position that all crew supporting the creation of the film be paid in full before recoupment begins and this should become a standard part of investment agreements.

- Budgeted [deferred fees](#): Current industry standards often provide for recoupment of unpaid budgeted fees—also known as deferred fees—after recoupment of investment and premium. Deferment is detrimental to filmmaker sustainability but has become normalized. It is the DPA's position that if fully budgeted fees have not been paid, all crew should be paid their full budgeted fees from gross revenues, ideally in first position, after customary off-the-top expenses and before any recoupment begins.
- Filmmakers often provide [cash advances](#) (sometimes called producer's cash), or their own funds, to pay hard costs in the development and production of projects. Filmmakers should seek to memorialize the loan of cash in the form of a promissory note for the repayment of principal (but no payment of interest) so that it is treated like other debt investments. Repayment of that note should be included in the budget, if possible. However, if excluded by distributors or co-production partners, cash advances should be recouped in first position with no premium or net profit participation on those funds. The amount of the cash advance should be agreed upon at the time of contract or before additional filmmaker advances are invested in the course of production.

We recognize paying budgeted unpaid fees and cash advances in first position is a new and bold proposal that differs from traditional models and may be a high bar to achieve in some cases. As an alternative, if filmmakers are asked to wait to be paid their fees or reimbursed their financial outlays, then we recommend that deferred fees and cash advances by filmmakers be converted to investment and that filmmakers should inure the same benefit as investors with *pari passu* recoupment, most favored nation premium, and net profit participation.

- [Preferential loans](#) with terms requiring recoupment in first position. It is worth noting that not all loans require preferential first-position treatment.

SECOND POSITION (RECOUPMENT)

In the spirit of a fair recoupment for all parties, the DPA advocates second position recoupment on a [pro rata pari passu](#) basis including:

- Principal of investments.
- Recoupable grants.

NB: Some recoupable grantors have opted to place themselves in fourth position, recouping only once the film reaches net profits. Positioning recoupable grants later in the waterfall may assist filmmakers in attracting other financing. This also allows filmmakers to secure their deferred fees in a more timely fashion, supporting filmmaker sustainability.

- Non-preferential loans.

- Budgeted unpaid fees also known as deferred fees converted to “[sweat equity](#)” investment: If mutually agreed by the filmmaker, the individual labor provider (if different from the filmmaker), and investors, budgeted unpaid deferred fees (including R&D and any other budgeted labor fees) may be converted to sweat equity investment (and thus the deferred fees waived by the labor provider). Such sweat equity investments should be made on a [most-favored-nations](#) basis with other outside investors, with premium and net profit participation and subject to the same terms as all other investors.

THIRD POSITION (PREMIUMS)

- Recoupment of the premiums on investments to the investors and some recoupable grantors. Traditionally, premiums for film projects have been subject to most-favored-nations status so that all investors—regardless of the nature of their investment and timing of their commitment – would be entitled to the same premium on their investment.

Earlier investment in a project—which is both critical to a project and also inherently carries a greater risk— should be rewarded with preferential premiums.

Specifically, the DPA suggests the following premium structure to be paid pro rata, pari passu:

- 15-20%—premium on investment made during R&D.
 - 10-20%—premium on investment made during production and post production.
 - 10-20%*—premium on investment made after a film has been accepted to a festival premiere.
- * We appreciate that investors can bring a range of benefits to projects including additional fundraising, sales, editorial, promotional support, or completion of the lion’s share of the production budget. We suggest a range of premiums to allow filmmakers and investors to honor the full value of an investment on a case by case basis.

FOURTH POSITION (NET PROFITS)

Net profits remaining after investors recoup their initial investment and secure their premium have traditionally been split 50/50 between the “[Funder Pool](#)” and the “[Filmmaker Pool](#)” (sometimes referred to as the “Creative Pool” or “Producer Pool”). This is the current industry model for both narrative films as well as documentary films.

Unlike fiction films which generally require all financing be secured before beginning the hard work of production, documentaries are often in production while funds are raised. Uniquely, documentary filmmakers are responsible not only for the creative process, but also raise critically needed “[soft money](#)”—securing funds from grantors, crowdfunding proceeds, philanthropic foundations, government entities offering grants and tax credits, and other donors. “Soft money” improves the potential for investor recoupment and furthers represents the mission of most grantors and donors to support filmmaker sustainability.

