



President Jan Sardi Emeritus President David Williamson

Level 4, 70 Pitt Street Sydney NSW 2000

t. 02 9319 0339 f. 02 9223 8933 admin@awg.com.au www.awg.com.au ABN. 38 002 563 500

3 February, 2017

Mr David Jones
Executive General Manager (Adjudication)
Australian Competition and Consumer Commission

via email: david.jones@accc.gov.au

URGENT

Dear Mr Jones,

RE: Australian Writers' Guild (AWG) application for revocation of a non-merger authorisation and substitution of a new authorisation

Further to the telephone conversations between your Mr Gavin Jones and our Industrial Officer, Bryant Apolonio, please find attached our FORM FC application together with a supporting submission and proof of payment of the \$2,500 application fee (as we understand there is no longer sufficient time to apply for a fee waiver).

With our current authorisation due to expire on 28 February 2017 we humbly request that you consider granting us an interim authorisation for the period between the expiration of the existing authorisation and the conclusion of the ACCC's decision making process on our new authorisation request.

We understand that the authorisation process can take up to six months and regret that our application was not submitted in a more timely fashion due to under resourcing and a higher than normal level of recent staff turnover in senior positions.

Screen Producers Australia have been granted a new authorisation and our negotiations with them under the previous authorisation are on-going. Further, the terms of engagement previously negotiated by the parties are currently in widespread use. Without an interim authorisation we are concerned that those benefits to the public identified in our submission could no longer be enjoyed, the existing terms of engagement negotiated could not be used and overdue negotiations for new terms and conditions of engagement could not commence. This would be unfair to SPA, who did seek the required authorisation within the appropriate timeline, and could also disadvantage SPA members and members of the AWG.

Please do not hesitate to contact me should you require any additional information or wish to discuss our application further.

Kind regards

A handwritten signature in black ink, appearing to read 'Wendy Howell', with a stylized, cursive script.

Wendy Howell

Manger, Industrial Affairs

Phone: (02) 8072 6769

Email: wendy@awg.com.au

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91573 **Australian Writers' Guild Limited (AWG).**

- (b) Description of business carried on by applicant:
(Refer to direction 3)

The AWG is a not for profit, company limited by guarantee representing performance writers in Australia, across the fields of film, television, theatre, radio and digital media. AWG was established in 1962 and has 2,235 financial members as at the date of this application.

- (c) Address in Australia for service of documents on the applicant:

Australian Writers' Guild, Level 4, 70 Pitt Street, NSW, 2000.

Attention: Wendy Howell, Manager, Industrial Affairs.

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisation A91274 was granted in respect of AWG's current and future members collectively negotiating model terms of engagement with the Screen Producers Association of Australia for use by AWG's current and future member writers when contracting with producers of either film and television.

- (b) Provide details of the basis upon which revocation is sought:

Current authorisation is due to expire on 28 February 2017. AWG seeks to substitute a new authorisation on substantially the same terms as previously granted with expansion to include additional parties

as there is an ongoing need for the statutory protection provided by this authorisation.

3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:
(Refer to direction 4)

AWG seeks authorisation under sections 88(1) and 88(1A) *Competition and Consumer Act 2010* (the Act) for current and future members of AWG to collectively negotiate model agreements which can be used by current and future members of AWG when contracting with producers of film, television and digital media, including:

- **current and future members of Screen Producers Australia (SPA);**
- **current and future film, television and digital media producers who receive a funding grant from Screen Australia or the various state and territory funding bodies; and**
- **current and future film, television and digital media producers who benefit from the producer offset tax rebate which is administered by Screen Australia.**

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

The provision of script writing, editing, consulting and related services including but not limited to script assessing, mentoring, judging, workshopping, brainstorming where those services are provided in relation to television programs, films or digital media content and including, without limitation, all adults and children's series, serials, sitcoms, miniseries, telemovies, web series, streaming content and feature films as well as any goods and intellectual property connected with the supply of such services.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

10 years.

