

1 Stephen P. Berzon (SBN 46540)
sberzon@altber.com
2 Stacey Leyton (SBN 203827)
sleyton@altber.com
3 P. Casey Pitts (SBN 262463)
cpitts@altber.com
4 Andrew Kushner (SBN 316035)
akushner@altber.com
5 ALTSHULER BERZON LLP
177 Post Street, Suite 300
6 San Francisco, California 94108
Telephone: (415) 421-7151
7 Facsimile: (415) 362-8064

8 Anthony R. Segall (SBN 101340)
asegall@rsglabor.com
9 Juhung Harold Lee (SBN 315738)
hlee@rsglabor.com
10 ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
11 Pasadena, California 91101
Telephone: (626) 796-7555
12 Facsimile: (626) 577-0124

13 Ethan E. Litwin (*pro hac vice*)
elitwin@constantinecannon.com
14 W. Stephen Cannon (*pro hac vice*)
scannon@constantinecannon.com
15 CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
16 New York, New York 10017
Telephone: (212) 350-2700
17 Facsimile: (212) 350-2701

18 *Attorneys for Defendants-Counterclaimants*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

19 WILLIAM MORRIS ENDEAVOR
20 ENTERTAINMENT, LLC, *et al.*,
21 Plaintiffs and Counterclaim Defendants,

22 v.

23 WRITERS GUILD OF AMERICA,
WEST, INC., *et al.*,
24 Defendants and Counterclaimants,
25 and PATRICIA CARR, *et al.*
26 Counterclaimants.

Ann M. Burdick (*pro hac vice*)
aburdick@wgaeast.org
Writers Guild of America, East, Inc.
250 Hudson Street, Suite 700
New York, New York 10013
Telephone: (212) 767-7800
Facsimile: (212) 582-1909

*Attorney for Defendant and
Counterclaimant Writers Guild of
America, East, Inc.*

Case No. 2:19-cv-05465-AB-AFM
**DECLARATION OF COLEMAN
BAZELON IN OPPOSITION TO
PRELIMINARY INJUNCTION
MOTION**

Hearing Date: Dec. 18, 2020
Hearing Time: 10:00am
Location: Courtroom 7B
Judge: Hon. André Birotte, Jr.

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1 **A. Introduction**

2 **A.1. Qualifications**

3 1. I am a Principal in the Washington, D.C. office of The Brattle Group.
4 My practice encompasses modern information infrastructure and the content that
5 fills it. My experience and expertise is in applying economic principles to
6 questions of valuation, regulation and policy, and market analysis. I frequently
7 testify in litigation and arbitrations and advise regulatory and legislative bodies,
8 including the U.S. Federal Communications Commission and the U.S. Congress.
9 My CV, enclosed in Appendix A, lists my education and professional activities
10 over my career.

11 2. In preparing this report, I, and Brattle staff working at my direction,
12 have reviewed several documents in this litigation, including the Declaration of
13 Edward A. Snyder¹ and declarations of seven showrunners and one union
14 executive. I have also analyzed data provided by WGA. In addition, I have
15 reviewed and drawn upon public sources related to TV production and writing. All
16 of the Materials Relied Upon are disclosed in Appendix B.

17 3. The Brattle Group is being compensated for my work on this matter at
18 my customary rate of \$700 per hour. That compensation is not in any way
19 dependent on the opinions I express on the issues in this case or the outcome of
20 this matter. I have been assisted in my work on this case by my colleagues at The
21 Brattle Group, for whose work The Brattle Group is being paid their regular rates.
22 This is an ongoing matter and I reserve the right to amend opinions if presented
23 with new information.

24

25

26 ¹ Declaration of Edward A. Snyder, Case No. 2:19-cv-05465-AB-AFM
27 (“Snyder Declaration”).

28

1 **A.2. Assignment**

2 4. I was asked by Counsel of the Writers Guild of America, West, Inc.
3 and Writers Guild of America, East, Inc. (collectively, “WGA”)² (1) to ascertain if
4 there “was the ‘presence of a job or wage competition or some other economic
5 interrelationship’”³ between showrunners and writers and (2) to address certain
6 opinions in the Snyder Declaration. Since showrunners primarily play a role on
7 television series, my declaration focuses on writing for television.⁴

8 **B. Summary of Opinions**

9 5. Based on my research and analyses described in this declaration, I
10 have concluded that:

- 11 a. Producing high caliber scripts is essential to the job of a showrunner. Most
12 showrunners develop their creative and writing talents through experience in
13 the writers’ room. Even after becoming showrunners, showrunners continue
14 to refer to themselves as writers and perform writing services, as defined in
15 the Writers Guild Theatrical and Television Basic Agreement (“MBA”)⁵, on
16 shows that they run. These writing services include drafting a script from

17
18 ² Writers Guild of America, West, Inc. and Writers Guild of America, East,
19 Inc. are separate labor unions that work together to negotiate and administer the
20 Writers Guild Theatrical and Television Basic Agreement or MBA between writers
21 and “major film producers and networks and stations.” Writers Guild of America,
22 East, “What is the Guild,” at “Where we come from...,” available at
<https://www.wgaeast.org/what-is-the-guild/>. See also Declaration of Charles
23 Slocum, December 4, 2020 (“Slocum Declaration”) ¶13.

24 ³ *American Federation of Musicians of the United States and Canada et al. v.*
25 *Carroll et al.*, 391 U.S. 99, 106 (1968), available at
<https://www.loc.gov/item/usrep391099/>.

26 ⁴ I refer to television and digital media when I use the term “television.”

27 ⁵ Writers Guild of America, 2017 Theatrical and Television Basic Agreement
(Effective May 2, 2017 through May 1, 2020),
<https://www.wga.org/uploadedfiles/contracts/mba17.pdf> (“MBA 2017-2020”). For
28 more details on the MBA’s definition of writing services, see *infra* ¶13.

1 scratch, providing notes and edits to other writers, and rewriting to ensure the
2 quality of the script.

3 b. Showrunners interchangeably work on projects as showrunners and as non-
4 showrunner writers. It is common to have a former showrunner as a senior
5 writer on the writing staff.

6 c. Writing services provided by showrunners and non-showrunner writers are
7 substitutable and economically interrelated in that writing services provided
8 by showrunners affect the compensation and hours of non-showrunner
9 writers. Three ways in which writing services provided by showrunners
10 influence compensation and hours of non-showrunner writers are:

11 i. Showrunners often face a fixed budget on the show to cover compensation
12 for writing services.

13 ii. Showrunners receive and voluntarily decline writing credits that would go
14 to non-showrunner writers and thereby impact compensation and future job
15 prospects. For scripted television series between 2010-11 and 2018-19, one
16 out of five writing credits, on average, went to a showrunner.

17 iii. Showrunners who perform writing services reduce hours required by
18 other writers, including additional hires.

19 d. Dr. Snyder's assessment and conclusions are problematic for the following
20 reasons:

21 i. Dr. Snyder's test of labor substitutability is overly restrictive for the
22 purpose of evaluating economic interrelatedness between showrunners and
23 non-showrunner writers. His test asks whether a writer can serve as a
24 substitute for the job of a showrunner and a showrunner can substitute for
25 the job of a writer. Instead, the relevant question is whether a showrunner's
26 provision of writing services can substitute for that of a writer's services. It
27

1 is not relevant in assessing the market for writing services whether a writer
2 can perform a showrunner’s job. It is similarly irrelevant that showrunners
3 have responsibilities in addition to providing writing services.

4 ii. Dr. Snyder claims that showrunners and non-showrunner writers are not
5 substitutable because they have different job responsibilities, different
6 levels of compensation, and different forms of compensation. As described
7 above, the extent to which showrunners have responsibilities in addition to
8 writing tasks is not relevant, and showrunners can and do provide writing
9 services that are substitutable with those of non-showrunner writers. To the
10 extent that differences in the level of compensation for writing services
11 exist and are not solely driven by terms set in the MBA, these differences
12 would be expected to affect the allocation of tasks and hours between
13 showrunners and non-showrunner writers, but do not imply that their
14 writing services are not substitutable. Differences in the forms of
15 compensation would be expected to affect the incentives (and effort levels)
16 of showrunners and non-showrunner writers, but do not imply that their
17 writing services are not substitutable.

18 iii. Moreover, several facts presented by Dr. Snyder are incorrect. First,
19 Dr. Snyder’s descriptions of showrunners suggest that showrunners’
20 primary role is managerial. The testimonies of showrunners in this matter
21 disagree and, instead, state that writing is fundamental to their positions.
22 Second, Dr. Snyder claims that showrunners and non-showrunner writers
23 are not substitutable but fails to acknowledge that there are talents “on the
24 margin” who interchangeably work in both capacities. Third, in his
25 anecdotal comparisons of compensation between showrunners and writers
26 on staff, Dr. Snyder juxtaposes individuals with substantially different
27

1 levels of experience and writing skill. Instead, if Dr. Snyder compared
2 “green” showrunners with, for example, seasoned Co-Executive Producers,
3 then the differences would be smaller.

4 **C. Framework of Analysis**

5 6. The central question I have been asked to evaluate is: when
6 showrunners write, are they displacing writing by non-showrunner writers? This
7 goes to the heart of whether or not there “was the ‘presence of a job or wage
8 competition or some other economic interrelationship’” between showrunners and
9 writers. Whether showrunners and non-showrunner writers are economically inter-
10 related is a question of whether or not writing services provided by showrunners
11 can substitute for writing services provided by non-showrunner writers. It is not, as
12 Dr. Snyder implies, a question of whether showrunners and non-showrunner
13 writers are in the same antitrust labor market.⁶

14 7. Within the context of television production, the question of economic
15 interrelatedness can be understood by empirically examining the extent to which
16 showrunners perform writing services that can also be provided by non-

17
18 ⁶ By referencing the standards for market definition as presented in the
19 Horizontal Merger Guidelines, Dr. Snyder equates the question of whether there is
20 “job or wage competition” between showrunners and other writers, “or some other
21 economic interrelationship” among them, with the question of whether two
22 products are in the same antitrust market (see Snyder Declaration at ¶15 and
23 footnote 12). The antitrust market definition test, applied here, would fail to
24 capture important economic relationships. For example, it is well understood that
25 independently owned, *complementary* products can create a “Cournot effect”
through market competition that can increase prices paid by buyers (e.g., carriage
prices paid for television channels by cable companies can be higher under
independent ownership than under common ownership). Such products are clearly
economically interrelated even if they are not substitutes.

26 U.S. Department of Justice and the Federal Trade Commission, Horizontal
27 Merger Guidelines, August 19, 2010, available at
<https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>.

1 showrunner writers, irrespective of whether showrunners compete in economically
2 distinct antitrust markets. Within television production, whether showrunners can
3 “substitute” for writers can be reflected by examination of areas of overlap (e.g.,
4 writing scripts) and the extent to which script-writing by either writers or
5 showrunners reduces the demand for script-writing by the other. Other areas of
6 non-overlap responsibility, such as the potential management roles that a
7 showrunner might take on, may inform the opportunity costs of the showrunner’s
8 time and efforts, but do not provide a basis for assessing substitutability of
9 showrunner versus non-showrunner writing.

10 8. To answer this question I look at both descriptive and empirical
11 information. As described in more detail below in the Background section,
12 showrunners are primarily writers. Consequently, the key descriptive evidence to
13 answer the question of ‘job or wage competition’ is whether the writing performed
14 by showrunners displaces writing done by non-showrunner writers. It is not
15 necessary to show that the writing done by showrunners is completely the same as,
16 and always interchangeable with, writing by non-showrunner writers. Rather, the
17 question is whether there is some substantive overlap between the writing
18 showrunners and non-showrunner writers perform. Showrunners are often lead
19 writers in a writers’ room and they typically provide more creative direction than
20 other writers. But whether taking the lead role in writing a specific episode or
21 reviewing, editing or polishing a script initially drafted by another writer, the
22 evidence below shows that showrunners are performing a task – writing – that
23 would have to be performed by a non-showrunner writer if the showrunner were
24 not doing it.

25 9. I also look to empirical evidence to test the “economic
26 interrelationship” between writing done by showrunners and non-showrunners. I
27

1 requested data from WGA on writing credits and pension contributions for scripted
2 television series between the 2010-2011 and 2018-2019 seasons. Using these data,
3 I calculated the share of shows, i.e., a season of a series (such as *New Girl*, Season
4 3), where showrunners received writing credit⁷, and the share of writing credits that
5 were ascribed to showrunners. In addition, I computed the share of showrunners
6 who received writing compensation, as evidenced by studio contributions to
7 WGA’s health and pension fund on behalf of the showrunner. These statistics show
8 how often showrunners receive reportable writing compensation, which may
9 displace salary that would otherwise go to non-showrunner writers, and writing
10 credits, which displaces credits and residuals that would otherwise go to non-
11 showrunner writers.

