



Your right to royalties

Distribution Policy

Contents

1	Purpose.....	3
2	Effective Date	3
3	Mission Statement.....	3
4	Governance.....	3
5	Complaints Handling and Dispute Resolution Procedure	3
6	Credits.....	4
6.1	Required Information	4
6.2	Locating Credits.....	5
6.3	Credit Types.....	5
6.4	Warranty and Indemnity	5
6.5	Conflicting Claim.....	5
6.6	Domestic Entitlement.....	6
7	Collection	6
7.1	Collection Territories	6
7.2	Australian Secondary Rights.....	6
7.3	International Secondary Rights	7
7.4	Gross Collections	7
7.5	Territory-Specific Collection	7
8	Expenses and Funds.....	7
8.1	Operating Costs	7
8.2	Cultural Levy.....	8
8.3	Allocation to Errors, Omissions and Growth Fund.....	8
8.4	Trust Fund and Trust Period.....	8
9	Distribution.....	9
9.1	Allocation.....	9
9.2	Distributable Royalties	9
9.3	Distribution Errors.....	10
9.4	Contacting Members.....	10

1 Purpose

AWGACS collects secondary royalties from the exploitation of the works of its Members and the Members of its sister societies, in accordance with the terms of its governing documents (including its Memorandum and Articles of Association). This policy outlines the information and documentation that is required to be provided by Members, the types of use that might give rise to royalty payments and the methodology that is used to determine the amount of royalty payments under this policy.

2 Effective Date

This distribution policy is current as of September 2021.

The AWGACS Board (**Board**) may amend or vary the terms of this policy from time to time, in accordance with the parameters set out in its governing documents.

The latest version of this policy will be published on the AWGACS website.

3 Mission Statement

AWGACS endeavours to pursue, collect and distribute secondary royalties owed to Screenwriters. AWGACS ensures the fair and equitable collection and distribution of secondary royalties and protects the interests of its Members.

4 Governance

AWGACS is governed principally by the Board. The Board undertakes to periodically review this policy and its related procedures to ensure that, as far as possible, AWGACS's distribution rules are fair and equitable for all current and future Members.

5 Complaints Handling and Dispute Resolution Procedure

Complaints and disputes will be managed in accordance with AWGACS's Complaints Handling Procedure. The latest version of the Complaints Handling Procedure can be found on AWGACS's website or a copy can be requested by emailing: awgacs@awg.com.au.

The Complaints Handling Procedure may be amended or varied by AWGACS from time to time.

6 Credits

6.1 Required Information

AWGACS requires certain information to validly claim secondary royalties on behalf of its Members. Members can provide this information by completing and returning a copy of the AWGACS Credit Form.

The minimum amount of information that AWGACS requires as a condition of it being able to take action on a Member's behalf (in addition to proof of domestic entitlement: see paragraph 6.6 below) is, in respect of each claim, as follows:

- (a) title of the project;
- (b) category (telemovie, feature film, etc.);
- (c) genre;
- (d) year of production;
- (e) director;
- (f) producer;
- (g) production company;
- (h) production country;
- (i) running time;
- (j) co-writer(s) details (if any); and
- (k) details of the creative split between co-writers (if applicable).

For any projects comprising episodes, we also require:

- (a) season number;
- (b) episode(s) number; and
- (c) episode(s) name.

In respect of projects concerning our sister societies, we also require:

- (a) shooting language of the work; and
- (b) medium details (i.e. black and white or colour).

AWGACS may amend or vary its Credit Form to require Members to provide additional information from time to time, in response to changes in international standards and practice.

If a Member is unable to provide all of the required information or the information is not available, AWGACS will use its best reasonable endeavours to still include those works in its repertoire and to collect royalties in respect of those works. However, there may be circumstances where it is not possible or feasible for AWGACS to collect royalties in respect of these works.

AWGACS undertakes ongoing research and compilation of new works as part of its activities. However, where a Member does not provide the minimum required information in respect of each separate royalty claim and AWGACS is not able to

ascertain this information from other sources, AWGACS may not be able to assist the Member to receive royalty payments arising from those claims.

6.2 Locating Credits

AWGACS gathers information regarding the titles for each credited Member by searching sources including:

- (a) online databases;
- (b) information from screenwriters;
- (c) information from producers;
- (d) information from broadcasts; and
- (e) program credits.

6.3 Credit Types

AWGACS has regard to the following principles when determining who a royalty payment is to be paid to and in what proportions:

- If there is a credited screenwriter, that person is entitled to 100% of the royalty payment.
- If there is no credited screenwriter, AWGACS will seek to identify a contributor to the underlying literary work with a different credit.
- Where there is more than one credited screenwriter, the royalty payment will be divided equally between all writers, or as otherwise agreed upon in writing between the parties.