Therefore the DPA is advocating for a new standardization of the documentary profit participation model, whereby the filmmaker participates in the Funder Pool in proportion to the share of soft money he/she/they have raised.

Following this principle, net profits should be determined as follows:

- [Funder Pool](#) profit participation:
 - The Funder Pool shall consist of investment funding AND soft money funding raised by filmmakers.
 - The Funder Pool shall be allocated a standard percentage of 50% profit participation.
 - An investor or filmmaker's profit participation in the Funder Pool should be calculated by taking the amount invested by said funder or the amount of soft money raised by the filmmaker; dividing that amount by the film's total budget; then dividing that amount by two: ***(funding amount ÷ total budget) ÷ 2 = amount of profit participation***
- [Filmmaker Pool](#) profit participation:
 - The Filmmaker Pool consists of producers, directors, and any other crew member (DP, editor, etc.), and/or other non-financing entities who are allocated profit participation by the filmmakers for their work. The DPA believes that filmmakers should be transparent with regards to how this Filmmaker Pool is split and these allocations should be specified in crew deal memos or other relevant legal agreements.
 - To recognize the creative contribution of the filmmakers, the Filmmaker Pool should be allocated a floor of 50% of the profit participation (i.e., back end).
 - Any profit participation that is allocated for soft money raised allows the filmmaker to participate in the Funder Pool. In this scenario, the total back end-profit participation related to the Filmmaker Pool is calculated as follows:
[(soft money funding amount ÷ total budget) ÷ 2] from the Funder Pool + 50% of the profit participation (from the creative allocation) = Total filmmaker's profit participation

Another way of understanding the same idea illustrated in the flow chart above in which the budget of a film is \$1 million—comprising \$500,000 from investments and \$500,000 from soft money raised by the filmmakers—is through the following calculations:

- The investors who invested private funds in the film should receive 25% of net profits.

$$(\$500,000 \div \$1,000,000) \div 2 = 25\%$$

- The filmmakers who raised the soft money—in this case \$500,000—should also receive 25% of the net profits.

$$(\$500,000 \text{ (soft money)} \div \$1,000,000) \div 2 = 25\%$$

The investors and filmmakers therefore split the net profits of the Funder Pool in recognition of their respective financing of the project.

- The Filmmaker Pool would receive its standard 50% of net profits for its creative contribution.

As a result, in this specific example, the Filmmaker Pool would receive:

$$\begin{aligned} & \mathbf{25\% \text{ Investment Funder Pool net profits allocation}} \\ & \mathbf{+ 50\% \text{ Baseline Filmmaker Pool net profits allocation}} \\ & \mathbf{= 75\% \text{ Total filmmaker net profit allocation}} \end{aligned}$$

Note that the 50% allocation of net profits to the filmmaking pool is the DPA-preferred standard US model. The European model (and other international models) may differ. Adjustments may need to be made if international co-producers are involved.

Some funding contributions that advance income to close budget gaps such as pre-sales, tax credit loans, or early tax credits may be excluded from a calculation of “total budget” when determining net profit allocations. For instance, a film with \$100,000 in tax credits would deduct \$100,000 from the total budget before running the formulas noted above.

Finally, for some mission-driven or charitable organizations, it might be beneficial and, in some cases, legally required for the granting organization to have the right to designate where any Net Profits attributable to their contributions are directed. The organizations may choose to allocate Net Profits to filmmakers, impact campaigns, or other designees depending on their mission and/or priorities. As such, filmmakers should engage funders on the designation of Net Profits, if any, during contract negotiations.

RESOURCES NOTE:

The DPA has created a [DPA Summary Term Sheet](#) that offers a summary format to relay the project’s key financing and crediting terms to potential investors and funders.

In addition, we have created a [DPA Accounting Worksheet](#) that reflects the financial structures outlined in the flow chart above with working calculations.

You can find these worksheets (along with others) in the [Resources](#) section at the end of the document.

