

# AWG/AWGACS x ASE Co-Writing and Royalties Guidelines

## A. Introduction

The Australian Writers' Guild (AWG) represents Australia's performance writers: over 2,500 playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers nationally. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members 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 (AWGACS) is a not-for-profit collecting society for screenplay authors in Australia and Aotearoa/ New Zealand. With more than 2,400 members and 34 partnerships with overseas collective management organisations, AWGACS has collected more than \$25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

The Australian Screen Editors Guild (ASE) is a cultural, professional and educational organisation, dedicated to the pursuit and recognition of excellence in the arts, sciences and technology of motion picture film and televisual post-production. It aims to promote, improve and protect the role of editor as an essential and significant contributor to all screen productions.

## B. Editors working on unscripted programs

AWG, AWGACS and ASE agree that screen editors working in unscripted mediums, including, but not limited to, documentary, and factual entertainment television, may in some circumstances be performing writing work especially when no screenwriter has been engaged to write a script nor is otherwise involved in the project.

It is common, in the development and production of these programs, for there not to be a specific creative worker designated to provide writing services or a person credited as a writer. Yet these productions will often still have a person whose role it is to develop the program's narrative elements, including its structure and sequences, the arcs of characters, the tone, the themes, the world, or to write interview questions or voice over narration. Often, this task falls to the screen editor, working in partnership with the director and/or producer(s).

A screen editor may be responsible for developing the themes and character of the unscripted program, pitching the story of the program after the rushes have come in, or predicting story arcs by writing questions for documentary interviews. Documentaries are often in part written in the edit suite. In those cases, the screen editor may be responsible for structuring the recorded material or footage into its final, narrative form.

When screen editors perform the work ordinarily performed by writers, in the absence of writers, the screen editors may be considered the "co-authors" of those audio-visual works for the purposes of (a) entitlement to a writing credit and (b) entitlement to a share of the author's secondary royalties collected by AWGACS under the copyright schemes managed by Screenrights and from its international sister societies.

The purpose of these guidelines is to set out the conditions under which AWGACS will claim

secondary royalties on behalf of screen editors working in these mediums.

These guidelines have been developed in the spirit of professionalism and solidarity. The work of screenwriters and screen editors in unscripted mediums often overlaps. AWG, AWGACS and ASE encourage screen editors working in unscripted mediums to join AWG and AWGACS to ensure that their industrial rights – as writers – are protected and that secondary royalties can be collected on their behalf.

By developing clear and transparent guidelines, AWG, AWGACS and ASE hope that industry consensus can be achieved and that any disputes between creatives regarding the credit derived from work that is carried out are resolved quickly and amicably, and any worker with an authorial credit receives the royalties to which they are entitled. All authors, regardless of the medium they work in, should be paid the share of secondary royalties they are due under copyright legislation.

### **C. Factors that should be considered when determining that a screen editor is a “co-author” of an unscripted program**

At section 189 the *Copyright Act 1968* (Cth) (the Act) defines “author”, in relation to a cinematograph film, as the maker of the film. “Maker” in relation to a cinematograph film, means “the director of the film, the producer of the film and the screenwriter of the film.”

This question arises in the context of secondary royalties paid to AWGACS where there is no writer or traditional writing credit (more below) however one of AWGACS’ sister Collective Management Organisations (CMOs) has determined sufficient authorship has occurred for a royalty to be generated by a creative worker in Australia or Aotearoa/New Zealand.

Unscripted programs, by definition, are not shot to scripts and do not engage screenwriters. Yet these programs still contain narrative elements, scenes, story and characters that a creative worker on the production will be responsible for developing or structuring. A creative worker will be responsible for the program’s overall structure, premise and theme, individual sequences, world, theme, character arcs, tone. A program may also be partially scripted and individual scenes (e.g. dramatisations), voice over narration, or interview questions need to be written by a creative worker. In the absence of a screenwriter, it is often the screen editor, working with the director and/or producer(s) who is responsible for these narrative and scripted elements. In that case, the screen editor may be considered one of the “makers” of the film or program, alongside the director and producer and therefore one of its “authors”.