12 **D. Background**

13 10. In this section, I provide an overview of the process of writing for
14 television and ways in which writers and showrunners are compensated for their
15 writing services. First, in Section D.1, I describe the process of writing for
16 television, which corresponds to WGA’s definition of writing services that are
17 covered in the MBA. Next, in Section D.2, I summarize WGA’s rules concerning
18 compensation for writers including the minimum salary, residuals, script fees, and
19 pension contributions. Section D.3 discusses WGA’s membership and the purview
20 of its activities.

21 _____
22 ⁷ “Writing credits” include “written by,” “story by,” “television story by,”
23 “teleplay by,” “adaptation by,” “narration written by,” “written for television by,”
24 “written and directed by,” and “written, produced and directed by.” I do not
25 include “separated rights” such as “created by” and “developed by” because these
26 credits are not ascribed to writers on an episode-by-episode basis. See Writers
27 Guild of America, West and Writers Guild of America East, “Television Credits
28 Manual,” 18-24 and 26-31, available at
https://www.wga.org/uploadedfiles/credits/manuals/tvcredits_manual10.pdf.

1 **D.1. The Process of Writing for Television and Definition of Writing Services**

2 11. Writers⁸ are central to the creation and production of television
3 entertainment. When describing the “key consistent characteristics” of television in
4 the first chapter of his book *The Business of Television*, Ken Basin—Senior Vice
5 President of Business Affairs at Paramount Television—stated, “First, television is
6 a writer-driven medium.”⁹ The centrality of writers is echoed by Bob Levy,
7 Executive Producer of shows such as *Gossip Girl* and *Pretty Little Liars*, in
8 *Television Development: How Hollywood Creates New TV Series* where he names
9 an idea and a writer as the two “essential creative elements of all development.”¹⁰
10 Writing drives television entertainment.

11 12. The process of writing for a new television series typically involves a
12 pilot, team of writers, and many hours of writing, commenting, editing, and re-
13 writing. After successfully pitching to a studio on an idea, a writer or team of

14 ⁸ “Writers” includes talents who may have titles that do not have the word
15 “writer.” These titles include Executive Producer and Co-Executive Producer,
16 Supervising Producer, Consulting Producer, Producer and Co-Producer, Executive
17 Story Editor, and Story Editor. For additional details about titles and their roles,
see *infra* ¶14.

18 ⁹ Ken Basin, *The Business of Television*, (New York: Routledge, 2019), 2-3
19 (“Basin 2019”) (“First, television is a writer-driven medium. ...In television, in the
20 vast majority of cases, the lead creative force behind a series (the ‘showrunner’) is
21 a writer. ...In television, most of the credited producers of a series are writers, who
22 shepherd the project throughout its life cycle. ...The dominant role played by
writers in the television industry manifests itself in the process, and the deals, that
brings a series to life.”).

23 ¹⁰ Bob Levy, *Television Development: How Hollywood Creates New TV*
24 *Series*, (New York: Routledge, 2019), 8 (“Levy 2019”) (“The first and most
25 fundamental creative element of any development is the idea itself. ...The second
26 essential creative element of all development is a writer, a screenwriter. The goal
of development is to create and perfect a script. A screenwriter is necessary to
transform the idea into dramatic, narrative form, into a script. An idea and a
screenwriter are the two basic, essential creative elements of all development.”).

1 writers write and develop a pilot episode.¹¹ If the studio agrees to order the series,
2 the project moves to the writers’ room. In the writers’ room, a team of writers will
3 lay out the story arc over the season (“break the season”), divide the story into
4 episodes, and assign an individual writer or writing teams to draft specific
5 episodes.¹² The writing staff is led and managed by a senior writer, usually the
6 showrunner.¹³ Other writers on staff, particularly more senior writers such as the
7 showrunner, review and edit (and often rewrite) the draft scripts.¹⁴ The television
8

9 ¹¹ A pilot is a “standalone episode of a television series that is used to establish
10 and demonstrate the style and content of a proposed television series, and to
11 persuade a network to order production of a full season’s worth of episodes for that
12 series” (Basin 2019, 266-267).

12 ¹² Basin 2019, 44-45 (“Although a television pilot is almost always the product
13 of the mind of a single writer (or writing team), a television series is inevitably a
14 collaboration among a team of writers. The next stage of the process is to engage a
15 ‘writer’s room’ – a group of writers and writer/producers who, together, will not
16 only determine the story and write the scripts for the coming season, but serve as
17 key lieutenants to the showrunner and help creatively lead the production of a
18 newborn television series. ...the ‘writer’s room’ will come together to ‘break the
19 season’ (i.e., to determine the overarching narrative and character arcs for the
20 season), before the individual writers and writing teams are assigned specific
21 episodes to write.”). See also Jessica Gao, “12 Things I Wish I Knew Before I
22 Became a TV Writer,” *Glamour*, November 20, 2015, available at
23 [https://www.cosmopolitan.com/entertainment/tv/a49602/things-i-wish-i-knew-
24 before-i-became-a-tv-writer/](https://www.cosmopolitan.com/entertainment/tv/a49602/things-i-wish-i-knew-before-i-became-a-tv-writer/) and Jason Hellerman, “What’s a Writers’ Room and
25 How Do They Work?,” *No Film School*, October 22, 2019, available at
26 <https://nofilmschool.com/writers-room-definition>.

27 ¹³ Slocum Declaration ¶10 and ¶12. See also Writers Guild of America, West
28 and Writers Guild of America, East, “Writing for Episodic TV: From Freelance to
Showrunner,” 2004, 44.

¹⁴ Jason Hellerman, “What’s a Writers’ Room and How Do They Work?,” *No
Film School*, October 22, 2019, available at [https://nofilmschool.com/writers-
room-definition](https://nofilmschool.com/writers-room-definition) (“Co-Executive Producer – The second-in-command on every
show, the ‘Number Two,’ the Co-EP is the showrunner’s right-hand person. You
review and rewrite scripts before they go to the showrunner. You’re basically a

1 network also reads and sends notes on the scripts to the writers. Even after the
2 script is finalized for production, writers may further edit the script depending on
3 feedback from the table-read or director.¹⁵

4 13. The definition of writing services in the MBA encompasses the range
5 of activities involved in script development. Specifically, the MBA names “the
6 performance of personal services in writing or preparing [‘literary material’¹⁶] or in
7 making revisions, modifications, or changes therein.”¹⁷ Moreover, this definition
8 applies to an individual who performs these activities but whose employment
9 contract may not explicitly “describe or require” these services.¹⁸ The terms of the
10 MBA apply to services and literary material that satisfy this definition.¹⁹

11 14. Under the MBA’s definition of writing services, there are numerous
12 types of individuals who write and also work in “additional capacities” on the same
13 project.²⁰ The industry refers to these individuals as “hyphenates.”²¹ Hyphenates’
14 showrunner in training.”). See also Writers Guild of America, West and Writers
15 Guild of America, East, “Writing for Episodic TV: From Freelance to
16 Showrunner,” 2004, 37-38.

17 ¹⁵ Declaration of Michael Schur, December 3, 2020 (“Schur Declaration”) ¶3;
18 Declaration of David Shore, December 3, 2020 (“Shore Declaration”) ¶13.

19 ¹⁶ “Literary material” includes “stories, adaptations, treatments, original
20 treatments, scenarios, continuities, teleplays, screenplays, dialogue, scripts,
21 sketches, plots, outlines, narrative synopses, routines, and narrations, and, for use
22 in the production of television film, formats.” (MBA 2017-2020, Article 1.A.1.).

23 ¹⁷ MBA 2017-2020, Article 1.C.1.

24 ¹⁸ MBA 2017-2020, Article 1.C.1 (“...(2) engaged by Company and who
25 performs services (at Company’s direction or with its consent) in writing or
26 preparing such literary material or making revisions, modifications, or changes in
27 such material **regardless of whether such services are described or required in
28 his/her contract of employment.**”) (emphasis added).

¹⁹ MBA 2017-2020, Article 2.A.2.

²⁰ MBA 2017-2020, Article 14.A.

²¹ Writers Guild of America, West and Writers Guild of America, East,
“Writing for Episodic TV: From Freelance to Showrunner,” 2004, 31. See also

1 job titles may include executive producer (including showrunners), producer,
2 associate producer or story editor.²² The MBA recognizes the “difficulty of
3 ascertaining the amount, duration, nature and extent of the services rendered by
4 such person as a writer,” and states that, by agreement, hyphenates “shall be
5 deemed to have performed services as a writer” throughout the production
6 season.²³ Chris Keyser, a writer and showrunner for film and television series such
7 as *Party of 5*, underscores the difficulty in delineating between writing and non-
8 writing services: “It is impossible to separate the writing and producing aspects of
9 a showrunner’s work because the two are completely intertwined.”²⁴ Therefore,
10 when referring to writers, the television industry typically includes producers and
11 story editors alongside talents who have “writer” in their job title.²⁵

12 **D.2. Compensation for Writing Services and Writing Credits**

13 15. Studios compensate writers with salaries, script fees, and residuals:²⁶

14 Slocum Declaration ¶7.

15 ²² MBA 2017-2020, Article 14.A.

16 ²³ MBA 2017-2020, Articles 14.A and 14.D.

17 ²⁴ Declaration of Chris Keyser, December 2, 2020 (“Keyser Declaration”) ¶9.

18 See also Keyser Declaration ¶10 (“In fact, the key to effective television
19 productions is the efficiency of having someone who can both produce *and* write.”)
20 (emphasis in original).

21 ²⁵ As examples, see definition of “writer” on p. 3 of United Talent Agency,
22 “UTA TV Writing Data Analysis: Impact of Packaging on TV Writer Revenue,”
23 March 20, 2019, available at [https://agentsforartists.com/wp-
content/uploads/2019/05/UTA-Packaging-Data-Analysis_3.20.19.pdf](https://agentsforartists.com/wp-content/uploads/2019/05/UTA-Packaging-Data-Analysis_3.20.19.pdf) and the list
of writer job titles in Eric Haywood, “Writers’ Room 101: TV Writer Job Titles,”
Script, June 2, 2015, available at [https://scriptmag.com/features/writers-room-101-
tv-writer-job-titles](https://scriptmag.com/features/writers-room-101-tv-writer-job-titles).

24 ²⁶ These three forms of compensation are common among writers regardless of
25 title and do not serve as an exhaustive list. An example of another form of
26 compensation is a character payment for introducing a new character on the series
(MBA 2017-2020 Article 15.B.14.h). See also Basin 2019, 117-124.

27 Some writers, such as the creator of a series (who may not be the

- 1 a. *Salaries* are typically specified as a per week or per episode rate and are
2 subject to the MBA minimum basic compensation requirement.²⁷ The MBA
3 minimum varies by factors such as the length of program (e.g., 30 minutes
4 versus 60 minutes), platform (e.g., network versus cable), and the writer’s job
5 title.²⁸ Writers’ salaries come out of the project’s writing budget that the
6 studio sets.²⁹
- 7 b. *Script fees* are paid on top of salaries for writers who hold the job title of story
8 editor or above.³⁰ The script fee only goes to the specific writer who wrote the
9 initial draft of the script.³¹ On many shows, different writers on staff will

10 showrunner), may also receive bonuses, perks (such as an exclusive assistant), and
11 “backend,” which is usually calculated as a share of the studio’s modified adjusted
12 gross receipts. See Basin 2019, 109-112 (on bonuses and backend) and 115-117.

13 ²⁷ Basin 2019, 119-120.

14 ²⁸ For example, see Writers Guild of America, Schedule of Minimums,
15 Revised October 2020, available at
<https://www.wga.org/uploadedFiles/contracts/min20.pdf> and Writers Guild of
16 America, West and Writers Guild of America, East, “Writing for Episodic TV:
17 From Freelance to Showrunner,” 2004, 18-19.

18 ²⁹ Writers Guild of America, West and Writers Guild of America, East,
19 “Writing for Episodic TV: From Freelance to Showrunner,” 2004, 43. See also
20 *infra* Section F.1.

21 ³⁰ Basin 2019, 121 (“The showrunner generally assigns each episode of a
22 series to a specific writer, subject to studio and network approval. ... For Staff
23 Writers – and sometimes, though not usually, for Story Editors and Executive
24 Story Editors – episodic script fees are applicable against the writer’s weekly fees.
25 For most Story Editors and Executive Story Editors, and all writers more senior
26 than that, episodic script fees are paid on top of the writer’s negotiated weekly or
27 episodic fees”). The “hierarchy” of job titles in the writers’ room is staff writer,
28 story editor, executive story editor, co-producer, producer, supervising producer,
co-executive producer, and executive producer (including showrunner). Eric
Haywood, “Writers’ Room 101: TV Writer Job Titles,” *Script*, June 2, 2015,
available at <https://scriptmag.com/features/writers-room-101-tv-writer-job-titles>.

