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AI

# WHY STUDIO TRANSPARENCY IS CRITICAL TO RESOLVING WGA BATTLE OVER AI

By Gary Friedman ✓

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**T**he rising tide of artificial intelligence has spilled into Hollywood labor negotiations, with writers concerned about the use of AI in script production and its effects on their work and future employment.

The use of AI has become a central issue in the Writers Guild of America's ongoing negotiations with the Alliance of Motion Picture and Television Producers, and the stalled contract negotiations highlight how important it is for the two sides to find a middle ground.

The WGA wants to place guardrails around the use of AI, including limiting its deployment in writing or rewriting scripts and other source material. For its part, the AMPTP rejected these proposals and instead is offering annual meetings to discuss use of and advancements in AI and related technology.

In the battle over the use of generative AI for screenwriting, there's no reason to believe such automated technologies will disappear. On the contrary, these predictive data tools are weaving themselves into consumer lives and finding real uses across industries.

In reality, AI has already been used by various motion picture studios in recent years — just not for screenwriting so far. You might not think a bot is capable of constructing the more intricate plotting required for a multiseason TV series, but that doesn't appear to be a foregone conclusion.

The fight now hinges on whether the industry should be able to use AI to create baseline content for movies and streaming platforms before writers get involved. The studios could argue some popular shows employ a formula-driven model and characters that can be created and developed by AI. In turn, employing AI for drafting initial scripts could help save the studios money versus having scripts written entirely by professional screenwriters.

However, writers argue that allowing AI to manufacture scripts would adversely impact their ability to ply their craft and make a living. Of course, no writer wants to become a glorified copy editor hired to punch up baseline content for less money.

In such a scenario, writers could be paid more commensurate with copy editors rather than original content creators, which could have an adverse impact on more experienced screenwriters whose compensation levels would disqualify them from these positions. The use of AI might also lead to studios employing fewer screenwriters per series, leaving more junior writers at risk of disintermediation.

Meanwhile, another significant open question is intellectual property law surrounding the use of generative AI technologies. It's more than likely that many

pieces of generated content may have already been previously protected and copyrighted work, setting the scene for waves of lawsuits on the horizon.

Further, how will credits be handled if studios create shows using AI-generated material? This is a critical issue for screenwriters, as credits are key to building their careers. If AI comes up with an early treatment of a TV episode and the writers are only editing and expanding upon that, should the writers' names be entitled to the same screen time during the credits?

Ultimately, if the studios aim to use AI for scriptwriting, the question will be in what capacity and under what terms the WGA can accept. As I noted in my testimony before the U.S. Equal Employment Opportunity Commission earlier this year, it's unlikely there is going to be a one-size-fits-all approach to using AI effectively and responsibly. Guidelines will need to be tailored to different sectors, including the entertainment industry.

A decision by lawmakers would likely help ease a resolution between the WGA and the studios, but that could take time to materialize and become untenable as the strike continues. Given the intractable positions on both sides — and the pace of policymaking generally — it seems safe to say we will all be watching a lot of reruns for the foreseeable future.

For now, some key guidelines can help companies use AI responsibly and help mitigate the risks.

A big one is transparency. If we assume AI-generated writing will be used in some capacity in Hollywood productions, studios should disclose their use of AI to the writers. Although not yet applicable to creative uses of generative AI, some state and city laws already require employers to give disclosures about AI use.

For example, New York City's recently enacted artificial intelligence law requires employers who use an "automatic employment decision tool" ("AEDT") to notify candidates before and about its specific use. After such disclosures, the candidate may request an alternative selection process or accommodation. Similarly, Illinois has proposed legislation that would require notification of applicants of AI use, and an explanation as to the "general types of characteristics" it uses to evaluate applicants and obtain their consent.

Screenwriters should know when they are working on the output of an AI or when their work is being evaluated by AI rather than a human reviewer. Studios shouldn't need to provide excruciating detail about how they're using AI tools, but general notice would give writers the opportunity to request more information and engage in negotiations aimed at protecting their interests.

Whether or not the new WGA agreement allows some use of AI, generative AI tools are here, and their capabilities are likely to grow.

Some have posited that the threat of AI to writers' careers may be overblown, as creativity, humor and emotion are the unique province of human beings, while AI statistically distills and reformulates data.

Can you envision a bot whipping off such impressive zingers as those emanating from the keystrokes of the writers from the indelible streaming series "The Marvelous Mrs. Maisel," as when Midge Maisel describes her decades-long relationship with her manager, Susie Meyerson, by stating: In its way, it was just like a marriage. It started with a contract, it ended with a lawsuit, and we never had sex." Alas, such shows represent the mountaintop while most remain firmly entrenched in the valley.

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