ADDITIONAL CONSIDERATIONS

- It is worth noting that the term “equity investment” has become common in describing investment financing overall. We would like to distinguish that term from **investment financing**, as the term “equity” may suggest ownership of the property or intellectual property (IP), or of the special purpose entity (SPE) that owns and controls the film, though that is not the standard in documentary investment. The DPA is eager to reimagine a term—“**equitable equity**” in which investment financing is equitable to all parties.
- Some mission-driven investors also choose to forego their participation in principal, premiums, and net profit participation in the waterfall.
- The DPA recognizes that different deals may include [revenue corridors](#) for recoupment that benefit filmmakers, talent, impact campaigns, or investors depending on the deal. As we cannot weigh in on every model, we encourage filmmakers to try and finance their films in a way that mutually benefits all parties.
- It may be agreed in certain cases that some profit participants (e.g. celebrity participants) will be deducted off-the-top, in which case the Funder Pool and the Filmmaker Pool need to mutually agree to share this financial burden equally.
- In some cases when funders, investors, or a third party help raise financing for the film, it may be appropriate to allocate net profits accordingly. We encourage net profit participants to have these discussions early in the process.
- While there are no common standards for how to share profit participation within the creative team, it can be offered to both reward crew and/or remediate below-standard fees, or to recognize other important creative contributions to the film including, when appropriate, story participants.
- Filmmakers are sometimes able to obtain [in-kind](#) services. These services may be in the form of outright contributions with no expectation of repayment. Alternatively, these services may be treated like deferred fees payable prior to recoupment. Finally, these services—calculated as the value of goods and/or services—may be treated as investments. When in-kind services are treated as an investment the filmmaker and investors should mutually agree and detail in writing the value of the services in advance or agree to a rate card.
- To minimize administrative burden and tax reporting on both filmmakers and investors, the DPA recommends [sunsetting](#) distribution requirements (and in the case of a film-specific LLC, winding down the LLC) once most sales have been exploited, typically after five years or less. Even in these cases, it is important to have a system in place to manage assets long term. This should be negotiated contractually with the input of attorneys and partners to ensure robust legal, tax and business practices, may not be appropriate for all films with longer life cycles, nor does it remove contractual profit-sharing obligations.
- Awards, grants, and individual fellowships/honoraria given directly to filmmakers for their work on a film, as well as speaking fees paid to filmmakers when they present a screening, are not considered revenue streams in the waterfall and should be expressly excluded from royalties and revenue definitions in the investor and financing agreements.

BEST PRACTICES

- **CONSULT ENTERTAINMENT ATTORNEYS AND ACCOUNTANTS:** Investments are complex legal deals that carry broad and far-reaching responsibilities and risks, that may include founding new entities, and that carry fiduciary and legal responsibilities. Every deal is different and should always be negotiated. Do not copy or re-use old agreements without the counsel of an attorney who has supervised investment financing deals in the past.
 - Filmmakers and investors should separately have their own attorneys.
 - Attorneys should include provisions in agreements for how to deal with issues including a legal disagreement, governing law, arbitration, liens, damages, and a framework for the inherent uncertainty of some aspects of investment financing.
- **SEEK AN ADVISOR WITH FILM INVESTMENT FINANCING EXPERIENCE:** Both filmmaker and investor should find peers or mentors with direct experience working with investment financing from a previous project. Ask them to advise the team as you build relationships and negotiate terms. In addition, we recommend using a [CAMA](#) when possible in the revenue distribution process to increase financial transparency.
- **COMMUNICATE WITH INVESTORS:** Fundraising is challenging, and many documentary filmmakers feel desperate for funding and so may be hesitant to ask questions that might jeopardize an interested party. Talking about money, legal protections, and risk can be uncomfortable and these important conversations are often avoided as a result. The reluctance to have difficult conversations can lead filmmakers and funders to enter into deals that become problematic for one or both parties in the long term. It is absolutely critical to align expectations up front. No matter how difficult the question or concern may be, both filmmakers and investors should listen to their gut and raise issues or concerns early on. Use the nature of the negotiation process as a litmus test to evaluate what it will feel like to enter into a relationship with an investor or filmmaker and to make sure the priorities, goals, and personalities of each are compatible. For investors, try to make it easy for filmmakers to ask questions so they fully understand the expectations that come with funding. For filmmakers, try to help investors understand the unknowns inherent in the project that can affect the schedule, the budget, and the final film.
- **CONSIDER ALL POTENTIAL SCENARIOS:** Carefully drafted investment documentation and strong partnerships (sometimes but not always within legal agreements) create a framework to deal with a range of possible scenarios (good and bad) during the full life cycle of the film's production. Carefully drafted budgets with contingencies and thoughtful financing plans are also critical to a strong framework. However, given documentary is prone to the unexpected, these conversations should also include how to handle budget caps, budget overages, budget shortfalls, investment caps, and the need to raise more financing than previously expected, to name a few.