These guidelines should generally apply only where there is no credited screenwriter and no designated writer of the script engaged by the producer during the development, production or editing of the program. It is in this situation that it will be likely that a co-writing role has been taken up, to some extent, by the screen editor in that production.

The AWG and AWGACS further define an author as “an individual, or individuals, who produce a screenplay that shows unique creativity and originality.” Where a script does not exist, AWGACS considers the author as an individual, or individuals, who have produced the narrative elements of a work using unique creativity and originality.

Where an editor is working with the rushes of a production, with no script or minimal guidance in the first instance, they meet that threshold.

If the editor's contribution is merely technical, and/or if the editor is following detailed direction/instruction from a director, producer or writer, the role is not creative or original in terms of the writing and therefore no authorship is regarded.

There will always be a balancing test involved when determining that a screen editor is a 'co author' of an unscripted, or minimally scripted film.

The screen editor may be considered a 'co-author' of the unscripted or minimally scripted program if they are responsible for some or all of the following:

- Gathering footage, including preparing a chronology of archival footage or writing scripts for shot footage.
- Selecting and composing footage to construct the narrative and/or character arcs - Making decisions around proportionality and story from footage provided - Writing voice over/narration.
- Discovery of and/or review of existing footage or research materials - Writing or collaborating on dramatised re-enactments of actual events.

The following factors should also be considered:

- The proportion of the screen editor's time spent working autonomously with the material/footage should then be considered during the rough cut, fine cut, and final cut
- Whether the screen editor is delivering WIP edits during the editing process to the director and/or producer largely unsupervised
- The amount of preparatory work the editor was given, or that they needed to prepare - The consultation, or 'creative offers' the editor is making of a significant nature, during the edit

In order to meet the threshold as a 'co-author' the editor must be able show their creative work is the product of their original thoughts and not per instruction of a director, screenwriter or producer.

A useful tool in this process will on occasion be the shooting script or treatment often used to attract and trigger financing from stakeholders (commissioners, screen agencies, and distributors). A simple comparison to the final film, when also mindful of the editor's time spent working autonomously, together with significant creative offers made on the elements outlined above throughout the process, can be utilised as a strong instrument to gauge an editor's entitlement to a shared writing credit.

It should be noted here that the AWG and AWGACS consider writing and authorship to be the explicit domain of human creativity and artistry. Any use of generative AI in the writing process automatically extinguishes any claim to authorship or co authorship, along with any entitlement to residuals, royalties and/or secondary royalties, or any share in writing awards garnered for the work.

If the above conditions are met, then the screen editor should be entitled to a writing or co writing credit and should receive a writer's or co-writer's share of secondary royalties collected by AWGACS for the unscripted film.

## **D. Credits**

Screenwriting credits are governed by the AWG Screen Credits Manual and any writing or editing contract should expressly incorporate the terms of the AWG Screen Credits Manual and/or provide that, in the event of a dispute regarding credits, the parties will submit to an AWG credit arbitration committee.

It is not currently industry standard practice for screen editors to receive writing credits on factual or documentary programs even if they have taken on the creative responsibilities described above.

However, in an unscripted or partially-scripted documentary or factual television context, a shared “Written by” or “Screenplay by” credit may be appropriate where a screen editor has played a significant role in creating the narrative, engineering character arcs, conducting research of subjects for interviews, reviewing archival footage and/or drafting questions for interviews where there is otherwise no script or minimal guidance, and no writer has been engaged on the project.

For the avoidance of doubt, if a screenwriter is engaged to perform the above services, then that screenwriter should receive a “Written by” credit. In that case, a screen editor may still be entitled to an “Additional Writing by...” if the program was, in part, written in the edit suite.

A screenwriter or screen editor may also be entitled to a “Narration by” where they are responsible for writing the voice over narration for a program..