Further information is set out in the attached submission.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

NAME	CONTACT DETAILS
AWG Members	AWG has 2,235 financial members as at the date of this application. For practical reasons, a full list of members has not been provided with this application, however, a full list of members can be provided if required and at the request of the ACCC.
SPA Members	A full list of SPA members can be obtained by contacting SPA: SPA 36 Fitzroy Street Surry Hills NSW 2010 Phone: (02) 9360 8988
Film, Television and Digital Media producers who receive a funding grant from Screen Australia or who benefit from the producer offset tax rebate which is administered by Screen Australia	Contact Screen Australia: Screen Australia Level 7, 45 Jones Street Ultimo, NSW, 2007
Film, Television and Digital Media producers who receive a funding grant from the various state and territory funding bodies.	Contact the relevant state and territory funding bodies for details: Screen New South Wales Film Victoria Screen Queensland South Australian Film Corporation ScreenWest Screen Tasmania Screen ACT Screen Territory

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Writers of film, television and digital media content who are present and future members of AWG who are participants in a current or future consultation committee and assist in preparation and negotiation of model terms of engagement or choose to rely on the terms of engagement collectively negotiated by AWG.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

N/A.

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

Please see attached submission in support.

(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

Please see attached submission in support.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Please see attached submission in support.

(See Direction 7 of this Form)

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

Please see attached submission in support.

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

Please see attached submission in support.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

Yes.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

This application also relates to any future model terms of engagement that AWG negotiates with the parties listed at 4(a) which any current and future members of AWG choose to give effect.

(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

N/A

(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

The parties to the similar model terms of engagement are any current and future members of AWG and the parties listed at 4(a).

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?
N/A.


10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Wendy Howell
Manager, Industrial Affairs
Australian Writers' Guild
Level 4, 70 Pitt Street
Sydney NSW 2000.
Phone: (02) 8072 6769

Dated.....3/2/2017.....

Signed by/on behalf of the applicant


.....

(Signature)

WENDY K. HOWELL
.....

(Full Name)

AUSTRALIAN WRITERS' GUILD
.....

(Organisation)

MANAGER, INDUSTRIAL AFFAIRS
.....

(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

ATTACHMENT A – AWG’S SUBMISSIONS IN SUPPORT

1. APPLICATION

1.1 Purpose of the application

Australian Writers’ Guild (AWG) seeks revocation of its existing authorisation (A91274) and substitution of a new authorisation on substantially the same terms as previously granted with expansion to include additional parties and for a longer term.

AWG seeks this authorisation under sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (the Act) for current and future members of AWG to collectively negotiate model agreements which can be used by current and future members of AWG when contracting with producers of film, television and digital media.

This submission supports the application under section 91C(1) of the Act for revocation of an authorisation and substitution of a new authorisation for the one revoked to give effect to a provision of a contract, arrangement or understanding which is, or may be, a cartel provision.

1.2 Analogous authorised conduct

In 2015, the ACCC granted authorisation until 2020 to Screen Producers Australia (SPA) to - collectively negotiate model terms of engagement with the AWG and other parties and to give effect to the existing and future model terms of engagement when contracting with current and future members of AWG and other parties.

Whilst the ACCC did not explicitly grant authorisation to AWG members, AWG submits that under s88(6) of the Act, authorisation would extend to cover AWG members as they were listed in SPA’s application as a proposed party to the arrangement. Therefore, insofar as the current authorisation application relates to SPA agreements to which authorisation has already been granted, AWG makes this authorisation application for the comfort of having an express authorisation in its favour and to extend to additional parties and for a longer term.

2. PROPOSED ARRANGEMENT

2.1 Substitution of authorisation

AWG seeks authorisation for current and future members of AWG to collectively negotiate model agreements which can be used by current and future members of AWG when contracting with producers of film, television and digital media.

2.2 Parties

The parties to the proposed arrangement are:

- (a) AWG
- (b) Current and future members of AWG
- (c) SPA;
- (d) Current and future members of SPA;
- (e) Current and future film, television and digital media producers who receive a funding grant from Screen Australia or the various state and territory funding bodies;
- (f) Current and future film, television and digital media producers who benefit from the producer offset tax rebate which is administered by Screen Australia;
- (g) Consenting Members (at the negotiations stage); and
- (h) Participating Members (at the agreement consolidation stage).

AWG is the national professional organisation representing performance writers across the fields of film, television, radio, theatre and digital media. As at the date of this application, AWG has 2,235 financial members. AWG membership is split into 2 main levels: Full Membership and Associate Membership respectively catering for produced and unproduced writers.

SPA is an industry body that represents the interests of independent Australian film and television producers.

AWG is requesting to expand the previous authorisation beyond SPA as there are some production businesses such as film studios, television networks and other independent producers who are prolific in the industry and are not members of SPA and have expressed a need to negotiate terms of engagement which differ from the benchmark recommendations achieved between SPA and AWG.