RESOURCES FOR FINANCING AGREEMENTS

FINANCING RESOURCES:

[DPA Accounting Worksheet](#)

[DPA Summary Deal Terms Worksheet](#)

[Risk Factors for Investors to Consider](#) (Courtesy of Nicole Page, Esq.)

[SEC definition of an accredited investor](#)

[“Exempt Offerings”](#) U.S. Securities and Exchange Commission website

ARTICLES ON INVESTOR RELATIONSHIPS AND DEAL MAKING:

Daniel Lawrence Abrahams. [“Deal Making Done Right: A Back-to-Basics Approach to the Byzantine World of Waterfalls, Hurdle Rates and Preferred Returns”](#) producersguild.com. August 10, 2015

Dan Cogan. [“How to Manage The Relationship Between Film Producer and Investor”](#) Indiewire. Sept 11, 2013

[“Film Finance Recoupment for Private Equity Investors”](#) RodriguezLaw.com. May 16, 2018

ARTICLES ON FILMMAKER SUSTAINABILITY:

Caty Borum Chattoo and William Harder. [“The State of the Documentary Field: 2018 Study of Documentary Professionals”](#) Center for Social Media and & Social Impact American University School of Communication. September, 2018

Tom Grater. [“Film4, BBC, BFI & Pact Back UK Producers Survey That Reveals Stark Challenges Of Indie Biz”](#) Deadline. February 5, 2020

Lance Kramer. [“The Messy Truth Behind a Day Job as a Documentarian”](#) Documentary Magazine. April 26, 2017

GLOSSARY

ABOVE-THE-LINE PERSONNEL (ATL PERSONNEL): Derived from the top-sheet of a budget, this term refers to the line of individuals who directly lead the production and creative direction of a film. In a documentary film, ATL roles include but are not limited to the producers and directors as well as writers and voiceover artists or other performers (if applicable). Above-the-line costs may also include development costs. ATL personnel are typically credited in the main credits.

ANNUAL PERCENTAGE RATE (APR): This is the annual percentage rate charged on loans or earned through an investment.

BACK END: Also known as net profit participation, this term refers to the expectation of income based on distributions of net profits made as the last step of the waterfall. These profits can also sometimes be referred to as “points.”

BELOW-THE-LINE PERSONNEL (BTL PERSONNEL): Derived from the top sheet of a budget, this term refers to the line that separates the director(s), producer(s), and writer(s) from the other crew, such as cinematographers, sound recordists, and post production crew. BTL personnel are all personnel who participated in the film other than the ATL personnel, and are typically credited in the end credits.

CASH ADVANCES BY FILMMAKERS OR PRODUCER’S CASH: Expenses incurred by the filmmaker before other sources of financing become available.

COLLECTION ACCOUNT MANAGEMENT AGREEMENT (CAMA): This agreement is with a collection agent that will manage revenue for the film. All revenue derived from exploitation of the film (from distributors, sales agents and other licensees) will be directed to the collection agent, and the collection agent will issue accounting statements

and pay out revenue to the financiers and profit participants pursuant to the terms of the agreed waterfall in the CAMA.

DEFERRED FEES: Generally due to cash flow constraints, crew members may defer or allow budgeted fees to go unpaid. Any member of the crew can offer to defer their fees including but not limited to directors, producers, editors, cinematographers, and composers.

DOMESTIC BOX OFFICE (DBO): A measure of ticket sales in the North American theatrical market that is often used to gauge the financial success of a theatrically released film.

DONATION: A tax-deductible gift typically made by individuals through a fiscal sponsor and re-granted to a film.

DOUBLE BOTTOM LINE: The “bottom line” traditionally refers to the last line of a balance sheet or other financial document, showing overall financial results. A “double bottom line” film focuses not only on financial results, but also on non-financial benefits, such as mission investing, social impact, exposure to new audiences, or support for under-represented artists, just to name a few. “Enhanced bottom line” or “triple bottom line” values the abilities of artists who are creating the work to thrive, in addition to the financial return and non-financial benefits.

EQUITY: In financial terms, equity means the value of shares issued by a company. In legal terms, equity implies ownership over the company or intellectual property (such as a film). In social justice terms, equity means the quality of being fair.