6.4 Warranty and Indemnity

AWGACS relies on the signed warranty and indemnity from its Members to make the final determination of the correct credit and creative split. Payment of royalties for a title is conditional on Members providing this warranty. If the credit remains unwarranted, AWGACS is unable to pay out any royalties.

6.5 Conflicting Claim

Where two or more Members make a claim for the same credit and/or creative split, AWGACS will inform the parties and recommend they resolve the matter between themselves. Conflicts are generally a result of a misunderstanding. If the writers are unable to resolve the matter between themselves, they may refer the matter to the Board for resolution. The Board will be guided by the percentage split specified in the original contract for the program in question.

If the parties do not agree to be bound by the Board’s determination, the matter may be referred for resolution in accordance with AWGACS’s Complaint Handling Procedure. AWGACS may decline to make any payment in relation to a royalty claim until all relevant conflicts have been resolved.

6.6 Domestic Entitlement

AWGACS must receive evidence of a Member’s domestic entitlement to secondary royalties before it can commence the process of claiming royalties for a work. Members must provide AWGACS with a copy of the relevant writers’ agreement (or similar documents) or otherwise cooperate with AWGACS to enable it to establish domestic entitlement in the event that such documentation is not able to be provided.

7 Collection

7.1 Collection Territories

AWGACS operates as the writers’ audio-visual collecting society for Australia and New Zealand. For international collections, AWGACS relies on establishing reciprocal agreements with collecting societies around the world. Currently, AWGACS has over 30 reciprocal and unilateral agreements which it uses to claim collections from in various jurisdictions around the world.

7.2 Australian Secondary Rights

On behalf of its Members and sister societies, AWGACS pursues the remittance of Australian statutory royalties that are owing to screenwriters by claiming these from the pool of royalties collected by Screenrights on behalf of all the creators of the different copyright works that make up audio-visual works.

Screenrights is a statutory authority established under the *Copyright Act 1968* (Cth) (**Copyright Act**) to be an audio-visual Collecting Society that administers the following provisions of the Copyright Act:

- educational copying and communication royalties (under Part IVA);
- government copying royalties (under section 183); and
- retransmission royalties in Australia (under Part VC).

AWGACS represents the interests of screenwriters as against other creators of audio-visual works, such as producers, directors and musicians. Under Screenrights’ Distribution Policy, a portion of the total royalties received by Screenrights is allocated to copyright subsisting in the “literary & dramatic works” (i.e. the “script”) comprising an audio-visual work.

7.3 International Secondary Rights

In addition to the collection of domestic entitlements, AWGACS also collects royalties internationally for the use of works for a number of purposes including:

- private copying;
- rental and public lending;
- simultaneous unaltered retransmission by cable or pay TV of primary broadcasts initially transmitted by wire or wireless means or any other available means;
- communication to the public by means of technical equipment;
- pay-per-view and video on demand;
- communication in public places of radio and television programs;
- projection in cinemas and similar establishments;
- sale for private use;
- use for educational purposes; and
- any other rights that may be negotiated by our sister societies from time to time.

For the avoidance of doubt, not all territories generate royalties in each of the above categories.

7.4 Gross Collections

AWGACS's gross collections are the total collections (i.e. domestic and international) received within an accounting period from 1 July to 30 June. Prior to becoming distributable to Members, all costs and expenses are deducted from the total gross collections.

7.5 Territory-Specific Collection

Unless the Board determines otherwise, Members are unable to split their repertoire between territories. This means that AWGACS will generally only agree to collect and distribute internationally-derived royalties for a Member if it also acts for that Member in connection with the payment of domestic royalties.

The Board, in making its determination in respect of whether it is necessary for Members to split their repertoire, will consider factors such as the Member's country of residence and the country of production for the Member's works.

8 Expenses and Funds

8.1 Operating Costs

AWGACS deducts its actual annual operating expenses from that financial year's gross collections in accordance with Article 62 of its Articles of Association. Our operating expenses vary every year and we seek to keep our fees as low as possible.

Based on each financial year's collections and expenses, the Board will determine the required deduction representative of our fees, so that our distribution is as fair and equitable as possible for our Members, whilst making appropriate provision to ensure the responsible financial management of the organisation.

8.2 Cultural Levy

Under its Articles of Association, AWGACS deducts a 5% cultural levy from its gross collections which is applied towards funding initiatives that promote and enhance the status and recognition of professional screenwriters. The funds comprising the cultural fund are directed towards initiatives, and otherwise utilised, as determined at the absolute discretion of the Board in a manner that promotes and enhances the status of writers.

