

The 'created by' credit

A good practice guide
for TV writers and those
who work with them

www.writersguild.org.uk

WGGB is the trade union for professional writers working in TV, film, theatre, radio, books, poetry, comedy, animation and videogames in the UK. Our members also include emerging, aspiring and student writers. We negotiate better pay and working conditions for writers and lobby and campaign on their behalf. To find out more and join online go to www.writersguild.org.uk

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The Writers' Guild of Great Britain has also produced a booklet, *Working with Writers: A Good Practice Guide for TV Programme Makers*. This is available for download from our website: www.writersguild.org.uk/resources

Hard copies are available by emailing the WGGB Head Office (admin@writersguild.org.uk) or by phoning **020 7833 0777**

You can also contact our TV Chair by email: tv@writersguild.org.uk

WGGB has negotiated minimum rates and rights for TV writers in the UK and you can view these on our website at: www.writersguild.org.uk/rates-agreements

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Introduction

Currently, in UK television, the use of the ‘created by’ credit (which carries many implications in terms of copyright, underlying intellectual property rights, royalties and residual fees) is not subject to any rigorous or consistent definition applied across the industry. As a result, writers doing the same job on different shows may be treated very differently and may not be rewarded with a ‘created by’ credit or the control over their own work, to which they should be entitled. At the same time, non-writers are claiming ‘created by’ credits.

This guide has been created with the aim of clarifying the role and definition of a TV series creator, and to bring UK practice into line with the highest international standards.

The intention is to create a template for correct use of the ‘created by’ credit and ownership of intellectual property (IP), which will reduce confusion and prevent abuse of the credit, whether deliberate or accidental.

WGGB has consulted with screenwriting guilds around the world, as part of the International Affiliation of Writers Guilds (IAWG), which has conducted in-depth examination of the definition of ‘creator’ in various industries internationally. As a result, we have deemed it appropriate to adopt the definition that follows:

The definition of a series creator

In order to merit the 'created by' credit in UK television, an individual must have **actually written** the majority of **the pilot screenplay**, the **series pitch document** and the **series bible**.

In the event that no one writer has written the majority of all three documents, credit will be shared amongst the writers of each. However, the writer of the pilot screenplay should always be entitled to a share of the creative credit and resulting IP.

If there is no series pitch document or bible (as is sometimes the case with authored pieces with only one writer) then the writer is the sole series creator.

Not every TV show credits a creator. When a single writer has written every episode, a 'created by' credit may not be deemed necessary, although the writer may wish to ensure that their contract protects their format rights.

Definitions of qualifying documents

The **pilot screenplay** is the prototype episode for the first season of the series. This may or may not be the first episode, but it is the episode which results in the series being greenlit.

The **series pitch document** is the initial document that led to the development of the series. This is usually a five to 10-page document embodying the main idea of the series.

The **series bible** will include an outline of the first season (at least); establishing the tone and dramatic arc of the show. It will include detailed descriptions of the characters and their journeys. It is usually about 15-30 pages long.

What a series creator is not

A series creator is not a script editor, producer, director, commissioner, member of the development team, or the person who optioned the underlying rights or even suggested an original idea – **unless** the person who performed one of the roles listed above also **actually wrote** the majority of the pilot script, series pitch document and series bible.

Contributing ideas, including advice or recommendation, brainstorming, process and/or methods of execution, editing etc do not comprise actual writing for the purposes of this definition and such activities do not entitle the contributor to any share of the ‘creator’ credit.

The old adage ‘copyright protects the expression of an idea – not the idea itself’ is still relevant today. In the well-known case of *Brighton v Jones (2004)*, concerning the hit play *Stones In His Pockets*, the judge found that the director and actors had contributed some original ideas to the script of a play in rehearsal but the writer, Maggie Jones, decided what ideas to accept or reject and amended the script herself in her own way. She did the writing and as author had sole copyright in the script.

What if the work is genuinely written by more than one writer?

There are two possibilities. If the work is written by two or more writers, so that the individual contributions of each writer cannot be distinguished, then the writers are **joint authors**. This is likely to be the situation when two or more writers sit down and create a work together. Where the contributions can be distinguished, they are **co-authors**. The difference is that joint authors together own the copyright in the whole work, whereas co-authors each own the copyright in their own contributions.

If a writer wishes to create a show in collaboration with somebody else (writer, producer, actor or other) it is advisable to put a simple agreement in place as early as possible. The WGGB can advise its members on this. The agreement will define the respective roles of the collaborators. It will usually specify that neither party can dispose of the idea without the agreement of the other parties.

If a writer has created a treatment for a show, the commissioning producer should give that writer the first opportunity to write the pilot script. If the script is subsequently rewritten by another writer, the second writer should only be awarded a share of the creator credit and/or format rights if they have genuinely changed the show's format significantly.

'Format provided by producer'

If a producer brings only a basic premise to a writer, and the writer expands this idea to create a viable show, the writer should still get full 'created by' credit and format rights. If the premise provided by the producer is more fleshed out, shared credit may be appropriate.

