

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

27 June 2005

Dear Mr Walsh,

RE: INQUIRY INTO THE PROVISIONS OF THE COPYRIGHT AMENDMENT (FILM DIRECTORS RIGHTS) BILL 2005

I am writing with respect to the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the *Copyright Amendment (Film Directors Rights) Bill 2005*.

The Australian Writers' Guild (AWG) has serious concerns with the options for change as outlined in the *Copyright Amendment (Film Directors' Rights) Bill 2005*. These include, but are not limited to, the following;

A. The extension of copyright to directors cannot be considered in isolation from the rights of other copyright holders (and in particular those of writers) without full and total consultation with those parties, a process that has not occurred.

B. Since the writer is the creator of the underlying copyright in the screenplay, the AWG cannot support any legislation that "deems directors to be the maker of a film" or which states that "the primary economic rights in a film are first co-owned by the director and the producer".

C. The AWG is concerned by the precedents the proposed legislation might establish beyond the limits of the retransmission scheme.

D. For these reasons, the AWG can only support Option 1.

The Australian Writer's Guild (AWG) and The Australian Writers Guild Authorship Collecting Society (AWGACS)

The Australian Writers' Guild (AWG) is the peak professional body representing film, theatre, television, radio and new media writers in Australia. With more than 2600 members nationally, we work to improve professional standards, protect and promote writers' creative rights and promote the Australian cultural voice.

The AWG is a member of the International Affiliation of Writers' Guilds (IAWG) which includes: Writers Guild of America West; Writers' Guild of America East; New Zealand Writers' Guild; Writers' Guild of Great Britain; Writers Guild of Canada; Irish Playwrights' and Screenwriters' Guild; and the Societe des Auteurs de Radio, Television et Cinema. The Writers' Guilds of France, Mexico and South Africa are associate members of the IAWG.

The Australian Writers' Guild Authorship Collecting Society (AWGACS) was established by the AWG in 1996 as a non-profit collecting society to collect and distribute authorship monies from European collecting societies for AWGACS members (Australian and New Zealand screenwriters of film and TV).

Copyright Amendment (Film Directors Rights) Bill 2005

The AWG, nor any member of the IAWG, can not support any legislation which grants directors general recognition as 'makers' of a film. Writers are the original creators of audiovisual works through their creation of the script - the very premise on which a film is built. Writers are not recognised as 'makers' of films and so it is therefore inappropriate to recognise Directors as 'makers' of a film.

The AWG, nor any member of the IAWG, does not support the 'Dublin Declaration' (<http://www.dggb.co.uk/press/press14.html>) of which the Australian Screen Directors Association is a signatory, which claims that:

"Directors perform the primary role in the creation of an audiovisual work...the Director has the creative responsibility for the artistic integrity of the work and accordingly should be recognised as an author in all jurisdictions."

Similarly The AWG, nor any member of the IAWG, can not support the notion of the "Possessory Credit" (where a Director takes the 'A Film By *insert Director's Name Here*).

It is of concern to us that the rights sought under the current Bill move inexorably in the direction of further acknowledgement of Directors as the primary “Author” of an audiovisual work.

We recognise that currently Directors have no copyright ownership in audio-visual materials in Australia. They would therefore not be able to share in retransmission income, except by contractual arrangement with the Producer (copyright owner), in the same manner as payments in lieu of residual and royalty payments are currently made by Producers, as per contractual agreement with Directors at the point of hire. Although the AWG does not agree to any amendment which would assign directors status and credit above those of writers, who are primary creatives, we do believe that directors, as secondary rights holders, should receive fair remuneration for their work. However, there are serious concerns which need to be addressed with industry consultation before that could happen.

The *Copyright Amendment (Film Directors Rights) Bill 2005* proposes to provide for film Directors to be joint copyright owners of their films, along with Producers, for the purpose of the retransmission statutory license in part VC of the *Copyright Act 1968*.

This proposal would have the effect of Directors directly receiving copyright royalty income from retransmissions from Screenrights, rather than requiring negotiations, as part of the Directors private hire contract to cover this area, and a diligent Producer to pass on a proportion of retransmission income, as per the contract. The AWG supports the notion that Directors receive some remuneration under statutory license schemes in Australia, however this should be done contractually and not be due to a legislative requirement that Directors receive recognition as ‘makers’ of films.

In addition to the concerns listed above, the proposed Bill fails to take into account the realities of the industry landscape, and the difficulties of enacting blanket legislation covering a variety of works where the creative input of the Director is vastly different from genre to genre, platform to platform. If enacted, the only logical conclusion that could be drawn is that the industry will be hamstrung with legislation that is at once unworkable and unfair to “key stakeholders” - the very people the government promised to consult with in 2001.

It is unfortunate that due to the complete inadequacy of the consultation process, that the AWG has been unable to explore further options for Directors to receive additional remuneration in recognition of the creative role they assume in the film making process. However, given the options which have been provided to us for comment, the AWG has no choice but to support Option 1 – Maintain the Status Quo.

Consultation Process

In 2001, the government made an election policy in the “*Arts for All*” statement to:

'Consult key stakeholders on proposals to amend the Copyright Act to grant new rights to film directors so as to address concerns about the level of recognition available to directors in Australia'

The AWG would bring to the Committee's attention the complete lack of comprehensive industry consultation on the issue of director's copyright. The AWG has not been approached for our views regarding this issue, nor indeed were we invited to make comment to the Senate Legal and Constitutional Affairs Committee.

At no time has the Australian Writers' Authorship Collecting Society been approached for comment or invited to make a submission to this Committee.

Furthermore, nowhere within the Regulation Impact Statement are the potential impacts on screenwriters of the proposed legislative changes to the copyright in films explicitly mentioned.

The AWG understands that other key industry stakeholders such as the Screen Producer's Association of Australia were also not invited to make comment before this committee.

Given this lack of consultation, the AWG fully supports the Screen Producers Association of Australia that it is completely inappropriate and ill advised that a Bill which takes little or no account of the realities of the industry as a whole is now introduced into Parliament.

Yours sincerely

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

Megan Elliott

Executive Director

Australian Writers' Guild

Australian Writers' Guild Authorship Collecting Society