8.3 Allocation to Errors, Omissions and Growth Fund

Where royalties are unable to be paid for any reason or AWGACS derives a financial surplus that is not referable to royalty claims, these amounts will be transferred to AWGACS's Errors, Omissions and Growth Fund. The monies comprising this fund may be used for purposes that include:

- (a) equalising the operating costs and to keep costs consistent across collecting years;
- (b) making royalty payments to any Member(s) that has been underpaid;
- (c) correcting any allocation errors that have resulted in an incorrect royalty payment;
- (d) promoting the growth of AWGACS and its collections; and
- (e) for exceptional use.

The Errors, Omissions and Growth Fund may also be used for other purposes as deemed necessary by the Board.

8.4 Trust Fund and Trust Period

AWGACS has established a trust fund under its Articles of Association. All money that has been allocated to Members but which AWGACS has been unable to distribute will be held in trust for up to four years from the end of the financial year in which the royalties were collected.

Royalties may be held in trust for an additional two years if the Board is satisfied that sufficient circumstances exist to justify an extension.

9 Distribution

9.1 Allocation

AWGACS takes an adaptable approach to the allocation of royalties because of its reliance on database information as well as the variability that exists in respect of that information across jurisdictions.

AWGACS is guided by the following allocation principles:

- In the first instance, AWGACS will always seek to allocate royalties based on the title of a program and the title of an episode. Where AWGACS receives royalties for a series or serial that does not have episode names, AWGACS will rely on the episode and season number(s). If royalties are attached to a series without any episode information, the royalties will be allocated evenly to each episode within the season. Where there is also no season number, the royalties will be allocated evenly across all seasons.
- Where no program information is provided but a known writer is attached to the program, AWGACS will allocate the royalty payment to the writer. Generally, these royalty payments will be labelled as “Miscellaneous Payment.”
- Where royalty payments are unable to be allocated because there is not enough information provided, these amounts will be moved to the AWGACS’s Errors, Omissions and Growth Fund.
- Where royalty payments are unable to be allocated because a work or screenwriter is represented by another organisation, AWGACS will repay these royalties to the society they received the royalties from or pay them to the society that represents the work or screenwriter (as applicable).

9.2 Distributable Royalties

In order for AWGACS royalties to be payable, the amount available for a Member to collect must exceed \$100. The Board may decide to amend this amount from time to time, in accordance with AWGACS’s Articles of Association.

AWGACS is authorised by its governing documents to only make royalty payments to its Members. Accordingly, royalties can only be paid to a writer or beneficiary who is also a Member of AWGACS.

Members must sign a warranty and indemnity form prior to any royalties being paid. This is to warrant that the Member in question is entitled to any royalties that have been allocated to that Member and that the Member has appointed AWGACS to collect these royalties on the Member’s behalf.

Members must also confirm their contact and bank details prior to completion of any royalty payment.

9.3 Royalty Payment Errors

As set out in AWGACS's Articles of Association, any allocations and royalty payments made to Members by the Board are final and binding. However, in certain circumstances, the Board may, in its absolute discretion, make royalty payments out of the Errors, Omissions and Growth Fund.

If there is a reasonable basis for suspecting an over-allocation of royalty payments, the AWGACS Board may, in accordance with its Articles of Association, take steps to recoup those funds (including by deducting them from a future Royalty payment(s)).

9.4 Contacting Members

AWGACS typically takes the following approach to contacting screenwriters regarding the royalty payments:

- During AWGACS's royalty payment period, all Members for whom royalties have been received will be contacted. AWGACS also attempts to contact Non-Members for whom it holds royalties.
- Where a Member or Non-Member fails to respond to AWGACS's first email, AWGACS will attempt to contact them a second time. AWGACS will attempt to contact Members and Non-Members up to three times each royalty payment period with each attempted contact at least 2 months apart. After the third attempt, AWGACS will cease contacting the screenwriter until the screenwriter returns their Credit Form or AWGACS becomes aware of new information that might assist with making contact with the screenwriter. These limits are in place to ensure that administration costs associated with contacting Members do not exceed a reasonable level.
- If a Member has been already been contacted three times in relation to open royalties, the Member will be contacted once without any follow ups in each royalty payment period. If a Member's royalties expire and new royalties are collected, AWGACS will once again attempt to contact the Member three times.
- Where a Non-Member is unable to be contacted, they will be placed on AWGACS's "Unable to Contact List." This list is available on the AWGACS website and publicised in the AWGACS newsletter.