Other than a “Screenplay by” or “Written by”, no other writing credits will entitle a screen editor to primary royalties or to share in any screenwriting awards. However, a screen editor may be entitled to the author’s share of secondary royalties collected by AWGACS if there is no other author on the program performing the role of screenwriter or credited as the screenwriter.

## **E. Contested writing credits and secondary royalties**

A screenwriter and screen editor (as two authors) may share the writing credits on an unscripted documentary or factual television program in exceptional cases (e.g. a screenwriter receives a “Narration by...” credit and a screen editor receives an “Additional writing by...” credit). Ideally this should be resolved as a matter of contract prior to the commencement of the work, or negotiated in good faith should the question emerge during the production and/or post-production of the work.

If an editor is hired on an ‘edit-only basis’ but later appears to be rising to the level of either ‘co-author’ – or at least being entitled to an ‘Additional Writing by’ credit or similar – then the screenwriter (often the director), screen editor and producer should enter into good faith negotiations regarding the screen editor’s writing credit, with such credit being subject to AWG credit rules and AWG Credit Arbitration in the event of a dispute that cannot be resolved.

The secondary royalties that flow from the credit (if any) will be collected by AWGACS and they will be shared and distributed based on its distribution policies.

In the absence of formal writing credits, it will be presumed that the authors contributed to the writing equally and should therefore share secondary royalties equally. If any of the co authors contest this decision, the parties may need to submit to an AWG Credit Arbitration.

Under AWG credit rules for script-writing, it is only writers who are entitled to a sole or shared 'Written by' or 'Screenplay by' credit that are considered the authors of the script for the purposes of entitlement to residuals, royalties and/or secondary royalties. A writer is entitled to a shared 'Written by' or 'Screenplay by' credit where their contribution to a work is 'essential': specifically, where the writer's contribution represents 33% or more to the dramatic construction, original and different sequences, original characterisation and dialogue of a shooting script. In an AWG Credit Arbitration involving a claim by a screen editor that is contested by a screenwriter, producer or director, the same principles will be applied to the finished work.

An AWG Credit Arbitration Committee may award non-standard credits – such as 'Additional Writing' and 'Narration by' – where an author's contribution to a work is 'significant' but does not meet the threshold for a shared writing credit. This contribution should be no more than a 32% contribution to a shooting script or finished work. No royalties or residuals are associated with these credits.

## **F. Recommended contractual language**

Screen editors should try to ensure that the following clause is included in their agreements with production companies, if not before commencement then as a variation when it becomes clear that the editor will be performing authorial work:

*The Producer agrees that the Producer will not claim:*

- (a) In relation to any copyright in the Screenplay created by the Writer pursuant to this Agreement, or in any other writing work created or performed by the Writer pursuant to this Agreement and used in the final production, educational copying and communication royalties under Parts VA and VB and government copying royalties under section 183 of the Copyright Act, currently 22.1% of the total royalties payable by Screenrights or the rate as amended by Screenrights, retransmission royalties in Australia under Part VC of the Copyright Act, currently 22.1% of the total royalties payable by Screenrights or any alteration of the rate as amended by Screenrights; and*
- (b) Payments in relation to the Screenplay made under any other statutory or voluntary licensing scheme or under collective or reciprocal Agreements negotiated by collecting societies, including but not limited to Australian Writers' Guild Authorship Collecting Society Limited (AWGACS), either in Australia under Australian law or in other countries under the law of those countries.*
- (c) In the event that the Producer receives the Writer'(s) entitlement under this clause, the Producer will advise the writer accordingly. The Producer will forward payment to the Writer(s) on receipt of appropriate indemnity for any re-claim or recovery from the paying authority together with a copy of the statement detailing the source of the payment.*

To avoid doubt, if the screen editor's work changes during the course of a project and they feel that they are beginning to provide writing services and take on screenwriting responsibilities, then they should communicate this to the producer and request a contract variation which shall include, at minimum, the appropriate credit, on a 'most favoured nations' basis with other key creatives in size and placement in the final credits, and separate to their agreed editing credit, along with the above clauses governing secondary royalties.

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