³¹ Basin 2019, 121. See also Writers Guild of America, “Schedule of
Minimums,” Revised October 2020, available at

1 write the initial drafts of scripts and receive the associated fees for those
2 scripts.³²

3 c. *Residuals* are payments for the “reuse of a credited writer’s work,”³³ and
4 residuals are typically calculated either as share of the company’s revenue or
5 as a fixed amount per showing.³⁴ Reuse refers to the airing of an episode after
6 its original season. Writers receive residuals on episodes for which they have
7 one or more writing credits.³⁵

8 16. Writing credits are limited and, like script fees, are often allocated
9 across writers on the writing team when the showrunner assigns specific writer(s)
10 to draft scripts. The MBA restricts the number of writers who can receive writing
11 credits for each episode; except in “unusual cases,” no more than two writers will
12 share a writing credit.³⁶ The general practice in the industry is to give writing credit

13
14 <https://www.wga.org/uploadedFiles/contracts/min20.pdf>, 18 (“Script Fee - For
15 each script on which a writer, other than the Header Writer, performs writing
16 services, such writer will be paid not less than...”).

17 ³² Writers Guild of America, West and Writers Guild of America, East,
18 “Writing for Episodic TV: From Freelance to Showrunner,” 2004, 18-19.

19 ³³ Writers Guild of America West, “Residual Survival Guide,” at “What are
20 residuals?,” available at

21 <https://www.wga.org/members/finances/residuals/residuals-survival-guide>
22 (emphasis in original).

23 ³⁴ Writers Guild of America West, “Residual Survival Guide,” at “How are
24 residuals calculated?,” available at

25 <https://www.wga.org/members/finances/residuals/residuals-survival-guide>.

26 ³⁵ See *supra* fn. 7 on writing credits. See also Writers Guild of America West,
27 “Residual Survival Guide,” at “Who receives residuals?,” available at

28 <https://www.wga.org/members/finances/residuals/residuals-survival-guide>.

29 ³⁶ MBA 2017-2020, Television Schedule A, Paragraph 3 (“Screen credit for
30 teleplay will not be share by more than two (2) writers, except that in unusual
31 cases, and solely as the result of Guild arbitration provided hereunder, the names of
32 three (3) writers or the names of two (2) writing teams may be used.”).

1 to the writer or writing team who writes the episode’s initial draft of the script
2 “from scratch.”³⁷

3 17. Writing compensation serves as the basis for the amount that studios
4 contribute to WGA’s pension and health plans on behalf of the writer. For these
5 contributions, writers’ salaries and residuals count as reportable compensation.³⁸
6 Studios pay 10.5 percent to 11.5 percent (depending on year) for the health plan
7 and an additional 8.5 percent for the pension plan.³⁹ For hyphenates, a benefit of
8 receiving compensation allocated to writing is gaining access to the WGA health
9 fund and pension plan. Studios are incentivized to minimize the amount paid as
10 reportable writing compensation because of the health and pension plan
11 contributions.⁴⁰

12 **D.3. Membership in the Writers Guild of America**

13 18. Membership eligibility involves the demonstration of employment
14 related to writing services and depends on whether the writer wishes to join WGA
15 West or WGA East:

- 16 a. WGA West requires writers to accumulate 24 or more units over the
17 preceding three years to be a full member (“current membership,” as opposed
18 to “associate membership”); units are based on engagements, such as one
19 week of employment within the Guild’s jurisdiction (2 units) or a “[bible] for
20 any television serial or primetime miniseries for at least four hours” (24

21 ³⁷ As examples, see Schur Declaration ¶7, Shore Declaration ¶8, and Keyser
22 Declaration ¶4.

23 ³⁸ Writers Guild of America Pension Plan and Writers’ Guild-Industry Health
24 Fund, What is Reportable?, Effective May 2, 2014, available at
https://wgaplans.org/contributions/forms/Reportable_Summary_Schedule.pdf.

25 ³⁹ PWGA Pension & Health Plans, “How Contributions Work,” available at
26 <https://wgaplans.org/dues-vs-contributions/>.

27 ⁴⁰ Schur Declaration ¶9.

1 units).⁴¹ The duration of current membership in WGA West is no less than 7
2 years from the time when the writer is admitted and extends for an additional
3 4 years from the end of the calendar quarter when the writer has one or more
4 employment or sales that counts towards covered earnings.⁴²

5 b. WGA East requires that the writer is “hired by a company who is a Guild
6 signatory” and that the writer’s work “falls under the jurisdiction of either a
7 Freelance or Staff contract.”⁴³ The duration of current member in WGA East
8 is 10 years from “the last day of Guild covered employment as long as the
9 member remains in good standing,” such as being current on membership
10 dues.⁴⁴

11 19. Members pay dues to WGA each quarter. Dues are calculated as 1.5
12 percent of writing compensation, including weekly salary, script fees, and
13 residuals, before taxes and commissions plus a base payment of \$25 per quarter.⁴⁵

14 ⁴¹ Writers Guild of America West, “How to Become a Member,” available at
15 <https://www.wga.org/the-guild/going-guild/join-the-guild>.

16 ⁴² Writers Guild of America West, “Constitution and Bylaws of the Writers
17 Guild of America, West, Inc.,” Revised May 3, 2016, available at
18 <https://www.wga.org/members/membership-information/constitution#4>, Article
19 IV.A.4.f. (“Duration of Current Membership”).

20 ⁴³ Writers Guild of America East, “Member Eligibility,” available at
21 <https://www.wgaeast.org/eligibility/>.

22 ⁴⁴ Writers Guild of America East, “Writers Guild of America, East
23 Constitution and By-Laws,” Revised June 20, 2011, available at
24 <https://www.wgaeast.org/constitution/#IV>, Article IV.2.A (“Current
25 Membership”).

26 ⁴⁵ Writers Guild of America West, “Declaring Your Earnings for WGAW
27 Dues,” available at <https://www.wga.org/members/finances/declaring-your-earnings-for-wgaw-dues>. Members pay the base payment of \$25 per quarter
28 regardless of whether they received writing compensation during the quarter.

The durations over which WGA West and WGA East allow members to maintain their “current membership” (4 to 10 years after their last writing employment as discussed above) account for the sporadic nature of Hollywood

1 For hyphenates, writing compensation is separated out in their contracts so that
2 studios can pay contributions to WGA’s health and pension plans based on the
3 specified amount.

4 20. WGA is a writer’s union and its purview covers writing services as
5 defined in the MBA, which I summarized in Section D.1 above.⁴⁶ I understand that
6 WGA’s action calling for the termination of non-franchised agencies did not
7 extend to their members’ non-writing services. In its FAQ on the Implementation
8 of Working Rule 23,⁴⁷ WGA explicitly stated that they “cannot direct [the talent] to
9 leave [the talent’s] agency for work that isn’t covered by the WGA, although we
10 encourage you to be represented for all your work by a franchised agency that is
11 not conflicted.”⁴⁸ WGA’s requirement to work with a franchised agency was **only**

12 engagements. My empirical analysis focuses on writing credits and evidence of
13 writing compensation among talents who were employed on a project.

14 ⁴⁶ Writers Guild of America West, “Guide to the Guild,” available at
15 <https://www.wga.org/the-guild/about-us/guide-to-the-guild> (“We are the Writers
16 Guild of America West (WGAW), a labor union composed of the thousands of
17 writers who write the content for television shows, movies, news programs,
18 documentaries, animation, and Internet and mobile phones (new media) that keep
19 audiences constantly entertained and informed.”) and Writers Guild of America
20 East, “What is the Guild?,” available at <https://www.wgaeast.org/what-is-the-guild/>
21 (“The Writers Guild of America, East, AFL-CIO (WGAE) is a labor union
22 representing thousands of members who write content for motion pictures,
23 television, news and digital media.”).

24 ⁴⁷ Writers Guild of America West, Code of Working Rules, Revised
25 September 24, 1986, available at [https://www.wga.org/members/membership-](https://www.wga.org/members/membership-information/constitution/working-rules)
26 [information/constitution/working-rules](https://www.wga.org/members/membership-information/constitution/working-rules). (“23. No writer shall enter into a
27 representation agreement whether oral or written, with agent who has not entered
28 into an agreement with the Guild covering minimum terms and conditions between
agents and their writer clients.”).

⁴⁸ See response to the question, “I’m represented by an agency for both writing
and another area of work not covered by the Guild (stand-up performance, acting,
directing, writing plays, etc.). Is it mandatory that I leave the agent for my non-
Guild-covered work?” at Writers Guild of America West, “WGA-Agency

1 **mandatory** as applied to their members’ **writing services**. It is my understanding
2 that to the extent WGA members seek to work with non-franchised agents on
3 projects where they are not hired to provide any of the writing services set forth in
4 the MBA, they are free to do so.⁴⁹ As a consequence and in accordance with my
5 understanding of the issues in this matter, my analysis focuses on WGA members,
6 who by definition are involved in writing.

7 **E. Many Showrunners Begin Their Careers as Writers and Continue to**
8 **Perform Writing Services Regardless of Whether They Are Engaged as a**
9 **Showrunner on a Show**

10 21. The term “showrunner” emerged as writers took on more responsibilities in
11 creating and producing television shows. “Showrunner” served as a shorthand to

12 _____
13 Campaign, Working Rule 23 Implementation FAQ,”
14 [https://www.wga.org/members/membership-information/agency-](https://www.wga.org/members/membership-information/agency-agreement/working-rule-23-implementation-faq)
15 [agreement/working-rule-23-implementation-faq](https://www.wga.org/members/membership-information/agency-agreement/working-rule-23-implementation-faq) (emphasis added).

16 WGA provided members with a form letter specifying that a non-franchised
17 agency would not represent the talent for “covered writing services,” i.e., writing
18 services under the MBA. Carol Mendelsohn is an example of a showrunner who
19 used this form letter and ended her relationship with a non-franchised agency “only
20 for writing work.” See Declaration of Carol Mendelsohn, December 3, 2020
21 (“Mendelsohn Declaration”) ¶10.

22 ⁴⁹ For example, in April 2019, Adam McKay ended his relationship with
23 William Morris Endeavor Entertainment, LLC (“WME”) for writing services.
24 Although WME no longer represents Mr. McKay for his writing work, the agency
25 continues to represent Mr. McKay for his producing and directing work.
26 Declaration of Adam McKay, November 29, 2020 (“McKay Declaration”) ¶¶10-
27 12. See also Borys Kit, “Adam McKay Signs First-Look Film Deal With
28 Paramount,” *The Hollywood Reporter*, November 8, 2019, available at
[https://www.hollywoodreporter.com/news/adam-mckay-signs-first-look-film-deal-](https://www.hollywoodreporter.com/news/adam-mckay-signs-first-look-film-deal-paramount-1253399)
[paramount-1253399](https://www.hollywoodreporter.com/news/adam-mckay-signs-first-look-film-deal-paramount-1253399) (“In the announcement, McKay made it a point to note that his
company stands in solidarity with the WGA and that no Hyperobject Industries
project will be part of any packaging deals through WME, which represents
McKay as a director and producer.”).

1 “separate the person making final creative decisions from other producers.”⁵⁰ In
2 this section, I discuss how most showrunners start their careers in television
3 entertainment as writers (Section E.1) and continue to perform writing services,
4 regardless of whether they serve as the showrunner on the project (Sections E.2
5 and E.3). The following section (Section F) shows how writing services
6 contributed by showrunners can and does displace writing services of non-
7 showrunner writers.

8 **E.1. Showrunners Often Start as Writers and Become Showrunners After**
9 **Demonstrating That They Have the Creative Aptitude to Develop a Show**

10 22. The fact that most showrunners start their careers in entertainment as
11 writers is well accepted. WGA’s booklet *Writing for Episodic TV: From Freelance*
12 *to Showrunner*, which was written by showrunners such as Al Jean (*Simpsons*) and
13 Jeff Melvoin (*Killing Eve*), steps through the pathway to showrunner across four
14 job levels: freelancer, staff writer/story editor, writer-producer, and executive
15 producer.⁵¹ The primary job of a showrunner is to deliver quality scripts on time
16 for production. David Shore testified that, “What studios hire me to do, and what I
17 am paid to do, is be the head writer; to deliver up to twenty-four scripts per season
18 that are written to my caliber of screenwriting,”⁵² which David has developed over

19 _____
20 ⁵⁰ Cindy Y. Hong, “When Did People Start Saying ‘Showrunner’?,” *Slate*,
21 October 14, 2011, available at <https://slate.com/culture/2011/10/showrunner-meaning-and-origin-of-the-term.html>.

22 ⁵¹ Writers Guild of America, West and Writers Guild of America, East,
23 *Writing for Episodic TV: From Freelance to Showrunner*, 2004.

24 ⁵² Shore Declaration ¶3. See also Declaration of Barbara Hall, December 3,
25 2020 (“Hall Declaration”) ¶6 (“On network television, *the* job that a showrunner is
26 paid to do is to ensure that a quality script is released and ready to be filmed every
27 eight days.”) (emphasis in original) and Levy 2019, 22 (“When a showrunner
28 delivers an outline of a story to the network and studio current executives, or
delivers a final draft of an episode script to the cast and crew of the series, the buck

1 more than 20 years.⁵³ Given the importance of generating quality scripts, it is not
2 surprising that most showrunners “have a writing background, usually in
3 television, and work their way up from being part of a writers’ room.”⁵⁴ Moreover,
4 the advice for becoming a showrunner is to “practice, practice, practice” writing.⁵⁵
5 Showrunners are typically writers who have creative talent and developed
6 experience through on-the-job training.