Further, most Australian producers rely on development and production funding received from Screen Australia and the various state and territory funding bodies and the provision of this grant and investment money is governed by core terms of trade which require writers to be engaged on at least the current recommended AWG minimums.

2.3 Term

AWG is requesting a term of 10 years.

Consultations and negotiations involved in agreeing upon model terms of engagement are generally lengthy and complex (on average between 9 to 12 months for each).

The process for preparing an authorisation submission is time consuming for an under resourced not for profit organisation such as the AWG.

Further, the \$2,500 application fee is a significant amount for AWG considering that AWG is a not for profit organisation with limited excess revenue with the majority of its members earning less than \$40,000 per annum.

A longer term relieves the burden on AWG to re-apply sooner and justifies the significant expense paid for this authorisation.

We understand that the existing authorisation was only granted for a period of five years, however, we note that the ACCC can grant an authorisation for a longer period when supported by the facts and for the same or similar conduct where it is established that the previous authorisations delivered the anticipated public benefit.

3. MODEL TERMS OF ENGAGEMENT

3.1 Existing AWG-SPA Agreements

Under the existing authorisation, AWG was able to successfully negotiate model terms of engagement with SPA which set out recommended terms of engagement of AWG members by SPA members. The model terms relate to writing services provided in relation to:

- Television series and serials (SASA);
- Miniseries and telemovies (MATA);
- Children's television (CTA).

The AWG-SPA Agreements include the following contractual terms:

- (a) Minimum rates and terms of pay;
- (b) Minimum contractual terms in relation to copyright and moral rights;
- (c) Minimum contractual terms in relation to rights of termination;
- (d) Minimum contractual terms in relation to residuals;
- (e) Minimum contractual terms in relation to dispute resolution;
- (f) Minimum contractual terms in relation to credits.

These AWG-SPA agreements have expired and are operating on a rolling basis with negotiations on further agreements already overdue.

3.2 Proposed Agreements

If granted a new authorisation, the AWG proposes to:

- Re-negotiate the AWG-SPA Agreements;
- Negotiate model terms of engagement with SPA for writers of feature film & digital media;
- Negotiate model terms of engagement for writers of film, television and digital media content with producers who receive funding from Screen Australia or who benefit from the producer offset tax rebate which is administered by Screen Australia;

- Negotiate model terms of engagement for writers of film, television and digital media content with producers who receive funding from the various state and territory funding bodies.

4. PUBLIC BENEFIT

4.1 AWG submits that the following significant public benefits would or will likely result:

(a) Fairness in the negotiating process

Despite the existence of the AWG-SPA agreements, writers are still (and perhaps will always be to some degree) hampered, as a disparate group, by the lack of individual bargaining power to bring producers to the negotiating table, the lack of means to engage professional advisers and the lack of skills and knowledge to adequately conduct complex negotiations. Further, due to the nature of the market, they are unable to be engaged as employees and therefore would not be entitled to any of the benefits, such as holiday pay, superannuation and minimum pay which are mandated for employees.

In comparison, under the proposed arrangement, writers would be able to provide greater input into the terms of their engagement across a broader range of agreements as AWG is in a superior position to negotiate with the producers on their behalf.

The current AWG-SPA Agreements have laid down generally accepted industry standards and those writers who have used them have consistently enjoyed benefits that writers who have not used them do not. This is true across most contractual terms but marked differences are apparent in relation to fees and backend entitlements. A significant difference is also noted in relation to payments of secondary royalties with Screenrights now only paying writers who are contracted under MATA and SASA or use the same clause verbatim in other agreements.¹

(b) Reduced costs and more convenience for all parties

The AWG industrial advice service has noted a marked reduction in the number of contract enquiries relating to series and serials and miniseries and telemovies because the industry is being encouraged to use the standard contract.

Many AWG members who work in television have also expressed that they no longer require the services of an agent or lawyer when contracting because producers are using the MATA or SASA standard agreement.

There is no doubt that these benefits would spread to other areas with the creation of new industry standard agreements for feature film, digital media and the amendment of the television contracts to cater for writers who have created original material and expanded to a larger group of producers.

¹ See Screenrights' ERP, Presumptions 5 and 6: <http://resolution.screenrights.org/wp-content/uploads/2016/12/Screenrights-CCRP-ERP.pdf>

Producers are reporting that the agreed minimum rates now give them a more accurate estimate of the budget because they know the amount of fees they will need to set aside for engaging the writer and for acquiring any underlying literary work.

