



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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August 26, 2011

David Quinto, Esq.
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP
865 South Figueroa Street
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Los Angeles, CA 90017

Dear Mr. Quinto:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, the Producers Guild of America, to use a certain certification mark to identify film producers whose work meets the Guild's criteria. The Guild proposes using this mark – which would appear as "p.g.a." in the film's credits – to clarify who performed the producing functions on a film as defined by the Guild's specifications. For the reasons set forth below, the department has no present intention to challenge the proposed use of the Guild's certification mark.

You have represented that the Guild is a voluntary professional trade association made up of 4,500 producers of film and television content. The Guild is not a union and does not jointly negotiate on behalf of its members with studios and distributors.

The Guild already evaluates the producer credits in awarding two prominent film honors. The Guild works with the Academy of Motion Picture Arts and Sciences to determine which of a film's credited producers are eligible for an Academy Award as a producer when the film wins the award for Best Picture, and with the Hollywood Foreign Press Association to determine the Golden Globe Awards. This letter takes no position on the antitrust implications of the Guild's role in awarding these honors.

You have stated that the purpose of the certification program is to provide clarity to the film industry and the public by distinguishing those who perform what the Guild considers to be producer's duties on a work from those financiers, actors, lawyers or others in the industry who may bargain for a generic producer credit in return for their services. Providing this additional information or clarity appears to be the main procompetitive benefit of the program.

You have stated that the Guild will not compel anyone to participate, nor penalize those who decline. We also understand, based on your representations and our investigation, that producers who decline to participate in the program would face no significant economic consequences as a result of that decision. Likewise, studios could continue to work with Guild members even if they declined to participate in the program.

The certification process would begin with the studio or film production company notifying the Guild of those people who will be listed as producers in the film's credits. The Guild would then ask those people whether they wished to have the p.g.a. mark applied to their credit on the work. Those interested would submit a form on which they would explain how their responsibilities satisfied the Guild's requirements for the Guild's certification. To become a Guild-certified producer on the work, a candidate must have had "significant decision-making responsibility" throughout the four major phases of the work's creation: development, pre-production, production, and post-production. The candidate need not be a member of the Guild to be eligible for certification.

The Guild describes each of these phases in its Rules for Eligibility. In the development phase, the producer "conceives of the underlying premise of the production," secures the rights and initial financing, and hires the writers and director. In pre-production, the producer selects the cinematographer and cast, as well as sets the shooting schedule and budget. In production, the producer "supervises the day-to-day operations" of the producing team, including supervising the filming and consulting regularly with the director, cast, and production designer. Last, in post-production, the producer "personally consults" with the editor and the creative and financial personnel in finalizing the production. This includes consulting on the marketing and distribution plans for the film, as well as the film's score and visual effects. According to the Guild, this list of responsibilities distinguishes a Guild-approved producer from one who may have provided financing or secured the commitment of a star.

After the candidate submits her application, the Guild Administrator would verify the candidate producer's role in the work. The Administrator would contact the film's department heads (*e.g.*, the director, casting director, cinematographer) to evaluate the involvement of the candidate in the film. The information collected by the Administrator would be provided to a panel of Guild-approved arbiters who possess past producing experience on films in the same genre as the film for which the candidate producer seeks certification but who need not be members of the Guild. The panel would be responsible for deciding whether the candidate producer could have the Guild's mark applied to her film credit.

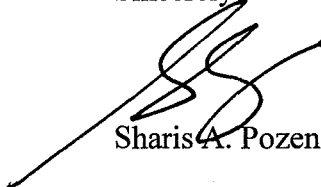
The Guild has proposed safeguards to reduce the risk of unfair or biased decisions by the panel. The candidate producer would be entitled to review in advance the list of potential arbiters, and to strike the names of potential arbiters for good cause.

Based on the representations made in your submission and our discussions with representatives of the Guild, the documents and information submitted in support of its request, and the information obtained during our investigation, we conclude that the proposed use of the certification mark, as described in your submission, is not likely to harm competition in the provision of producer services. The department would be concerned about the Guild's certification process if it had the potential to prevent producers without p.g.a. certification or producers who are not members of the Guild from competing to provide producer services. If the certification scheme succeeded in reducing the supply of producers available to movie studios, producers could demand higher fees. But the process described in your submission would not appear likely to produce these effects. Participation in the certification program is voluntary for both producers and movie studios. Producers who decline to seek certification (or even join the Guild) may still work as movie producers. Movie studios that decline to participate in the Guild's program face no restrictions on the producers they can hire or other significant economic consequence. Certified producers may seek to use the p.g.a. distinction to market themselves, but the certification program does not restrain in any way the ability of studios to hire producers without p.g.a certification or of producers without certification to work in the film industry.

For these reasons, the department has no present intention to challenge the proposed use of the Guild's certification mark. This letter expresses the department's current enforcement intention solely with respect to the proposed use of the mark and is issued in reliance on the information and representations contained in the Guild's submissions. In accordance with its normal practice, the department reserves the right to bring an enforcement action in the future should the implementation of the certification mark prove to be anticompetitive in purpose or effect.

This statement is made in accordance with the department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to this procedure, your business review request and this letter will be made publicly available immediately, and any supporting documentation will be made publicly available within 30 days of the date of this letter, except for any part of the materials for which you request and justify confidential treatment in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Pozen', written over a horizontal line.

Sharis A. Pozen