7 23. Along their career path, showrunners may have previously served as
8 the “Number Two” writer in the writers’ room. The “Number Two” writer would
9 have responsibilities such as leading the writers’ room when the showrunner is not
10 present.⁵⁶ For example, the “Number Two” writer may have the job title of “Co-
11 Executive Producer” and be responsible for “[reviewing] and [rewriting] scripts
12 before they go to the showrunner. You’re basically a showrunner in training.”⁵⁷
13
14

15 stops with the showrunner – he or she is responsible for its content and quality.”).

16 ⁵³ Shore Declaration ¶2.

17 ⁵⁴ Cori Hundt, “How to Become a Showrunner,” *Backstage*, available at
<https://www.backstage.com/magazine/article/become-showrunner-553/>. See also
18 Levy 2019, 22 (“Almost all showrunners are seasoned TV writers.”).

19 ⁵⁵ Cori Hundt, “How to Become a Showrunner,” *Backstage*, available at
<https://www.backstage.com/magazine/article/become-showrunner-553/>. See also
20 Davey Holmes, “How to Become a Showrunner,” *Careers in Film*, June 12, 2019,
21 available at <https://www.careersinfilm.com/showrunner/>, (“Showrunners are
22 almost exclusively products of Writers’ rooms so any experience writing on a
show is essential. ... The essential craft is built through hours of writing, then
letting it fly.”).

23 ⁵⁶ Writers Guild of America, West and Writers Guild of America, East,
Writing for Episodic TV: From Freelance to Showrunner, 2004, 34-35.

24 ⁵⁷ Jason Hellerman, “What’s a Writers’ Room and How Do They Work?,” *No*
25 *Film School*, October 22, 2019, available at [https://nofilmschool.com/writers-](https://nofilmschool.com/writers-room-definition)
26 [room-definition](https://nofilmschool.com/writers-room-definition). Co-Executive Producers may also be former showrunners in the
writers’ room; see Keyser Declaration ¶14.
27

1 24. Showrunners continue to think of themselves as writers even after
2 reaching the status of showrunner or executive producer. Elizabeth Meriwether,
3 showrunner for *New Girl*, called herself a writer in an interview about the final
4 season of *New Girl*.⁵⁸ Bob Levy characterized showrunners as “almost always the
5 head writer of a show’s writing staff.... Almost all showrunners are seasoned TV
6 writers. As head writer, the showrunner leads the writing staff in creating every
7 story for every episode....”⁵⁹ Even as the creative lead on a television show,
8 showrunners consider themselves and are often seen as writers in the industry.⁶⁰
9

10 ⁵⁸ Jessica Radloff, “‘New Girl’ Was Never Meant to Be ‘Adorkable’ – but We
11 Fell for It Anyway, *Glamour*, April 10, 2018, available at
12 <https://www.glamour.com/story/new-girl-final-season> (“My initial instinct was to
13 do everything myself and not communicate everything. For better or for worse, I
14 had to learn how to accept help and become more of a leader as opposed to a kid
15 who could write. It wasn’t an easy process. It was really hard, and it’s not natural
16 to me. **There’s a reason I’m a writer.** I like being alone in a room writing. But
17 when I did that, when I opened myself up to the writers and the crew and the
18 actors, it paid back in dividends. It’s why we could keep going for seven years.”)
19 (emphasis added).

20 ⁵⁹ Levy 2019, 22 (“The showrunner is almost always the head writer of a
21 show’s writing staff (which might number anywhere from four to twenty writers).
22 **There are a small number of non-writing EP showrunners, but they are few
23 and far between.** Almost all showrunners are seasoned TV writers. As head
24 writer, the showrunner leads the writing staff in creating every story for every
25 episode, assigns the writing of episode scripts to writers on the staff and to
26 freelance writers, notes (gives creative feedback to) writers on all the many drafts
27 of episodes and, when necessary, rewrites other writers’ scripts herself. When a
28 showrunner delivers an outline of a story to the network and studio current
executives, or delivers a final draft of an episode script to the cast and crew of a
series, the buck stops with the showrunner – he or she is responsible for its content
and quality.”) (emphasis added).

⁶⁰ For example, see Basin 2019, 270 (“The showrunner is typically a writer,
and frequently/ideally the writer who wrote the pilot script and created the series
(if that individual is senior and experienced enough to be able to handle the role)”).

1 25. The idea that as a professional progresses through their career and
2 gains added responsibilities while still having an intertwined economic relationship
3 with more entry level colleagues is not unique to writing for TV. Dr. Snyder uses
4 an example from law firms, pointing out that first year associates are not fully
5 substitutable for senior equity partners. But those senior equity partners **are**
6 substitutes for first year associates because they can and often do the legal research
7 and drafting that can and should predominantly be done by younger associates at
8 law firms. The same is true in my profession of economic consulting.⁶¹ As an
9 equity partner at The Brattle Group, I have many responsibilities beyond research
10 and initial drafting of reports, but I often do such tasks. In fact, if I had not written
11 the initial draft of this paragraph, someone else more junior at Brattle would have
12 had to.

13 26. Dr. Snyder also uses an analogy from his own profession of university
14 teaching and administration. He notes that some university faculty members
15 become Provost, e.g., Professor Deborah Prentice at Princeton.⁶² But some
16 provosts return to teaching, as did Professor David Lee, the prior Provost at
17 Princeton who has since returned to teaching in the Economics Department.⁶³
18 Similarly, Department Chairs will often teach and advise students even while
19 serving in the chair role.

20

21

⁶¹ Snyder Declaration ¶53. See also Snyder Declaration ¶21.

22

⁶² Snyder Declaration ¶61.

23

⁶³ See CV of David S. Lee available at

24

<https://www.princeton.edu/~davidlee/CVRecent.pdf>. According to Princeton's course catalog, Professor Lee is teaching "Economics of Labor" in the 2020-2021 Fall semester; see Princeton University Office of the Registrar, "Course Details," 2020-2021 Fall, available at, <https://registrar.princeton.edu/course-offerings/course-details?term=1212&courseid=001456>.

25

26

27

28

1 **E.2. Almost All Showrunners Perform Writing Services on Shows For Which**
2 **They Are the Showrunner**

3 27. Showrunners almost always perform writing services on shows for
4 which they are the showrunner.⁶⁴ These writing services may include taking the
5 initial pass at drafting the script of an episode, where the showrunner may receive a
6 writing credit, and rewriting scripts of other writers. For example, Davey Holmes
7 describes the process and his role in writing as follows: “We break scripts together,
8 then the Writer gets a couple of passes, then we all do notes together. I like to note
9 the scripts with the whole room; everybody weighs in and we work for a while on
10 them. After that, I take the script for the final pass. That’s usually a fairly intense
11 pass in this show, even on my own stuff. I remind my Writers not to be distressed –
12 even my own work goes through the grinder at the end!”⁶⁵ Since it is ultimately the
13 showrunner’s responsibility to deliver scripts and ensure a consistent tone
14 throughout the season,⁶⁶ it is common for showrunners to write and rewrite scripts.

15 28. The writing services provided by showrunners are precisely the
16 activities covered by the MBA and are far more involved than “[overseeing] and
17 [managing] the episode-by-episode writing tasks performed by Writers,” as Dr.
18 Snyder suggests.⁶⁷ Bob Levy lists the following writing activities for a typical
19 showrunner: “leads the writing staff in creating every story for every episode,
20 assigns the writing of episode scripts to writers on the staff and to freelance
21 writers, notes (gives creative feedback to) writers on all the many drafts of

22 ⁶⁴ As noted in ¶20 above, the few showrunners who are not contracted to
23 provide any writing services on a project are free to use a non-franchised agent in
24 pursuing that project.

25 ⁶⁵ Davey Holmes, “How To Become a Showrunner,” *CareersinFilm*, June 12,
2019, available at <https://www.careersinfilm.com/showrunner/>.

26 ⁶⁶ Shore Declaration ¶¶3, 14. See also Hall Declaration ¶6.

27 ⁶⁷ Snyder Declaration ¶38.

1 episodes and, when necessary, rewrites other writers’ scripts herself.”⁶⁸ Rewriting
2 may include doing a “page-one rewrite” of a non-showrunner’s script where the
3 showrunner re-drafts the script of the *entire* episode.⁶⁹ In addition, showrunners
4 also write the initial drafts of scripts and receive writing credits for those
5 episodes.⁷⁰ These writing services constitute “writing or preparing such literary
6 materials or making revisions, modifications, or changes in such literary material”
7 as stated in the MBA.⁷¹

8 29. The testimony of showrunners in this matter underscore the
9 importance and amount of writing that they do as showrunners. Three examples
10 include:

- 11 a. Alex Gansa, showrunner of *Homeland*, *Numb3rs*, *Dawson’s Creek*, and
12 *Maximum Bob*, writes almost every morning from 5:30am to 9:30am before
13 working with the rest of the team.⁷² Writing is “the core responsibility of a
14 showrunner,” and Mr. Gansa is “directly involved in every single step of the
15 writing process when working as a showrunner, from developing story arcs

16 ⁶⁸ Levy 2019, 22.

17 ⁶⁹ Shore Declaration ¶7. See also Writers Guild of America, West and Writers
18 Guild of America, East, “Writing for Episodic TV: From Freelance to
19 Showrunner,” 2004, 47 (“A showrunner is expected to rewrite. It comes with the
20 job description, and as the showrunner you are well compensated for it. Although it
21 might be frustrating to do a page-one rewrite and send it out with someone else’s
22 name on it, as showrunner you need to ask yourself, who assigned the script? Who
23 approved the story? Who was in charge of notes and rewrites? Who is ultimately
24 responsible for every word that appears on the show? You are. All good work on
25 the show redounds to your credit whether your name is on a particular script or not.
26 Conversely, all poor work is also attributed to your leadership regardless of whose
27 name appears on an episode. It’s important to think about that before putting your
28 name on someone else’s script.”).

⁷⁰ As examples, see Shore Declaration ¶5 and Hall Declaration ¶¶3-4.

⁷¹ See *supra* ¶13. See also Slocum Declaration ¶4.

⁷² Declaration of Alex Gansa, December 2, 2020 (“Gansa Declaration”) ¶6.

1 (both for an overall season and for individual episodes), reviewing and
2 commenting on story outlines, writing scripts, editing scripts drafted in the
3 first instance by others on the writing team, and rewriting scripts as needed in
4 response to issues that arise during the production process.”⁷³

5 b. Barbara Hall, showrunner of *Judging Amy*, *Joan of Arcadia*, and *Madam*
6 *Secretary*, describes writing tasks as the “core tasks of a showrunner.”⁷⁴ She
7 participates in “every single step of the writing process when working as a
8 showrunner. I help break all aspects of the story (i.e. develop the overall
9 narrative arc), both for the overall season and for individual episodes. I read,
10 comment on, and edit every single story outline. I write scripts in the first
11 instance from scratch as well as review, comment on, and edit every single
12 script drafted by other members of the writing team.”⁷⁵

13 c. David Shore, showrunner of *Family Law*, *Hack*, *House*, *Sneaky Pete*, *Battle*
14 *Creek*, and *The Good Doctor*, states that the “primary job of a showrunner is
15 fundamentally to write.”⁷⁶ Writing tasks include “developing and fine tuning
16 character arcs (i.e. the season-long outline of the program’s plot), developing,
17 writing, and fine tuning story ideas, developing, writing, and fine tuning “beat
18 sheets” (the basic map of an episode’s plot structure) and outlines, and
19 developing, writing, and fine tuning the actual scripts for each episode.”⁷⁷ As
20 the showrunner, Mr. Shore also writes scripts “in the first instance from
21 scratch” and receives writing credits for those episodes.⁷⁸

23
24 ⁷³ Gansa Declaration ¶3.

⁷⁴ Hall Declaration ¶3.

25 ⁷⁵ Hall Declaration ¶3.

26 ⁷⁶ Shore Declaration ¶3.

⁷⁷ Shore Declaration ¶4.

27 ⁷⁸ Shore Declaration ¶5.

1 received writing compensation between the 2010-2011 and 2018-2019 seasons.⁸⁴
2 This represents over 99 percent of showrunners of scripted comedy or drama series
3 on television.⁸⁵

4 32. In other words, nearly all showrunners were hired by studios to
5 provide those writing services that are specifically defined in the MBA and,
6 accordingly, have been compensated for providing those services. These services
7 are distinct from the limited managing of writers indicated by Dr. Snyder in his
8 report⁸⁶ and which would not constitute a writing service under the terms of the
9 MBA.