A further reduction in the costs of maintaining AWG's indispensable industrial advice service will likely lead to a reduction in the total amount of public funding required by the AWG to supplement its income from membership fees for this purpose. It will also reduce the strain on a very busy service which currently spends a large proportion of time and resources reviewing and commenting on individual contracts for feature film and options on original television concepts which are not currently covered by agreed minimum standards and rates.

(c) Improvements in the working conditions for writers

There have been improvements in the flow of information to both producers and writers as to what constitutes fair and reasonable terms of engagement, particularly for regional writers who would otherwise be more susceptible to exploitation due to their geographical remoteness (decreasing opportunities to negotiate face-to-face) and isolation from other writers (decreasing opportunities to access comparable terms and conditions of pay).

A set of common terms and minimums has resulted in improved certainty and security of remuneration.

Writers feel able to delegate to AWG to enforce negotiated terms on their behalf in the event they lack the capacity to do so, particularly when they are intimidated by better-resourced producers.

(d) Improvements in the quantity and quality of work

Many writers report that they are spending less time on contracts and have been able to afford to devote more time and energy to their writing.

The industry has become more professional as more television writers in particular are able to afford to work full-time as television writers.

More people are being attracted to enter or remain in the industry, leading to increased output.

As a medium of mass education and entertainment, television is central to the consolidation and propagation of a collective national identity, the importance of which is exemplified by the Federal government's regulations on the minimum amount of Australian Content required to be broadcast annually. The proliferation of television writing of a high standard would contribute directly to the fulfilment of this legislative intention and foster the growth of Australian arts and culture, which would be beneficial for all members of the Australian public.

Whilst the increase in demand for writers can also be attributed, in part, to new streaming services and additional broadcast channels entering the market, the majority of their programming is still created overseas. However, the local content they are commissioning is on the increase and will rise rapidly over the next few years so it is more important than ever to secure minimum terms and conditions for the local content produced.

(e) Greater diversity in business types and program content

There has been an increase in the last 5 years of large international producers entering the Australian market by acquiring local production houses. In order to avoid the industry being dominated by these players who tend to produce a narrower range of content and hire within their own inner circle of known writers it is imperative that collective representation and bargaining is allowed to continue with SPA and with the independent producers who are not members of SPA or owned by these large corporations in order to ensure a viable industry providing access to the public to a variety of content and on-going employment and opportunity for a larger number of writers.

(f) Guidance for Screen Australia and state and territory funding bodies as to what constitutes “fair and reasonable” conduct when recipients of public funding engage writers

Producers who apply for funding from Screen Australia and state and territory funding bodies must comply with terms of trade which require producers to act fairly and reasonably in relation to writers including a requirement to pay at least the minimum award rates or the rate agreed with the AWG. Model terms of engagement have and will continue to provide guidance to Screen Australia and the state and territory funding bodies as to what constitutes fair and reasonable conduct and reduce costs to those bodies in analysing, policing and enforcing fair and reasonable terms in the contracts for the projects they fund.

AWG also met with Screen Australia at the end of 2016 to discuss Screen Australia publishing the AWG minimum rates on their website to ensure all funding applicants can be made aware of what their obligations are under the terms of trade and this is scheduled to go live any day now.

6. MARKET DEFINITION

6.1 Nature of the services

Writers provide script writing, editing, consulting and related services including but not limited to script assessing, mentoring, judging, workshopping and brainstorming, in relation to television programs including without limitation all adults’ and children’s series, serials, sitcoms, miniseries, telemovies, live action, game and reality shows, feature films and digital media content.

Writers also exploit, usually by way of assignment or licence, the intellectual property rights contained within any literary and dramatic works produced either in their own time or during the course of their commission by another person, including that contained within the results and proceeds of any of the services hereto mentioned.

6.2 Structure of the Market

Writers are by and large, independent contractors commissioned on a freelance basis by private individuals, productions companies or networks, as the services required are project-specific and often time-specific. There are a very limited number of exceptions to this working model, such as staff writers on long-running television serials who are employed by the networks and

writers who self-fund the production of their work, either through their own production companies or through joint ventures or special purpose vehicles formed in collaboration with others.

Writers mostly work on their own and must compete with each other for the development and eventual production of their work. Writers compete not only on the basis of the quality of their work (be it particular pieces or their entire repertoire) but also on their reputation and success within the industry as most pertinently reflected by their number of produced credits.