ALL WRITERS DESERVE EQUAL CREDIT FOR THEIR WORK

Most established TV writers in the UK are granted creator status as a matter of course. But some are not. Variations in time slot, channel and the writer's perceived standing in the industry, as well as entrenched practice in certain departments, are some of the factors which can prevent a writer from being recognised as the creator of a work.

Issues also arise when the show is based on existing material, such as a novel or an historical account. Again, the credit given to the writer of an adaptation can be influenced by the factors listed in the above paragraph.

Adaptations

When the TV show is based on existing material, the 'created by' credit and underlying rights may be shared with the original author or authors, but the writer/s of the pilot script and other materials (as set out above) must always be recognised as co-creators and entitled to a percentage of the same rights as an original creator. When the underlying material is out of copyright, the adapter should receive all the rights pertaining to the creator credit.

'Developed for television by' and 'created for television by' are acceptable alternatives for 'created by' in terms of screen credit. These credits still carry significant equal weight in terms of ownership of IP and underlying rights.

Copyright and the law

Legally, the first owner of copyright in an original work is the person who wrote it – the author. Original in this sense means originated rather than unique – in other words, the law sees a strong and clear connection between you as an author and the work you create. However, original is not about literary quality or merit – it is about the work coming out of the author’s head and onto the page. In line with copyright recognising the connection between the author and their work, it is important to remember that copyright is not infringed when two writers independently produce the same or similar works. It is **copyright**, and in this case, neither has copied from the other.

Pitch documents, treatments and series bibles are all protected by their own copyrights, owned by their authors. Documents which **establish the format of a series** (including scripts, treatments or bibles) have their own economic value. Traditionally, this is 10% of the script fee for each episode of the series that is *not* written by the format owner, but rates and terms vary and are open to negotiation.

Under UK law, usually the individual who authored the work will exclusively own the rights. However, if you are an employee and the work is produced as part of your employment then the work will belong to your employer immediately.

Most screenwriters in the UK are freelance, not employees. In UK law, freelance, self-employed individuals own the copyright in the work they **create even if the work has been commissioned by a producer or broadcaster**. To acquire rights in the screenwriter’s work, the producer or broadcaster will need the writer to transfer their rights through an agreement. Read the agreement carefully. If you don’t understand it, and you don’t have an agent, join the WGGB and get advice on it. In UK law you must sign a written agreement to transfer your rights in your work. But once you have signed, you are bound by the terms, whatever they are. As the legal situation around copyright and ownership can be complicated, we have created some theoretical examples to illustrate how the credit should work.

‘Created by...’ examples

A writer writes a pilot script. They send it to a production company which works with them to develop a series pitch and bible.

The writer is the sole creator of the show.

Two freelance writers work together to create a show. They write a series pitch, a pitch document and a series bible.

The writers are joint creators of the show. Their agents should draw up a contract between them as soon as possible. If they do not have agents, they should consider instructing an experienced media lawyer. WGGB members are entitled to free contract vetting and advice.

A development executive in a production company comes up with an idea. They pitch it verbally to a writer and hire them to develop a more detailed pitch, show bible and eventually a full script.

The development exec is not a co-creator of the format, and the writer should have the sole creator credit.

A development executive in a production company comes up with an idea. They write a one- or two-page summary of the idea and send it to various writers. They select a writer and hire them to develop a more detailed pitch, show bible and eventually a full script.

The development executive will own copyright in the two-page summary. However, the writer will own copyright in the pitch, bible and script. Depending on the contents of the exec’s summary, the exec may have underlying rights in the documents the writer has written. The executive will have no claim for ownership in the writer’s original work.

A freelance producer writes a series pitch and a detailed bible for a show. They hire a writer to write the pilot script and pay them for their work.

The producer owns copyright in the series pitch and bible. The writer owns copyright in the script they have written. It is likely that the script will contain some original copyright material contained in the pitch and bible. This will be an underlying work in the script. The format of the series will likely contain original elements of the script, the pitch and the bible. The writer and producer are co-creators of the show, and should make a formal agreement as soon as possible, setting out what rights each has in the format. The fact that the writer has been paid for writing the script is not enough on its own to transfer ownership to the producer.

A production company's development team writes a detailed format bible for a show. A writer writes a pilot script. They then hire several writers to write episodes based on the format bible and the pilot script.

The creator credit should be shared between the writers of the format documents and the writer of the pilot script. The hired writers of episodes after the pilot episode will own copyright in their scripts. The format will be an underlying work in their scripts. Original elements of the hired writers' scripts are not included in the format. The production company will usually require the hired writers to sign an assignment agreement transferring all the hired writers' rights to the production company. If the hired writers are employees of the production company, all rights in the scripts will be owned by the production company.

Summary

In order to merit the ‘created by’ credit, an individual must have **actually written** the majority of **the pilot screenplay**, the **series pitch document** and the **series bible**.

In the event that no one writer has written the majority of all three documents, credit will be shared amongst the writers of each. However, the writer of the pilot screenplay should always be entitled to a share of the creative credit and resulting IP.

In order to avoid future conflict – and potentially expensive and time-consuming arbitration and even litigation – it is in everyone’s interest to put a formal collaboration agreement in place as early as possible.

The creator credit should be agreed in writing before a writer assigns any rights in their work to a producer.

Disclaimer

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