10 **E.3. Showrunners Continue to Perform Writing Services on Shows Where**
11 **They Are Not the Showrunner**

12 33. Numerous showrunners interchangeably work as showrunners and
13 non-showrunner writers on projects throughout their careers. In their declarations,
14

15 ⁸⁴ I focus on showrunners of scripted television series (episodic comedy or
16 drama, including animation) because I understand from WGA that the showrunner
17 role is primarily applicable to these types of shows.

18 ⁸⁵ There were 1,166 showrunners for animation, episodic comedy, and episodic
19 drama between 2010-11 and 2018-19 in the datasets from WGA (see Appendix C).
20 Among these showrunners, studios contributed to the WGA health and pension
21 plans on behalf of 1,157 individuals over this period. See also Levy 2019, 22 (“The
22 showrunner is almost always the head writer of a show’s writing staff.... There are
23 a small number of non-writing EP showrunners, but they are few and far
24 between.”).

25 ⁸⁶ Snyder Declaration ¶¶38 (“[showrunners] oversee and manage the episode-
26 by-episode writing tasks performed by Writers...”) and ¶53 (“While a
27 showrunner’s primary responsibilities are those of a manager, they are also often
28 series creators and thus can at times engage separately in writing roles and may
receive writing credit.”). The testimonies of showrunners in this matter disagree
with Dr. Snyder’s characterization of a showrunner’s job as primarily managerial;
see Shore Declaration ¶¶15-16, Schur Declaration ¶15, Keyser Declaration ¶12,
Hall Declaration ¶3, and Gansa Declaration ¶3.

1 several showrunners testify that writers with experience as showrunners will also
2 write on shows for which they are not the showrunner. Chris Keyser has been
3 reviewing applications for writers on a show that he is running, and he testified that
4 “of the twenty or so applications I received five have previously worked as
5 showrunners on a different project but have nonetheless applied for non-
6 showrunner positions of the writing staff on my show.”⁸⁷ Michael Schur testified
7 that “it is also not uncommon for writers who have served as showrunners on one
8 project to work on another, later project as a member of the writing staff in a non-
9 showrunner position” and provided an example of Alan Yang, showrunner of
10 *Master of None*, who also wrote an episode of *The Good Place* as a non-
11 showrunner writer.⁸⁸ Alex Gansa has moved from showrunning on *Dawson’s*
12 *Creek* and *Numb3rs* to writing on *Entourage* and *24* and back again to
13 showrunning on *Homeland*.⁸⁹ The fact that showrunners interchangeably work as
14 non-showrunner writers is not surprising given that showrunners are, from their
15 own viewpoint and from the viewpoint of the industry, writers.⁹⁰

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⁸⁷ Keyser Declaration ¶13. See also Keyser Declaration ¶14 (“Based on my experience in the industry I know that the compensation for the lower-paid showrunners and highest-level members of the writing staff (generally Co-Executive Producers) are very similar This is this case because the compensation for lower-paid showrunners and high-level writing staff members are connected. The compensation that beginner showrunners can command is generally a slight premium over what they and others command as Co-Executive Producers and, furthermore, the same writers will often jump between showrunner jobs and Co-Executive Producer jobs on different projects.”).

⁸⁸ Schur Declaration ¶19.

⁸⁹ Gansa Declaration ¶10. Barbara Hall serves as another example of a showrunner who interchangeably worked as a non-showrunner writer; see Hall Declaration ¶¶10-11.

⁹⁰ See *supra* ¶24.

1 34. The first season of the episodic drama *Homeland* serves as an
2 example where the entire writing team comprised of former showrunners. Barbara
3 Hall had been a showrunner on *Judging Amy* and *Joan of Arcadia* before working
4 in the writers' room on the first season of *Homeland*. Ms. Hall testified that “[we]
5 *Homeland* writers who were formerly showrunners were displacing other writers
6 who had never worked as showrunners, who would have filled those writing room
7 positions if we former showrunners had not occupied them.”⁹¹ Former
8 showrunners can and do displace non-showrunner writers on a writing team.

9 **F. By Performing Writing Services on Shows Where They Are the**
10 **Showrunner, Showrunners Affect the Compensation and Hours Worked**
11 **by Writers**

12 35. As I showed in Section E above, many showrunners are trained as
13 writers, consider themselves to be writers, perform writing services on shows
14 where they are the showrunner as well as shows where they are not the
15 showrunner, and receive writing compensation, part of which the studio pays to
16 WGA's health fund and pension plan. In this section, I discuss how the writing
17 services of showrunners displace those of non-showrunner writers. I focus on three
18 ways in which displacement of hours or compensation occurs: (1) a showrunner's
19 writing salary reduces the writing budget for the show and thereby reduces salary
20 that would have gone to other writers; (2) writing credits allocated to the
21 showrunner reduce the share of residual payments that would otherwise go to other
22 writers; and (3) if showrunners did not perform writing services, other writers
23 would need to work more hours or additional writers would need to be hired to the
24 team. Sections F.1, F.2, and F.3 below cover the three points, respectively, in more
25 detail.

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27 ⁹¹ Hall Declaration ¶11. See also Gansa Declaration ¶¶11-12.

F.1. Showrunners Often Face a Fixed Writing Budget that Covers Salaries of the Writing Staff

36. As noted by Dr. Snyder,⁹² one of the responsibilities of a showrunner is to manage the show’s budget. The showrunner typically faces a fixed budget for writing from the studio.⁹³ Based on his interviews with CAA and WME executives, Dr. Snyder claims that the writing budget per episode is “generally between \$100,000 and \$175,000.”⁹⁴ David Shore testifies that the per-episode budgets on his programs are generally “*three to four times* Dr. Snyder’s figure.”⁹⁵ Regardless of the exact amount, showrunners often have a set writing budget that covers salaries of the writing staff.

37. The writing salaries paid to non-showrunner writers and showrunners compete for the same writing budget. [REDACTED]

[REDACTED]

⁹² Snyder Declaration ¶23.

⁹³ Writers Guild of America, West and Writers Guild of America, East, *Writing for Episodic TV: From Freelance to Showrunner*, 43 (“A major factor in making your final decisions is your budget. The studio will give you a dollar amount you can spend on writers. How you divvy it up is pretty much up to you. Is it better to have one writer-producer and three less-experienced writers or two high-priced writer-producers and a staff writer?”).

⁹⁴ Snyder Declaration ¶27.

⁹⁵ Shore Declaration ¶18.

⁹⁶ [REDACTED]

1 showrunners did not perform writing services, then a greater proportion of the
2 writing budget would be available to pay or hire other writers.

3 **F.2. Showrunners Often Receive Writing Credits on Shows Where They Are**
4 **the Showrunner and Also Voluntarily Decline to Take Writing Credits**
5 **So That Other Writers Share in the Financial Success of the Show**

6 38. As discussed in Section D.2 above, writing credits per episode are
7 limited, and credits determine how residuals are allocated across the writing team.
8 Moreover, writing credits enhance the writer’s credentials, which affect his or her
9 ability to get or negotiate future engagements.⁹⁷ Therefore, when showrunners
10 receive writing credits or share writing credits with other writers, they affect the
11 amount of residual earnings that would go to other writers and the other writers’
12 future job prospects.

13 39. The norm in the industry is that writers who drafted the script from
14 scratch will receive writing credits for the episode, even if the showrunner
15 completely rewrites the script.⁹⁸ This practice is corroborated by the testimonies of
16 Michael Schur, David Shore, and Chris Keyser.⁹⁹ Michael Schur further explained
17 that he does not “take a credit in [circumstances when he rewrote someone else’s
18 script] because the ‘Written By’ credit is a source of pride for members of a TV

19 _____
20 ⁹⁷ Basin 2019, 113 (“In many respects, credits are so fleeting and non-obvious
21 to viewers as to be largely meaningless. Nevertheless, such credits can be
22 extremely significant for the professional resumes of the parties and provide
23 valuable precedents that substantially influence the parties’ entitlements in
24 subsequently negotiated deals”).

25 ⁹⁸ Writers Guild of America, West and Writers Guild of America, East,
26 *Writing for Episodic TV: From Freelance to Showrunner*, 2004, 24 (“Historically,
27 an unspoken agreement developed among showrunners that they and their staffs
28 would not take credit for scripts they had rewritten unless the original writer had
given a bad faith effort.”).

⁹⁹ Schur Declaration ¶7, Shore Declaration ¶¶5, 8, and Keyser Declaration ¶4.

1 writing staff, and because I believe the writer assigned to the script deserves to
2 have his or her hard work recognized. In addition, being credited as having written
3 an episode can increase the compensation of members of the writing staff, and
4 writers deserve those ‘script fees’ as a reward for their singular focus on the
5 episodes to which they were assigned.”¹⁰⁰ Writing credits have implications for
6 compensation.

7 40. Data on writing credits from WGA show that, for over 93 percent¹⁰¹
8 of scripted television shows¹⁰², showrunners have one or more writing credits¹⁰³
9 during the season and that approximately 22.6 percent of all writing credits are
10 ascribed to showrunners. Table 1 provides descriptive statistics on the share of
11 shows where showrunners have any writing credits and the share of writing credits
12 that are ascribed to showrunners, as opposed to non-showrunner writers. Between
13 seasons 2010-2011 through 2018-2019, there were 2,385 episodic comedy or
14 drama (including animation) shows for which WGA has information on the
15 identity of the showrunner. Among these shows, showrunners had at least one
16 writing credit on 2,231 shows or 93.5 percent (see row [2], column [C]). In other
17 words, for more than 9 in 10 scripted television shows, showrunners received
18 writing credits.

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23 ¹⁰⁰ Schur Declaration ¶7.

24 ¹⁰¹ As discussed above in ¶31, the WGA pension data indicates that 99 percent
25 of showrunners received writing compensation between the 2010-2011 and 2018-
2019 seasons.

26 ¹⁰² I use the term “show” to refer to a series-season combination, such as *New*
Girl, Season 3.

27 ¹⁰³ See *supra* fn. 7 on writing credits.

Table 1: Showrunners Have 1 or More Writing Credits on Most Shows and, On Average, Have Over 1-In-5 of all Writing Credits

	Shows where showrunner has writing credit				
	Shows where showrunner also has pilot credits	Shows where showrunner does not have pilot credits	SUBTOTAL	Shows where showrunner has <u>no</u> writing credits	TOTAL
	[A]	[B]	[C]	[D]	[E]
Shows (Series-Seasons)					
[1] Number of Shows (Series-Seasons)	717	1,514	2,231	154	2,385
[2] <i>Share of Total Shows</i>	30.1%	63.5%	93.5%	6.5%	100.0%
Writing Credits					
[3] Total Number of Writing Credits	13,408	35,307	48,715	2,968	51,683
[4] Credits Ascribed to Showrunners	4,249	7,431	11,680	0	11,680
[5] Credits Ascribed to Non-SR Writers	9,159	27,876	37,035	2,968	40,003
[6] <i>% Credits Ascribed to Showrunners</i>	31.7%	21.0%	24.0%	0.0%	22.6%

Notes: “Show” is defined as a series-season, e.g., *New Girl*, Season 3. “Non-SR Writers” refers to non-showrunner writers. Sample includes television shows on broadcast, cable, and streaming platforms in the following genres: episodic comedy, episodic drama, and animation. Sample includes shows that appear in the Credits data and have a showrunner listed in Labor Power. Writing credits include “written by,” “story by,” “television story by,” “teleplay by,” “written for television by,” and “written and directed by.” See Appendix C for details on data sources and preparation.

For rows [1]-[5], column [C] is the sum of column [A] and column [B], and column [E] is the sum of column [C] and column [D].

Row [3] is the sum of row [4] and row [5].

Row [6] is calculated as row [4] divided by row [3] and expressed in percentages.

41. The bottom panel of Table 1 presents the number of writing credits across the shows in the sample. There were over 51,000 writing credits, or 21.7 writing credits per show (covering an entire season), on average.¹⁰⁴ Showrunners

¹⁰⁴ $51,683 / 2,385 = 21.67$. Note a show here is a season comprised of multiple episodes and there can be multiple writers who receive a writing credit for a given episode.

1 received over 11,000 writing credits or 22.6 percent of writing credits across all
2 shows in the sample (see row [6], column [E]).¹⁰⁵ Focusing on shows where
3 showrunners received at least one writing credit, showrunners were ascribed 24.0
4 percent of writing credits (see row [6], column [C]). If no showrunner performed
5 writing services and received writing credits, then approximately 1 in every 5
6 writing credits would have been available to another non-showrunner writer, or
7 non-showrunner writers would have a greater residual share if they did not split the
8 writing credit with a showrunner.¹⁰⁶

9 42. Dr. Snyder argues that the fact that showrunners and writers
10 “[perform] some similar tasks does not imply that showrunners and Writers have
11 the same job responsibilities.”¹⁰⁷ [REDACTED]

12 [REDACTED]
13 [REDACTED]¹⁰⁸ Dr.
14 Snyder misses the point that if [REDACTED] had not written and received the
15 “written by” credit for [REDACTED] then another writer would have.
16 Indeed, in the subsequent season, [REDACTED]

17
18 ¹⁰⁵ Moreover, there is considerable variability in the share of writing credits
19 received by showrunners across shows. This demonstrates that the share received
20 by showrunners may be driven by more than standardized industry expectations.
21 See Figure 1 in Appendix C.