FILMMAKER: As used in these Guidelines, the core creative decision makers with legal and fiduciary responsibility for the film, typically including directors and/or producers.

GLOSSARY

FILMMAKER POOL: The net profits shared by all the non-financing parties receiving profit participation in a film project— generally producers, directors, or crew members.

FRONT END: The expectation of income based on payouts made pursuant to the budget, off-the-top costs, return of capital, and premium.

FUNDER: In these Guidelines funder refers to any source of money that is used to make a film. Funders will be further divided into two subcategories: “Donors,” who do not expect to receive a financial reward as a result of their contribution to the film; and “investors,” who do.

FUNDER (OR FINANCING) POOL: The Funder Pool is comprised of recoupable funders -- generally including investors, some recoupable grantors and, in the DPA recommended model, filmmakers who have raised “soft money” -- all of whom participate in the net profits of the film.

GRANT: As used in these Guidelines, a grant is an outright gift of funds provided for philanthropic reasons not requiring recoupment, payment of a premium, or back-end participation. A grant may be conditioned on compliance with certain terms and conditions of the grantor. Grants may be made by non-profit 501(c)(3) foundations, government or quasi-governmental organizations.

GROSS RECEIPTS: The total amount of revenues generated by a film property, generally through exploitation of distribution and ancillary rights. Note that definitions of the term or inclusions and exclusions from “gross receipts” may vary widely by contract.

GROSS REVENUES: The total amount of revenues (gross receipts) received by the film entity minus distribution expenses (e.g. prints and advertising or P&A, agency fees, distribution fees, or advances, etc.).

IN-KIND: Services provided to the film in lieu of upfront monetary compensation. They can either be contributions with no expectation of repayment, for which payment can be deferred, or services that can be considered an investment to be recouped as per investor agreements once net profits are received.

INVESTMENT: Financing that traditionally has included recoupment of principal, a premium, and net profit participation.

INVESTMENT CAP (ALSO KNOWN AS “EQUITY CAP”): A limit on maximum allowable investment on a film project.

LOAN: A financial instrument governed by a contract with specific terms defining the repayment of principal according to a set schedule and, typically, the payment of interest on top of the principal amount loaned. Some loans may require establishment of a security interest in the film as collateral to be recovered by the lender in the event of the borrower’s default, though that is not a defining feature of a loan.

MOST-FAVORED-NATIONS (MFN): A contractual provision in an investor agreement whereby the producer agrees to give the investor the best/most favorable terms made available contractually to any other investor. Note this term also may be used in other contracts to ensure a party does not get lesser terms than any other similar party. Some attorneys recommend using “no less favorable” language rather than “most-favored-nations” clause, which can be very broadly interpreted.

NET CROWDFUNDING PROCEEDS: Monies raised from crowdfunding minus the cost of fulfillment on rewards and platform costs (i.e. for any typical Kickstarter campaign, Kickstarter will take 5% of the total proceeds for use of their platform; the cost of fulfillment of rewards promised in the campaign can range from zero to even 40% of monies raised).

GLOSSARY

NET PROCEEDS: A defined term reflecting gross revenues of a film after all of the approved budget line items have been fulfilled including all labor fees and all contractually agreed-upon expenses (“off-the-top costs”) have been paid.

NET PROFITS: As used in these Guidelines, gross revenue of a film less budgeted expenses, off-the-top costs, recoupment of principal, and premium. Net profits are distributed to investment financiers and other back end participants (including filmmakers and some recoupable funders).

NET PROFIT PARTICIPATION: The right to receive a distribution of net profits of a film, based on payouts made as the last step of the distribution waterfall, after budgeted expenses and above-the-line costs have been deducted from gross revenues. Otherwise known as “back end.”

NO-BACK END INVESTMENT: A financial tool that, similar to a standard investment as described above, carries the right to recoup the investment principal and a premium; however, the investor does not require any back end participation.

NO-PREMIUM INVESTMENT: A financial tool that, similar to a standard investment as described above, carries the right to recoup the investment principal, and in some cases receive a share of the net profits of a project if the film succeeds commercially; however, the investor does not require any premium on his/her/their investment.

OFF-THE-TOP: Any costs deducted from gross receipts prior to recoupment of financing and paying out of net profits.

PARI PASSU: Equally between all relevant parties (i.e. funders), at the same time, without preferential treatment to anyone.