The majority of writers do not have the contacts and expertise to secure funding on their own without being attached to a producer. It is rare for a project to secure funding and proceed to production and distribution without a producer attached. Consequently, when negotiating the terms of engagement, there exists a significant power imbalance in favour of the producers who control the flow of money.

Most experienced and credited writers earn less than \$40,000 a year.

AWG Associate Members have no credits and so most often resort to speculative pitching to secure commissions. Most Associate Member have little experience with contractual matters but find it difficult to access the professional services offered by an agent (who also select their clients on the basis of produced credits) or to afford a lawyer and rely heavily on AWG's industrial advice service.

The model terms of engagement negotiated by AWG and SPA under the current authorisation have provided a valuable benchmark and also allowed the parties to contract without protracted, complex, expensive negotiations. Writers can use the standard agreements without the need to engage a Lawyer and have confidence that the terms of engagement meet recommended minimums.

The majority of film, television and digital media employers are small to medium enterprises without the resources to negotiate the number of contracts required for each production so collective participation in model terms of engagement has been a benefit to them as well and important for sustainability of the industry as a whole.

6.3 Geographic Coverage of the Market

Writers are located in every state and territory of Australia.

Writers are free to move in and across every state and territory of Australia. As they are able to work remotely, they are free to compete to work for any persons, whether or not such persons are located within the state or territory of the writers' usual residence.

6.4 Entry into and Exit from the Market

There are no barriers to entry into the writing services market. Membership of AWG is voluntary and not a pre-condition to being able to undertake work within the industry (as it is for example, in the United States of America).

Writers may likewise exit the market at any time, due not insignificantly to the lack of guarantee of remuneration and future work.

7. PUBLIC DETRIMENT

7.1 No Lessening of Competition and No Public Detriment

AWG submits that there has been no lessening of competition as a result of the current AWG-SPA contracts and there will be no lessening of competition under the proposed arrangement.

In fact, AWG submits that there has been an increase in competition as improvements in working conditions are encouraging more people to enter or remain in the industry. As discussed above, there are also a significant number of new players in the industry due to the launch of a number of new streaming services and channels acquiring and commissioning local content.

The primary grounds for selecting writers continues to be the quality of their work and their prior reputation and credits, which would not be negatively impacted by the implementation of a new set of industry terms and minimums or renegotiation of the AWG-SPA agreements.

Moreover, there would be no lessening of competition among the producers, since both the writers' and the producers' participation in the arrangement would be voluntary, so that competition from both service suppliers and acquisitions outside the group are unaffected.

Accordingly, AWG submits that there is no public detriment constituted by any lessening in competition.

The proposed arrangements will be implemented at no extra cost to AWG member writers, who are already paying membership fees and likewise, SPA already has the capacity to liaise with and represent its members.

AWG further submits that the price for engaging freelance performance writers will not be driven higher, as the proposed arrangement will only specify minimums so that writers are free to negotiate their own terms, opt out of the agreement or seek a waiver from AWG in special circumstances.

7.2 Public Benefit Outweigh Public Detriment

Using the 'future-with-and-without-test'², it is AWG's submission that the significant public benefits which would flow under the proposed arrangements clearly and unequivocally outweigh the likely public detriment, if any.

We hereby seek the granting of ACCC's authorisation within the scope of this application and for the period of authorisation to be ten (10) years, given the extent of consultations that AWG proposes to undertake and the complexity of the negotiations.

8. REQUEST FOR INTERIM AUTHORISATION

With our current authorisation due to expire on 28 February 2017 we also request that you grant AWG an interim authorisation for the period between the expiration of the existing authorisation and the conclusion of the ACCC's decision making process on our new authorisation request.

² *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936.

We understand that the authorisation process can take up to six months and regret that our application was not submitted in a more timely fashion due to under resourcing and a higher than normal level of recent staff turnover in senior positions.

Screen Producers Australia have been granted a new authorisation and our negotiations with them under the previous authorisation are on-going. Further, the terms of engagement previously negotiated by the parties are currently in widespread use. Without an interim authorisation we are concerned that those benefits to the public identified in our submission could no longer be enjoyed, the existing terms of engagement negotiated could not be used and overdue negotiations for new terms and conditions of engagement could not commence. This would be unfair to SPA, who did seek the required authorisation within the appropriate timeline, and could also disadvantage SPA members and members of the AWG.