22 ¹⁰⁶ If two or more writers share a writing credit, then the residual is typically
23 evenly split between the parties. For example, if the “written by” residual was
24 \$10,000, then a single credited writer would receive \$10,000, and two writers who
25 shared the credit would receive \$5,000 each. See Writers Guild of America West,
26 “Residual Survival Guide,” at “Example 3 – Residuals on a Made-For-Basic Cable
27 Project,” available at <https://www.wga.org/members/finances/residuals/residuals-survival-guide>.

28 ¹⁰⁷ Snyder Declaration ¶53.

¹⁰⁸ [REDACTED].

1 [REDACTED].¹⁰⁹ [REDACTED]
2 provided actual competition for other writers in [REDACTED] and potential competition
3 for writers on staff in [REDACTED]. Put another way, the services that [REDACTED]
4 provides are economically interrelated with the services provided by writers on
5 staff, since her decision to write and/or take credit for writing certain episodes
6 directly affects their compensation and possibly the employment of additional
7 writers.

8 **F.3. Showrunners Who Perform Writing Services Reduce the Number of**
9 **Working Hours that Would Otherwise Be Required of Other Writers**

10 43. Showrunners who perform writing services on a show reduce the
11 number of working hours that other writers need to spend and/or the number of
12 writers on staff. Showrunners, such as David Shore, have testified that additional
13 writers would need to be hired to the project if the showrunner did not perform his
14 or her writing tasks.¹¹⁰ For example, one of the senior writers may be appointed as
15 the “Number Two” writer to run the writers’ room,¹¹¹ and additional staff or
16 freelance writers would fill in gaps.

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21 ¹⁰⁹ [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 ¹¹⁰ Shore Declaration ¶9 (“If I did not perform the dozens of hours of writing
25 work that I perform each week when running a show it would be necessary to hire
26 additional writers to perform that work.”). See also Schur Declaration ¶10, Keyser
27 Declaration ¶6, Hall Declaration ¶8, and Gansa Declaration ¶7.

28 ¹¹¹ See *supra* ¶23 on the “Number Two” writer.

1 **G. Dr. Snyder’s Standard for Testing Labor Substitutability Understates the**
2 **Degree of Economic Interrelation Between Showrunners and Non-**
3 **Showrunner Writers**

4 44. Dr. Snyder concludes that showrunners and non-showrunner writers
5 are neither “functionally interchangeable” nor economically interchangeable, and
6 “do not compete for the same jobs or compensation.”¹¹² He reaches this conclusion
7 through observations that showrunners usually take on some responsibilities that
8 extend beyond writing, and also that showrunner compensation can be both tied to
9 show profitability (e.g., managing and keeping costs within the production budget)
10 and significantly greater than the compensation for non-showrunners.

11 45. Whether or not Dr. Snyder’s observations are true, it would be
12 incorrect to conclude from them that showrunners and non-showrunner writers are
13 not substitutes for the specific writing services set forth in the MBA. As I explain
14 above, writing activity by showrunners does displace both actual writing activity
15 and compensation of non-showrunner writers.¹¹³ All else equal, a production in
16 which the showrunner is very active in the writing room requires less effort from
17 non-showrunner writers than the same production in which the showrunner is less
18 active in the writing room.

19 46. Rather than focusing on the areas of production overlap, Dr. Snyder’s
20 standard for substitutability seems to be that showrunners and non-showrunners
21 can only be substitutes if hiring a non-showrunner writer would entirely eliminate
22 the need for a showrunner, and vice versa.¹¹⁴ This overly strict standard ignores the

23 ¹¹² Snyder Declaration ¶¶64-65.

24 ¹¹³ See *supra* Section F.

25 ¹¹⁴ For example, in his concluding statement, Dr. Snyder writes “the hiring of a
26 showrunner for a production by a studio does not substitute for or eliminate the
27 need for a Writer on the staff of that production as the two jobs are not functionally
28 interchangeable or in the same labor market.” Snyder Declaration ¶65

1 decisions of the production team at the margin.¹¹⁵ Greater leverage of non-
2 showrunner writing efforts reduces the time that the showrunner must allocate to
3 writing duties such as drafting dialogue for a particular episode (and frees up the
4 showrunner potentially to focus on other activities, including providing notes on
5 another episode script). And greater time allocation by the showrunner to writing
6 duties, all else equal, reduces the demand for writing by non-showrunners.
7 Moreover, these marginal writing decisions affect the compensation of
8 showrunners and non-showrunners alike.¹¹⁶

9 47. Dr. Snyder concludes that showrunners are not substitutes with non-
10 showrunner writers because of differences in their levels of compensation and
11 differences in the forms of compensation.¹¹⁷ However, Dr. Snyder’s claims
12 regarding differences in compensation are erroneous for the following reasons:

13 _____
14 ¹¹⁵ To see that Dr. Snyder’s standard is overly strict, consider a merger affecting
15 products A and B where, in response to a price increase for product A, 20 percent
16 of the lost sales migrate to product B and 80 percent to other products (i.e., B is not
17 a “perfect substitute” for A). Does the fact that “only” 20 percent of the lost sales
18 of A divert to B imply that A and B are not sufficiently substitutable, so that their
19 merger would not raise concerns about lost competition? The answer, as antitrust
20 authorities have explained, is clearly no.

21 See U.S. Department of Justice and the Federal Trade Commission,
22 Horizontal Merger Guidelines, August 19, 2010, available at
23 <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>, at
24 6.1 (“A merger may produce significant unilateral effects for a given product even
25 though many more sales are diverted to products sold by non-merging firms than to
26 products previously sold by the merger partner.”).

27 ¹¹⁶ For example, allocation of residuals is determined in part by the number of
28 writing credits in the production. Showrunners who accumulate a greater number
of writing credits reduce the writing credits, and therefore the residuals, that are
allocated to the other members of the writing team. Likewise, showrunners who
voluntarily decline writing credits provide more opportunities for the non-
showrunner writers on the team. See *supra* Section F.2.

¹¹⁷ For example, see Snyder Declaration ¶57.

1 a. Dr. Snyder does not account for potential differences in the
2 experience or quality of the writing skills of the showrunner compared with non-
3 showrunner writers.

4 b. Dr. Snyder does not separate out compensation for writing services
5 from compensation for other activities on the show.¹¹⁸

6 c. To the extent that differences in the levels of compensation for writing
7 services exist and are not solely driven by terms set in the MBA, these differences
8 between showrunners and non-showrunner writers would be expected to impact
9 the allocation of time or tasks but not whether the showrunner's writing services
10 would displace a non-showrunner's writing activities.

11 d. Differences in the forms of compensation would be expected to affect
12 the showrunner's incentives and effort level but not whether the showrunner's
13 writing services would displace a non-showrunner's writing activities.

14 e. Pay-for-performance is a compensation policy used across different
15 levels of workers and not only CEOs.

16 48. Dr. Snyder's illustrative anecdotes do not account for differences in
17 the experience and "quality" between the showrunner and non-showrunner writer.
18 For example, prior to *Outlander*, Ron Moore had been a showrunner on three other
19 shows including *Battlestar Galactica* in its first season (2004-2005, which predates
20 *Outlander* by 9 years).¹¹⁹ As of April 2017, Jennifer Yale was a co-producer who
21 received her first writing credit two years prior on *Da Vinci's Demons*.¹²⁰ If Dr.

22 ¹¹⁸ As discussed in ¶17 above, studios are incentivized to minimize reportable
23 writing compensation. Thus, nominal writing compensation may be not be
24 reflective of the value of writing services to the project.

25 ¹¹⁹ Writers Guild of America West, "Ronald D. Moore," Find A Writer,
available at <https://directories.wga.org/member/90648ff9-910d-4518-b761-367f3749a569/>.

26 ¹²⁰ Writers Guild of America West, "Jennifer Yale," Find A Writer, available at

1 Snyder compared the compensation of writers and showrunners with comparable
2 backgrounds, then the differences may be more similar. In fact, based on his
3 experience, Chris Keyser has found that “compensation for the lower-paid
4 showrunners and highest-level members of the writing staff (generally Co-
5 Executive Producers) are very similar”¹²¹

6 49. Dr. Snyder compares a showrunner’s entire compensation package to
7 the compensation of a non-showrunner writer. As discussed in ¶46 above, the
8 relevant margin would be writing services as set forth in the MBA and therefore
9 the proper analysis would focus on the portion of the showrunner and writer’s
10 compensation that is attributed to writing services.¹²²

11 50. Even if showrunners receive higher compensation than writers for
12 performing the same writing activities (such as writing a script from scratch),
13 differences in wages between the showrunner and writer might be expected to
14 affect the allocation of activities or amount of time that each would spend on the
15 activity but not whether they are substitutes for performing writing tasks.¹²³ In the

16 <https://directories.wga.org/member/cadcd588-c228-44ed-a345-2591321d1fac/>.

17 ¹²¹ Keyser Declaration ¶14 (“Based on my experience in the industry I know
18 that the compensation for the lower-paid showrunners and highest-level members
19 of the writing staff (generally Co-Executive Producers) are very similar (“Co-
20 Executive Producer,” notwithstanding what that title may suggest, is a writing role
21 one level below the showrunner in the hierarchy of a project’s writing staff). This
22 is this case because the compensation for lower-paid showrunners and high-level
23 writing staff members are connected. The compensation that beginner showrunners
24 can command is generally a slight premium over what they and others command as
25 Co-Executive Producers and, furthermore, the same writers will often jump
26 between showrunner jobs and Co-Executive Producer jobs on different projects.”).

24 ¹²² See *supra* fn. 118.

25 ¹²³ In economics, this is analogous to the concept that a firm is minimizing costs
26 when the marginal rate of technical substitution between inputs into the production
27 function equal the ratio of prices; see George Borjas, *Labor Economics, Sixth
28 Edition*, (New York: McGraw-Hill Irwin, 2013), 97.

1 absence of budgetary and/or time constraints, the showrunner may write all of the
2 scripts. Indeed, there are high-budget shows where showrunners received writing
3 credits on all or most of the episodes.¹²⁴

4 51. Dr. Snyder notes that showrunners “may receive financial incentives
5 to keep episodes and series within budgeted amounts, profit-sharing for creating hit
6 television programs, guaranteed minimum overall/exclusivity payments, and
7 reimbursement for activities designed to boost their productivity, such as personal
8 assistants.”¹²⁵ However, forms of compensation might at most affect worker
9 incentives, not the degree to which workers are substitutable for a specific activity.
10 In the context of this case, studios want a showrunner and writing team to produce
11 the best quality script that will lead to the success of a show. If studios are not able
12 to perfectly monitor the effort of the writing team, then the studio can structure the
13 showrunner’s compensation to be proportional to the financial success of the show
14 so that the showrunner will ensure that the script is up to the highest standards.¹²⁶
15 In the event that the script is subpar, the showrunner will edit or even rewrite the
16 entire script. The testimonies of the showrunners indicate that such events do play
17 out.¹²⁷ The fact that forms of compensation differ – and that a showrunner may be
18 compensated for quality assurance as well as writing – does not mean that the
19 showrunner’s writing activities do not substitute for the non-showrunner writer’s

21 _____
22 ¹²⁴ See *supra* ¶30.

23 ¹²⁵ Snyder Declaration ¶47.

24 ¹²⁶ One of the key insights from the economic literature on contract theory is
25 that, when the principal cannot perfectly monitor the agent’s effort level, providing
26 higher compensation to the agent after observing a more desirable outcome will
27 help to ensure that the agent does not shirk. See Bengt Holmstrom, “Moral Hazard
28 and Observability,” *The Bell Journal of Economics* 10, No. 1 (Spring 1979): 74-91.

¹²⁷ Shore Declaration ¶¶3, 6-7 and Hall Declaration ¶¶4-5.

1 tasks; in fact, the showrunner may redo the writer’s work to ensure the highest
2 quality script.

3 52. Dr. Snyder comments that the “bases for showrunner compensation
4 are themselves an indicator that showrunners provide CEO-style management
5 functions” and cites to an article on CEO incentives published in *Harvard Business*
6 *Review*.¹²⁸ The article discusses the concept of “pay-for-performance,” where
7 CEOs’ compensation would be tied to corporate value.¹²⁹ The concept of “pay-for-
8 performance” is not unique to CEOs. For example, in 1994, Safelite Glass
9 Corporation implemented a “pay for performance” compensation policy for
10 automobile glass installers where installers were paid on a per-installation basis
11 rather than at an hourly rate.¹³⁰ Being paid in proportion to a measure of firm
12 performance does not equate to serving in a CEO-like capacity.

13 I declare under penalty of perjury under the laws of the United States that
14 the forgoing is true and correct.

15 Executed this 4th day of December 2020 at Glenelg, MD.

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20 _____
21 Coleman Bazelon, Ph.D.