PRO RATA: Proportionately as between all relevant parties (i.e. funders), in proportion to their relative interests, where distributions are made in proportion to the parties’ financial contributions.

PRO RATA PARI PASSU: The two terms are often used together to mean proportionately, at the same time.

PRODUCER: The term “producer,” in this instance, is a contractual term used to identify the signer of investor and distributor agreements. The producer may include the credited director (if they are a producer and/or owner of the film) and/or producer(s) and/or the legal entity controlling the film.

RECOUPABLE GRANT: This refers to interest-free giving, recoupable by the granting organization only if the film exceeds certain income thresholds and, in some cases, participates in premium and/or net profits. Recoupable grants are utilized by organizations with a charitable purpose.

REVENUE: The total amount of revenue earned and actually received by a film, from all distribution and exploitation of the film in all media and across all platforms throughout the world. May also be referred to as “gross revenue” or “total revenue.”

REVENUE CORRIDOR: A portion of gross revenues (usually a percentage, up to a ceiling) that is excluded from the waterfall and paid to the filmmaker or other designated corridor recipients ahead of or pari passu with the investors and other waterfall participants. A revenue corridor may be used, for example, where the filmmaker’s budgeted fee was lower than the project warranted.

SALES SUNSET: The winding down of distribution of net profits requirements (and in the case of a film-specific LLC, winding down the LLC) once most sales have been exploited, typically after five years or less.

GLOSSARY

SOFT MONEY: As used in the documentary film investment landscape, soft money refers to all non-recoupable, non-investor funds contributing to the film's budget, including grants, donations, subsidies, tax credits, and crowdfunding.

SWEAT EQUITY: A party's contribution to a project in the form of labor, as opposed to financial equity or paying others to perform the task.

WATERFALL: A contractual financial structure accounting for the flow of gross revenues that a project receives, the payment of required expenses, and how net revenues are distributed amongst those with a financial interest in the project.

ENDORISING ORGANIZATIONS

THE DRAKE BETTNER FOUNDATION
KATY DRAKE BETTNER,
INVESTOR



+ impactpartners

KARTEMQUIN FILMS

NYWIFT



WMM WOMEN MAKE MOVIES



FWD-Doc



SUNDANCE INSTITUTE continues to support and applaud the Documentary Producers Alliance organizing and education efforts and will continue to be a convener, provide a platform for advancing best practices in crediting, financing and overall sustainability, and directly support producers through our fellowship program, labs and other activities.

The **INTERNATIONAL DOCUMENTARY ASSOCIATION (IDA)** has agreed to be a convener and to provide a platform for advancing the conversation around Documentary Waterfall Guidelines as part of its advocacy and policy work.

ADVISORS

The following organizations and professionals have committed their time and expertise to reviewing these Guidelines. They have signed in support of the ethos these Guidelines promote.

THE PERSPECTIVE FUND, Funder

SANDBOX FILMS, Funder

SUBMARINE, Sales Agent

KAREN SHATZKIN, Attorney

JONATHAN GRAY, Attorney

We thank the countless others who have advised us over the past three years.

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Jessica Devaney	Tracie Holder	Jeff Orlovski	Camille Servan-	Lise Zumwalt

ENDORISING PRODUCTION COMPANIES

Arch + Bow Films

Ajna Films

Beggar Kings Entertainment

Big Mouth Productions

Blue Lake Entertainment

The Brakefield Company

Delirious Pictures

The Department of Motion Pictures

Exposure Lab

Farthest Films

Hazel Pictures

Hibiscus Films Inc.

Iguana Films / Emerson College

Insignia Films

Intention Media

Intuitive Pictures

La Monte Productions

Maylo Films

Means of Production Media

Medicine of the Wolf Productions

Meridian Hill Pictures

Motto Pictures

Multitude Films

Necessary Pictures

Nyla Pictures

Northland Films

Once in a Blue Films

Oregon Media Lab

Public Record

Salty Features

SideXSide Studios

Stacey Reiss Productions

St Marks Productions

Thornapple Films

Vagabond Moving Pictures

SUPPORT THE DPA

The Documentary Producers Alliance is a 100% volunteer organization and relies solely on donations to support its ongoing work and advocacy on behalf of documentary producers.

Thank you in advance for making a tax-deductible donation through our Fiscal Sponsorship provided by [The Film Collaborative](http://TheFilmCollaborative.org).

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