

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional Committee
S1.61
Parliament House
Canberra ACT 2600

Monday 25 July 2005

Dear Owen,

Re: The inquiry by the Senate Legal and Constitutional Legislation Committee into the *Copyright Amendment (Film Directors Rights) Bill 2005*

Thank you for your email of 11 July and for the opportunity for the AWG to make a further short submission for consideration by the Committee.

The AWG considers that it is relevant for the Committee to consider whether writers should be afforded the same rights as directors under the proposed amendments to the Copyright Act. The AWG would support an amendment of this nature. However for the amendment to have viable practical effect, the AWG considers that it ought to be made non-transferable and that the right to receive the retransmission royalty be retainable by the writer, the producer and the director jointly.

The AWG set out in its original submission its concerns in relation to the amendment as currently proposed. In that the Moral Rights regime under the Copyright Act, in place since 2001, recognises the principal screenwriter of a film as one of the three *makers* of a film – together with the individual producer and the principal director – it is the view of the AWG that a replication of this recognition ought to be considered in the case of statutory rights, including the retransmission right under Part VC of the Act.

In relation to the point made by witnesses in front of the Committee, that writers generally 'obtain copyright' over their screenplays while directors do not obtain equivalent copyright in films, the AWG would emphasise that writers – as a

matter of course – are required by producers to assign almost all parts of their copyright in the script to the producer at an early stage of the production process. As a result it is not the case that writers are able to retain any substantial level of copyright ownership in their scripts and that all primary rights are owned by the producer. It is the producer who will receive a revenue stream from the exploitation of those primary rights and not the writer.

It is the view of the AWG that secondary rights, such as the retransmission right, are rights which the writer should obtain statutory entitlement to receive. The current proposed amendment – Option Five – recognises that directors should have this entitlement.

As the AWG has addressed in both our original and oral submissions, film making is a collaborative process principally involving three key participants, the writer, the producer and the director. As a result the AWG considers that an amendment to the Act should reflect this collaborative process – as the Moral Rights regime has recognised – and make the statutory recognition on behalf of the writer to share in the retransmission royalty in relation to a film.

The AWG thanks the Committee for considering these further short points.

Should you require any further information or clarification, please do not hesitate to contact me on tel: 02 9281 1554 (ext. 227) / 0414 573 336 or email: melliott@awg.com.au

Sincerely,

A handwritten signature in black ink, appearing to read 'melliott', with a long horizontal stroke extending to the right.

Megan Elliott
Executive Director
Australian Writers' Guild