22
23 ¹²⁸ Snyder Declaration fn. 45.

24 ¹²⁹ See insert “How We Estimate Pay for Performance” in Michael C. Jensen
25 and Kevin J. Murphy, “CEO Incentives – It’s Not How Much You Pay, but How,”
26 *Harvard Business Review*, May-June 1990, available at
<https://hbr.org/1990/05/ceo-incentives-its-not-how-much-you-pay-but-how>.

27 ¹³⁰ Edward P. Lazear, “Performance Pay and Productivity,” *American*
Economic Review 90, No. 5 (December 2000): 1346-1361.

Appendix A: CV of Coleman Bazelon

Coleman Bazelon
Principal

Washington, D.C.

+1.202.955.5050

Coleman.Bazelon@brattle.com

Dr. Coleman Bazelon is a Principal in the Washington, D.C. office of *The Brattle Group*. He is an expert in regulation, strategy and valuation in the wireless, wireline, and video sectors. His practice encompasses the modern information infrastructure and the content that fills it. He has consulted and testified on behalf of clients in numerous telecommunications matters, including wireless license auctions and spectrum management; internet matters, including the broadband and applications markets; media matters, including in the programming and copyright markets; entertainment, including analyses of gaming markets; and sports, advising on economic matters related to baseball, Australian Rules Football, and the Olympics. In addition to regulatory, policy and valuation analyses Dr. Bazelon's engagements have also focused on a range of issues within the competition and intellectual property areas.

Dr. Bazelon frequently advises regulatory and legislative bodies, including the U.S. Federal Communications Commission and the U.S. Congress.

Throughout his career, Dr. Bazelon has had extensive experience with spectrum license auctions. He advises on and evaluates numerous auction designs and regularly serves as an auction advisor for bidders in spectrum license auctions.

Prior to joining *Brattle*, Dr. Bazelon was a Vice President with Analysis Group, an economic and strategy consulting firm. During that time, he expanded the firm's telecommunications practice area. He also served as a Principal Analyst in the Microeconomic and Financial Studies Division of the Congressional Budget Office where he researched reforms of radio spectrum management; estimated the budgetary and private sector impacts of spectrum-related legislative proposals; and advised on auction design and privatization issues for all research at the CBO.

SELECTED CONSULTING PROJECTS

Litigation

- Testified on damages and injunctive relief for Canadian patents.
- Provided written testimony on lost profits of a pharmacy in the fertility industry.
- Provided written testimony on the ability to estimate refunds of prison phone commissions.
- Estimated value of stadium naming rights, in International Arbitration.
- Provided written testimony on the ability to estimate damages for a data breach class.
- Provided written testimony on the actual value of spectrum for a fraud matter.
- Estimated damages related to spectrum value in North America, in International Arbitration.
- Provided Domestic Industry testimony in ITC 337 case involving Solid State Storage devices.
- Provided written testimony of the value of a satellite joint venture.
- Estimated damages related to spectrum value in India, in International Arbitration.

- Provided declaration on spectrum valuation for potential SEC fraud matter.
- Provided written testimony in private fraud case involving 700 MHz Guard and Expansion Band licenses.
- Provided testimony in ITC 337 enforcement case involving reusable coffee brewing cup patents.
- Provided written testimony in Virginia State Corporation Commission fraud case involving 700 MHz Guard and Expansion Band licenses.
- Provided testimony in SEC fraud case involving 700 MHz Guard and Expansion Band licenses.
- Estimated value of a spectrum portfolio.
- Developed auction format for sale of private equity management firm.
- Estimated racial impact of voter ID law in Texas.
- Assessed Domestic Industry requirement in ITC 337 case involving mobile location patents.
- Evaluated damages in the applications market.
- Assessed allocation theories in an international bankruptcy.
- Evaluated damages from a programming contract termination.
- Evaluated damages from allegations of reputational harm in gaming equipment market.
- Evaluated damages from non-working wireless network equipment.
- Assessed Domestic Industry requirement in ITC 337 case involving wireless equipment patents.
- Assessed commercial viability of full text searching of books business model.
- Assessed Domestic Industry requirement in ITC 337 case involving portable storage device patents.
- Estimated value of satellite assets in bankruptcy.
- Estimated damages from denial of pole attachments.
- Provided written testimony evaluating the performance of a numbering resource administrator.
- Provided written testimony on the ability to estimate damages for a class of satellite phone users.
- Provided written testimony on the economic value of Rights-of-Ways in Massachusetts.
- Estimated damages for a broadcast tower permit revocation.
- Provided oral testimony on the proprietary nature of specific information contained in a statewide public safety network bid.
- Provided written testimony on economic value associated with items provided in a labor neutrality agreement.
- Estimated damages associated with USF and other telephone taxes paid by a calling card reseller.
- Assessed the damages associated with the infringement of patents related to Voice over Internet Protocol (VoIP) technology and the likely impact of a permanent injunction.
- Estimated recoverable data costs for two pesticides.
- Estimated cost of delay in granting local cable franchise.

- Analyzed the economic underpinnings of an exclusivity clause of a mobile phone affiliation agreement.
- Assessed commonality issues of physicians for class certification of RICO action against a set of health insurance companies.
- Estimated “Loss of Use” damages for a severed fibre optic cable.
- Provided written testimony estimating the value of a surety bond in a contract dispute involving toll free phone numbers used in an enhanced service application.
- Assessed damages associated with infringement of patents used to provide VoIP.
- Assessed basis for guidance of a large telecommunications firm in a 10-b securities litigation.
- Valued digital television radio spectrum in St. Louis in the pre-litigation phase of a breach of contract dispute.
- Estimated damages in a breach of contract case involving the sale of a fibre optic network.
- Researched the basis for generally optimistic forecasts of broadband deployment in the later 1990s and early 2000s in an anti-trust litigation.
- Researched the basis for generally optimistic beliefs about the telecommunications sector in the late 1990s in a 10-b securities litigation.
- Assessed the market for Competitive Local Exchange Carriers in an SEC fraud case.
- Assessed a bankruptcy sale proposal for a national tier 1 broadband backbone provider.
- Examined the business case asserted for a small wireless reseller in a breach of contract litigation.
- Assessed damages associated with infringement of patents used in DNA fingerprinting applications.
- Assessed changes in contributions to the Cable Royalty Fund on behalf of Sports Claimants in a Copyright Arbitration Royalty Panel (CARP) proceeding.
- Assessed the capital adequacy of the U.S. branch of a foreign bank.

Regulatory Proceedings

- Provided written testimony on prison phone rates.
- Reviewed and assessed comments on the costs and benefits of repurposing 5.9 GHz spectrum.
- Assessed the public interest benefits of a market-based solution for the C-Band spectrum.
- Assessed benefits of fibre-based broadband in rural areas.
- Analyzed impact of Canadian resale obligations.
- Analyzed approaches to repurposing C-Band spectrum.
- Analyzed competitive effects of proposed Sprint/T-Mobile merger.
- Provided written testimony on the costs and benefits of reallocating 900 MHz spectrum.
- Analyzed impact of forbearance on unbundling, resale, facilities access, and non-discrimination obligations.
- Provided written testimony on rates for TRS service.
- Assessed basis for mechanical royalties in copyright proceeding.
- Provided declaration on minority incentives in spectrum secondary market transactions.

- Evaluated proposed pole attachment rate.
- Analyzed costs of USPS.
- Assessed impact on incentive auction of unlicensed operations in guard bands.
- Assessed market power in Canadian wireless market.
- Provided testimony in prison phone rate proceeding.
- Estimated economic impact of LNP on RLECs.
- Assessed relevance of U.S. UNE-L experience for New Zealand benchmarking proceeding.
- Authored analysis of harm from revoking LightSquared's ATC authorization.
- Estimated value of pairing Upper 700 MHz A Block with public safety.
- Estimated impact of increased regulatory uncertainty on spectrum value.
- Estimated value of government provision of GPS service to private industry.
- Coauthored analysis of feasibility of reallocating broadcast television through the use of incentive auctions.
- Analyzed impact on spectrum value of pairing AWS III spectrum.
- Coauthored analysis of the merits of licensed versus unlicensed allocation of the TV White Spaces.
- Estimated the value of TV White Spaces.
- Provided written testimony on the economic harm of using proprietary information in retention marketing.
- Provided written testimony on the economics of pole attachment rates.
- Estimated the value of the PCS H-Block spectrum band.
- Estimated the economic impact of ITC Exclusion Order on cell phone handsets.
- Authored several reports on the 700 MHz auction rules.
- Analyzed the relationship between the size of cable systems and the economics of the programming market.
- Presented analysis on pricing differentials in overlapping cable markets.
- Assessed proposed regulation of mobile phone roaming rates.
- Analyzed impact of local franchise requirements on competition in the video marketplace.
- Developed and assessed Indian spectrum management proposals.
- Analyzed economic ramifications of à la carte cable channel pricing on consumers and the cable and television programming industries.
- Examined the relative merits of licensed versus unlicensed radio spectrum and the effects of "underlay" licenses on existing commercial licensees.
- Examined federalism issues related to mobile telephony regulation.
- Examined and refuted arguments suggesting that the California Telecommunications Consumer Bill of Rights was an appropriate response to market failures.
- Assessed the impact on consumers of California's Telecommunications Consumer Bill of Rights proposal.
- Provided written testimony refuting analysis purporting to show a positive relationship between UNE-P and telecom network investment.

- Provided written testimony examining the effects of unbundling regulations on capital spending in the telecommunications sector.
- Estimated the adjustment to the TELRIC pricing formula to account for irreversible investment in the local telephone network.
- Examined the impact of irreversible investments in the local telephone network on the TELRIC pricing methodology.
- Assessed the degree of market overlap of two food service firms for purposes of merger review.
- Provided written testimony that assessed the validity of an analysis of the costs of a DTV tuner mandate.
- Provided written testimony of a forecast of toll free number demand for the toll free number administrator, SMS/800, in a rate case proceeding.

Other

- Advised broadband provider on FTC consumer protection/false-advertising investigation.
- Advised bidder in FCC RDOF auction.
- Advised bidder in FCC CBRS spectrum license auction.
- Advising bidder in FCC C-Band spectrum license auction.
- Estimated value of 900 MHz spectrum licenses for several clients.
- Estimated Value of 600 MHz, 900 MHz, 2.4 GHz, and 3.5 GHz licenses.
- Estimated the value created from an accelerated clearing of the C-Band spectrum.
- Analyzed value of repurposing lower mid-band spectrum.
- Analyzed impact of 5G on mobile spectrum values.
- Advised Afghanistan Telecom Regulatory Authority on spectrum licensing.
- Estimated value of spectrum portfolio.
- Auction planning and support for CAF II auction.
- Estimated value of spectrum pipeline.
- Provided support for Australian Rules Football collective bargaining negotiations.
- Provided support for MLB/MLBPA Collective Bargaining Agreement negotiations.
- Estimated value of new spectrum technology.
- Analyzed market for VRS services.
- Coauthored analysis of wireless technology on agricultural water use.
- Evaluated impacts of Boston 2024's Olympic bid.
- Estimated value of licensed mobile broadband spectrum.
- Estimated future needs for licensed mobile broadband spectrum.
- Advised bidder in Canadian 700 MHz auction.
- Evaluated performance of TV stations when repacked in an Incentive Auction.
- Analyzed differences in U.S. and European wireless markets.
- Assessed business case and value of HF license holder.
- Analyzed likely auction outcomes for TV broadcaster participating in incentive auction.
- Assessed value of commercial mobile spectrum bands.
- Analyzed economic impacts of the commercial casino industry.

- Evaluated impact of digitization on copyright industries.
- Analyzed economic and employment effects of Dutch gas hub.
- Advised bidder in Indian 3G spectrum license auction.
- Estimated economic and employment effects of network neutrality regulation.
- Analyzed relative costs of wireless and wireline deployments in rural areas.
- Analyzed potential harms from Internet gambling.
- Estimated economic value of reallocating TV spectrum for wireless broadband.
- Estimated economic and employment effects of electric power transmission construction in support of new wind generation facilities.
- Estimated economic and employment effects of broadband stimulus grant applications.
- Estimated employment effects of an ATC-mobile satellite network deployment.
- Analyzed the impact of reducing international mobile phone roaming charges.
- Developed an auction platform for an electricity procurement auction.
- Analyzed the economic impacts of reduced mobile phone taxes in Africa and the Middle East.
- Evaluated the impact of reducing ethanol requirements on gasoline prices.
- Analyzed FRAND licensing requirements for intellectual property in the DTV standard.
- Advised bidder in Canadian AWS spectrum license auction.
- Advised bidder in FCC 700 MHz spectrum license auction.
- Evaluated a business plan for proposed dam removals.
- Assessed a business plan involving the WiMAX market.
- Estimated the value of a portfolio of spectrum licenses.
- Assessed the budgetary impacts of legislation to license TV white spaces.
- Analyzed the economics of the military's build versus buy decision for broadband satellite communications capacity.
- Advised bidder in FCC AWS spectrum license auction.
- Provided framework to estimate impact of the effect of designation of TV white spaces as unlicensed on 700 MHz auction receipts.
- Analyzed Universal Service Fund expenditures.
- Analyzed cable franchising requirements.
- Valued proposals to re-band the Upper 700 MHz Band of radio spectrum.
- Analyzed proposed accelerated digital television transition impacts on society and the federal budget.
- Coauthored a report on the value of a portfolio of patents used to provide VoIP.
- Coauthored a report to the U.S. Chamber of Commerce on the economic effects of telecommunications deregulation.
- Assessed the business cases for IRU swaps of a large international fibre optic network owner.
- Examined the effects of unbundling regulations on broadband penetration internationally.

