

13 May 2024

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

By email: ec.sen@aph.gov.au

RE: Inquiry into the National Cultural Policy

The Australian Writers' Guild represents Australia's performance writers: playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers. We represent 2,500 performance writers in Australia. Established by writers for writers, the AWG is a democratic organisation run by its members who work together to represent their fellow writers across the industry to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society is the royalty collecting body for Australian and New Zealand screenwriters, distributing millions annually from royalties paid all over the world.

We thank the Committee for the opportunity to appear at the public hearing on 16 April. We would like to take this opportunity to respond to statements made during one of the later hearings on 16 April in the session relating to the screen industry, during which only one witness was called to attend, and bring additional matters to the Committee's attention. In our view this supplementary information should assist the Committee in its deliberations.

Matthew Deaner, CEO of SPA, made a number of comments regarding intellectual property (IP). He said that "intellectual property" is the "valuable asset that we generate as businesses". In fact, intellectual property is *generated* by screenwriters, and in some cases other screen creative workers like editors, directors, and composers – the workers that these small businesses engage. In copyright terms, the work of creation by a screenwriter generates a Part III literary work. The work subsequent to this creates a Part IV cinematographic work. This is the work a production company may own, in

whole or in part. This property may be owned jointly or by several parties, and generates value and income for them, not exclusively for the owners of the production company that produced the work.

The hours of planning, the application of writer (and creator) effort and skill – that results in an underlying intellectual property that is worthy of being adapted to screen and seen by audiences in Australia and around the world.

Yet writers' compensation often does not square with the time and effort writers spend developing and polishing their work. Writers, like many artists, work on a commission basis: they are paid when they achieve an end result. Their work is otherwise insecure. Hours are irregular and there is often an expectation put on them by production companies to engage unpaid work. It is common for these small businesses not to pay writers superannuation, for example.

The Committee was told that a business's ability to hold onto IP as assets is valuable because it combats the problem of gig-based work for producers. There is a question of whether this broadened definition of 'gig based work' can hold when we refer to a company, not a worker. If this view is taken, it is hard to see what type of work in our economy is not 'gig based' from a company point of view; Construction work would therefore be a 'gig', but this is to reduce the term in meaning. Work that is a project for a company is a gig for a worker, and we rightly draw a distinction between the impact project-based work has for the legal entity of a company and the life-disrupting experience of gig work for a worker. Businesses may experience downtime between projects, but that does not have the same material impact on a company as it does a person.

This construction, if accepted, elides the actual problem for the writers and creatives who generate the creative underpinning a work. Many screenwriters are not producers and may not have the benefit of owning and controlling the intellectual property they create if they are to see their work on screen. Most writers, unfortunately, will never have the security of an ongoing salary. Many writers have never even been paid superannuation.

There are currently very few market incentives for writers to work in Australia. There are Australian writers who have been forced to work in the USA and UK to sustain their careers and their families and express a desire to work at home. In the case of one AWG member, they worked in a writers' room in Los Angeles for a show that is shot in Australia. Production is enticed here by generous incentives, but development and creative work is not. This may contribute, in our view, to the capacity constraints

experienced by the industry in production and post-production. Our incentive structure skews towards the production of works in Australia, rather than the development of Australian creative works.

“Making the artist central” is a goal of the National Cultural Policy. This means creating an economic framework in which an artist can pay the bills and create. This means a living income, whether it be from commissions, secondary royalties, some other ongoing exploitation of their work- or more likely, a combination of all these.

We believe that the government can take steps to rectify this imbalance. The National Cultural Policy expressly referred to funding agencies playing a role in enforcing industry minimum rates of pay. It said: “[f]unding bodies should continue to affirm the principle that artists should be paid for their work, including through recognition of Awards, mandated rates of pay and codes of practice such as the...**Australian Writers’ Guild benchmarks.**”

Unlike many other industries, the majority of businesses employing Australian screenwriters are partially reliant on state and federal government funding and tax concessions. It is our understanding that the majority of screen and content works made in Australia receive some form of government subsidy or support, which may be direct grants, or through taxation exemptions and rebates. This unique dependency necessitates additional measures to safeguard the rights and livelihoods of creative professionals. We propose that government funding bodies should recognise our industry-agreed minima and funding arrangements should be contingent on ongoing compliance with these minima: a key enforcement tool not available in many workplaces, but one commensurate with the fact that workplace enforcement mechanisms are not available to screenwriters.

We note also that government may choose to outsource enforcement duties to relevant industry organisations, or to consider what the most appropriate mechanism is to facilitate enforcement across the Commission, the relevant funding agencies and industry Guilds. The Guild welcomes the opportunity to discuss enforcement work further, should the protections of minimum conditions be extended to Australia’s performance writers.

We agree with Mr Deaner’s comments to the hearing regarding the streaming companies, particularly regarding the streaming companies’ practice of seeking “outright purchases” of intellectual property rights from creatives. We agree that the streaming companies put pressure on

Australian producers for these rights and writers feel the effects sharply because the production companies seek the same “outright purchases of IP” from the writers they engage.

If a US streamer is involved in an Australian screen project, then it is highly likely that an Australian writer engaged to write the script will be required to assign all their rights in the work to the Australian production company making the project. To be clear, this is an assignment of all copyright in a script for use in all territories throughout the world, on all platforms including on technology yet to be devised.

In exchange, the writer is paid a once-off fee. Normally, under the AWG negotiated agreements, a writer would be entitled to ongoing payments (“residuals” or “royalties”) but these are given up under a ‘full buyout’. Furthermore a writer will generally be forced to forego their share of the budget (so that their remuneration is calculated as a flat fee only). They may also be asked to waive their entitlement to remuneration from the statutory licensing schemes. There is a huge imbalance of power between a writer and an international streamers and studios; an imbalance that results in writers being unable to negotiate better terms.

The regulation of the streamers and the introduction of a strong local content quota is an essential first step. But more work needs to be done. Many EU countries – including Spain, France, Italy, Belgium, Slovenia, and Estonia – have sought to address this imbalance between the streamers and creatives. They recognise the immense value of the worldwide exploitation of an artist’s work and the fact that the compensation received by audio-visual creators for rights was often not “proportionate” to that exploitation. These jurisdictions sought to rectify this imbalance through law reform: they introduced a **new category of equitable remuneration for the online exploitation of works**. This serves to future-proof a stream of income for artists as audiences consume their media in a completely different way with the advent of streaming and online content distribution.