



Submission on the Screen Australia's Terms of Trade

The Australian Writers Guild (AWG) is the peak professional body representing performance writers in Australia.

On behalf of its 2600 members the AWG works to improve professional standards and conditions, to protect and advance creative rights, and to promote the Australian cultural voice in all its diversity, including supporting our members to succeed in the global marketplace.

With affiliations extending across the world, AWG is recognized internationally as being the voice of Australian performance writers.

- AWG members are fundamental to the success of the Australian film, television and new media industries.
- Without the script and the creators of the script, Australian film and television would cease to exist.
- In the current climate the majority of Australian performance writers struggle to make a living wage.

Introduction

The Australian Writers Guild (“the Guild”) welcomes the opportunity to comment on the draft proposed guidelines published by Screen Australia on 27 October 2008.

The Guild’s focus in its response to the terms of trade are an extension of points raised in its earlier submission on the guidelines and the importance of Screen Australia’s support and implementation of industry-wide agreements for writers, incorporating mandated fees and rates, as negotiated with the Guild.

Turning specifically to the content of the terms of trade:

General Matters

The Terms of Trade specify at point 1.5 that “Fairness and reasonableness includes (a) paying market rates for all work performed by third parties on their project; (b) complying with policies of Screen Australia as advised from time to time; (c) respecting intellectual property rights of all relevant persons whether those rights be copyright moral rights or indigenous rights.”

This is insufficient detail. Screen Australia must specify what the policies are that producers must comply with. What specifically will be determinative of market rates given that current market rates fall well short of what is fair and appropriate? There is a clear and urgent need for review, reassessment and implementation of rates more reflective of the commercially sustainable industry the entire sector is striving to achieve.

Other Matters

Screen Australia has directly and appropriately tied payments, terms and conditions for cast and crew to various MEAA awards and agreements. However, by omission, does Screen Australia therefore not think the roles of the representative Guilds for directors and writers have a role to play in determining appropriate terms and conditions? Screen Australia must consult with the Guild when determining the rates for writers just as they must with the respective representative bodies across the sector. To unilaterally impose rates without consultation can only create division and conflict and it is incumbent on Screen Australia to promote a collaborative and constructive dialogue with the Guild on matters affecting writers.

One of those matters is the issue of fee deferral. By omission does the fact that Screen Australia will not “generally” permit the deferral of fees for producer, cast or crew mean that they will do so for writers and directors? It is highly detrimental to a healthy and productive screen sector for the current common practice of writers working for months or years for no pay being allowed to continue. There must be change to the way the fee deferral process functions. If writers are, out of necessity, required to accept any deferral of fees, then there must be a penalty loading applied on the deferred fee proportionate to the degree of the deferral. At a minimum, writers should be entitled to interest on any amounts deferred for the period of the deferral.

Reversion of Rights

The Guild reiterates a point raised in its earlier submission on the Screen Australia Guidelines that it is vitally important that producers be obliged to return scripts to the creative originator when they have declared their intention to discontinue development of the project. There are many Guild members currently unable to get their scripts back because of unscrupulous producers who refuse to release writers from options without paying exorbitant up front payments to buy the work back. It is unethical and another practice which runs counter to an effective and productive screen sector. If the industry as a whole is to evolve into a stronger, more flexible and responsive industry, such practices must cease.

It is the responsibility of Screen Australia to promote a healthy industry by guarding against script harvesting and Screen Australia must ensure provisions are in place for the return of those rights to the writer when that project is no longer being developed and for writers to be empowered to seek termination of options when there is no demonstrative development occurring.

Recommendations:

- a) Industry-wide minimum fees and rates in accordance with AWG minimums, reflective of a professional and sustainable industry, that all recipients of Screen Australia funding must adhere to when engaging writers at all levels and across all programs and no writers to be engaged on deferred fee basis;
- b) Industry-wide writers agreements be negotiated in conjunction with the Guild that all recipients of Screen Australia funding through any of its programs must adhere to;
- c) Deferment penalty clause so that any fee or part thereof of per draft, polish, rewrite etc that is deferred attracts a percentage loading on the fee due;
- d) Provisions for the release of writers from option agreements if the producer has declared an intention not to proceed with the development of the project over which they hold an option;
- e) A minimum fee of 5% of the production budget for the acquisition of a screenplay. With writers able to negotiate upfront advances against residuals;
- f) Any fees and payments not linked to a percentage of the production budgets – ie, per draft fees, rise by CPI on the 1 January of each year;
- g) If additional writers are brought onto a project the subject of an option, the previous writer is paid out all deferrals immediately a subsequent writer is appointed;
- h) Automatic no-cost reversions of rights to writers if the project has not commence principal photography after a period of five years;
- i) The option may only be exercised if the producer has raised production finance for the project;
- j) If the producer wishes to extend the option beyond the initial option period without production finance they must negotiate again with the writer;
- k) If the producer cannot demonstrate active development of the project during the option period the owner may terminate the option with a no-cost reversion of rights;
- l) If the producer cannot demonstrate active development of the project the writer may refuse an extension of the option period;
- m) The only costs recoverable by a producer following a reversion of rights to a writer are legitimate, itemized and receipted third party development expenses;
- n) Should the producer fail to exercise the option in accordance with the terms of any option agreement that all rights in the script revert to the writer free and clear of any claims by the producer;
- o) Distributor's Gross Receipts: All revenue must be based on actual revenue. The accounting for the payment of residuals and new media must employ a definition of

- “distributors gross” which eliminates the accounting uncertainty inherent in the concept of “producers net profits” or “net receipts” which are effectively meaningless;
- p) Specific provisions for payments calculated on new media exploitation based on the fair and equitable system implemented in the US such as: download rentals; download sales and theatrical ad-supported streaming;
 - q) Every writer shall receive no less than the applicable minimum except where there is a bona fide team of no more than 2 writers which offers, prior to employment on the script in question, to collaborate then that team of 2 writers shall receive in the aggregate the applicable minimum compensation. The minimum compensation paid must increase for bona fide teams of 3 or more;
 - r) Producers shall not be able to require the writer to render services beyond that period of time determined by dividing the applicable minimum compensation by the minimum weekly compensation for writers employed on a weekly basis for story, original treatment, first draft screenplay, final draft screenplay, screenplay or rewrite. The writer will be paid minimum weekly compensation for any time spent beyond that time on the project;
 - s) Payment always to be due on delivery, not “acceptance” by the producer.

Conclusion

The preceding list of Guild recommendations is by no means exhaustive but represents some of the key terms that we feel are integral to achieving a fair and productive working environment for writers. When there is an absence of mandated contracts in place, the Guild experience is that writers are repeatedly exposed to exploitation and that exploitation can very quickly become systematic across the industry.

Screen Australia’s terms of trade do not go far enough to reassure that adequate and appropriate provisions will be put in place to provide necessary protections for writers; the lack of any reference to consultation or negotiation with the Guild on matters that directly affect our membership is of deep concern.

It is the responsibility of Screen Australia to set the benchmark and demonstrate to an industry that is on the cusp of positive change and expansion, that fair, transparent and equitable dealings with industry are essential if the Australian screen sector is to prosper.