TESTIMONY AND DECLARATIONS

“Revised Reply Expert Report of Coleman Bazelon,” Rovi Guides, Inc. v. BCE Inc. Federal Court, Canada, Court File No. T-113-18, June 26, 2020 and Rovi Guides Inc. v. TELUS Federal Court, Canada, Court File No. T-206-18, June 26, 2020.

“Affidavit of Coleman Bazelon,” Rovi Guides, Inc. v. BCE Inc. Federal Court, Canada, Court File No. T-113-18, June 12, 2020 and Rovi Guides Inc. v. TELUS Federal Court, Canada, Court File No. T-206-18, June 12, 2020.

“Reply Expert Report of Coleman Bazelon,” Rovi Guides, Inc. v. BCE Inc. Federal Court, Canada, Court File No. T-113-18, May 12, 2020 and Rovi Guides Inc. v. TELUS Federal Court, Canada, Court File No. T-206-18, May 12, 2020.

“Highly Confidential Reply Expert Report of Coleman Bazelon,” Rovi Guides, Inc. v. Videotron Ltd., Federal Court, Canada, Court File No. T-921-17, February 21, 2020.

“Expert Report of Coleman Bazelon,” Rovi Guides, Inc. v. BCE Inc. Federal Court, Canada, Court File No. T-113-18, January 29, 2020 and Rovi Guides Inc. v. TELUS Federal Court, Canada, Court File No. T-206-18, January 29, 2020.

“Highly Confidential Expert Report of Coleman Bazelon,” Rovi Guides, Inc. v. Videotron Ltd., Federal Court, Canada, Court File No. T-921-17, November 11, 2019, revised on January 10, 2020.

“Declaration of Coleman Bazelon,” In the matter of Kellie Pearson and The Law Offices of Mark Booker, on behalf of themselves and those similarly situated, v. Thomas M. Hodgson, In His Official Capacity as Sheriff Of Bristol County and Securus Technologies, Inc., United States District Court, District of Massachusetts, Case No. 1:18-cv-11130, November 7, 2019.

“Declaration of Coleman Bazelon, Ph.D.,” In the Matter of Vertical Ventures II, LLC, et al., v. Smartcomm LLC, et al., and Smartcomm License Services, LLC, et al., v. Carla Marshall, an individual, Superior Court of Arizona County of Maricopa, No. CV2015-009078, December 6, 2018.

”Declaration of Dr. Coleman Bazelon in Support of Plaintiff’s Motion for Class Certification,” In the matter of Premera Blue Cross Customer Data Security Breach Litigation, Case No. 3:15-md-2633-SI, August 3, 2018.

“Fourth Expert Report of Dr. Coleman Bazelon,” In the Matter of CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited, Case No. PCA2013-09, April 26, 2018.

“Witness Statement of Dr. Coleman Bazelon,” In the Matter of Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing Same, United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-1097, March 2, 2018.

“Third Expert Report of Dr. Coleman Bazelon,” In the Matter of CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited, Case No. PCA2013-09, November 29, 2017.

“Testimony of Coleman Bazelon before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications and Technology,” November 16, 2017. (5G Spectrum)

“Second Rebuttal Report – Reply to the Expert Report of J. Armand Musey in Opposition of Coleman Bazelon,” In the Matter of ATK Space Systems, Inc., et al., vs. U.S. Space LLC, Circuit Court of Loudon County, Virginia, Case No. CL-101847, November 10, 2017.

“Rebuttal Report of Coleman Bazelon, Ph.D.,” In the Matter of ATK Space Systems, Inc., et al., vs. U.S. Space LLC, Circuit Court of Loudon County, Virginia, Case No. CL-101847, October 20, 2017.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of ATK Space Systems, Inc., et al., vs. U.S. Space LLC, Circuit Court of Loudon County, Virginia, Case No. CL-101847, September 8, 2017.

“Second Expert Report of Dr. Coleman Bazelon,” In the Matter of CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited, Case No. PCA2013-09, July 31, 2017.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Vertical Ventures II, LLC; Vertical Ventures V, LLC; LWH Network, LLC; L, W & C Network, LLC; and Spectrum Family 800, GP vs. Smartcomm, LLC; Smartcomm License Services, LLC; Smartcomm Management, LLC; Smartcomm Acquisitions, LLC; License Acquisitions, LLC; Big Wave Ventures, LLC; Spectrum Networks Group, LLC; M2M Spectrum Networks, LLC; Spectrum Acquisitions Group, LLC; Carlson Investment Group, LLC; Carole L. Downs; Barclay Knapp; and Joe Doe Transferees, Superior Court of Arizona Maricopa County, March 24, 2017.

“Expert Report of Dr. Coleman Bazelon,” In the Matter of CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited, Case No. PCA2013-09, January 16, 2017.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Commonwealth of Virginia, *ex rel.* State Corporation Commission v. Darryl Gene Bank and Raeann Ann Gibson, Commonwealth of Virginia State Corporation Commission Hearing Examiner, Case No. SEC-2015-00020, November 4, 2016.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same, United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-929, November 2, 2016.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Securities and Exchange Commission v. Janus Spectrum LLC; David Alcorn; David Alcorn Professional Corporation; Kent Maerki; Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Prime Spectrum, LLC; Prime Spectrum Management, LLC; Daryl G. Bank; Premier Spectrum Group, PMA; Bobby D. Jones; Innovative Group, PMA; Premier Group, PMA; Prosperity Group, PMA; Terry W. Johnson; and Raymon G. Chadwick, Jr., United States District Court, District of Arizona, Docket No. CV-15-609-PHX-SMM, May 13, 2016.

“Amended Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Sprint Corporation, Sprint Communications, Inc., Erik Prusch, John W. Stanton, William R. Blessing, Bruce A. Chatterley, Mufit Cinali, Jose A. Collazo, Hossein Eslambolchi, Dennis S. Hersch, Brian P. McAndrews, Kathleen H. Rae, Theodore H. Schell, Jennifer L. Vogel, Slade Gorton, Starburst I, Inc., and Softbank Corp., Court of Chancery, State of Delaware, C.A. No. 8508-VCL and ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Clearwire Corporation, Court of Chancery, State of Delaware, C.A. No. 9042-VCL, November 2, 2015.

“Rebuttal Report of Coleman Bazelon, Ph.D.,” In the Matter of ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Sprint Corporation, Sprint Communications, Inc., Erik Prusch, John W. Stanton, William R. Blessing, Bruce A. Chatterley, Mufit Cinali, Jose A. Collazo, Hossein Eslambolchi, Dennis S. Hersch, Brian P. McAndrews, Kathleen H. Rae, Theodore H. Schell, Jennifer L. Vogel, Slade Gorton, Starburst I, Inc., and Softbank Corp., Court of Chancery, State of Delaware, C.A. No. 8508-VCL and ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Clearwire Corporation, Court of Chancery, State of Delaware, C.A. No. 9042-VCL, October 23, 2015.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Sprint Corporation, Sprint Communications, Inc., Erik Prusch, John W. Stanton, William R. Blessing, Bruce A. Chatterley, Mufit Cinali, Jose A. Collazo, Hossein Eslambolchi, Dennis S. Hersch, Brian P. McAndrews, Kathleen H. Rae, Theodore H. Schell, Jennifer L. Vogel, Slade Gorton, Starburst I, Inc., and Softbank Corp., Court of Chancery, State of Delaware, C.A. No. 8508-VCL and ACP Master, Ltd., Aurelius Capital Mater, Ltd., and Aurelius Opportunities Fund II, LLC, v. Clearwire Corporation, Court of Chancery, State of Delaware, C.A. No. 9042-VCL, September 25, 2015.

“Expert Rebuttal Report on Domestic Industry of Coleman Bazelon, Ph.D.,” In the Matter regarding Certain Non-Volatile Memory Chips and Products Containing the Same, Investigation No. 337-TA-916, December 15, 2014.

“Expert Report on Remedy and Bonding of Coleman Bazelon, Ph.D.,” In the Matter regarding Certain Non-Volatile Memory Chips and Products Containing the Same, Investigation No. 337-TA-916, December 15, 2014.

“Expert Report on Public Interest of Coleman Bazelon, Ph.D.,” In the Matter regarding Certain Non-Volatile Memory Chips and Products Containing the Same, Investigation No. 337-TA-916, November 24, 2014.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter regarding Wynnchurch Capital Ltd., In the Court of Chancery of the State of Delaware, C.A. No. 10077-VCL, November 7, 2014.

“Third Amended Reply Report of Coleman Bazelon, Ph.D.,” On Behalf of Plaintiff-Intervenors Texas League of Young Voters Education Fund and Imani Clark, United States District Court for the Southern District of Texas Corpus Christi Division, Civ. No. 2:13-cv-00263, September 22, 2014.

“Reply Report of Coleman Bazelon, Ph.D.,” On Behalf of Plaintiff-Intervenors Texas League of Young Voters Education Fund and Imani Clark, United States District Court for the Southern District of Texas Corpus Christi Division, Civ. No. 2:13-cv-193 (NGR), August 15, 2014.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of the Texas League of Young Voters Education Fund and Imani Clark v. State of Texas, Nandita Berry, in her official capacity as Texas Secretary of State; and Steve McGraw, in his official capacity as Director of the Texas Department of Public Safety, United States District Court for the Southern District of Texas Corpus Christi Division, Civ. No. 2:13-cv-00263, June 27, 2014.

“Rebuttal Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, As Amended, and in the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation United States Bankruptcy Court for the District of Delaware, Case No. 09-10138 (KG), February 28, 2014.

“Supplemental Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Sky Angel U.S., LLC, against Discovery Communications, LLC, Animal Planet, LLC, United States District Court for the District of Maryland, Case No. 8:13-cv-00031-DKC, January 31, 2014.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, As Amended, and in the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation United States Bankruptcy Court for the District of Delaware, Case No. 09-10138 (KG), January 24, 2014.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Sky Angel U.S., LLC, against Discovery Communications, LLC, Animal Planet, LLC, United States District Court for the District of Maryland, Case No. 8:13-cv-00031-DKC, December 6, 2013.

“Expert Report of Coleman Bazelon, Ph.D. and Armando Levy, Ph.D.,” In the Matter of LT Game International Ltd., against Shuffle Master, Inc., United States District Court for the District of Nevada, Case No. 2:12-cv-01216-JAD-GWF, October 4, 2013.

“Expert Report of Coleman Bazelon, Ph.D.,” In the Matter of Certain Electronic Devices, Including Wireless Communications Devices, Tablet Computers, Media Players, and Televisions, and Components Thereof, United States International Trade Commission, Investigation No. 337-TA-862 (Judge Shaw), July 5, 2013.

“Declaration of Coleman Bazelon” In the Matter of PTA-FLA, Inc, Daredevil, Inc., NTCH-WEST TENN., Inc., NTCH-WA, Inc., and Eric Steinmann against ZTE Corporation, and ZTE USA, Inc. Florida Arbitration, Case No.: 50-494-T-00665-11, February 26, 2013.

“Rebuttal Testimony of Coleman Bazelon,” In re: Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC’s Request, State of Maine Public Utilities Commission, Docket No. 2012-198, Docket No. 2012-218, Docket No. 2012-219, Docket No. 2012-220, Docket No. 2012-221, October 12, 2012.

“Testimony of Coleman Bazelon, Ph.D.,” In re: Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC’s Request, State of Maine Public Utilities Commission, Docket No. 2012-198, Docket No. 2012-218, Docket No. 2012-219, Docket No. 2012-220, Docket No. 2012-221, August 20, 2012.

“Expert Report of Dr. Coleman Bazelon,” *Salsgiver Communications, Inc., Salsgiver Telecom, Inc., and Salsgiver Inc. v. Consolidated Communications Holdings, Inc., North Pittsburgh Systems, Inc., and North Pittsburgh Telephone Company, Inc.*, Court of Common Pleas, Allegheny County, Pennsylvania, Civil Division, No. GD 08-7616, May 10, 2012.

“Effect of the Proposed Merger on Service Quality, Consumer Services, Employment, and California’s Economy,” Panelist on behalf of AT&T before the Public Utilities Commission of the State of California, Order Instituting Investigation on the Commissioner’s Own Motion into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and Its Effect on California Ratepayers and the California Economy. Case No. I.11-06-009, July 22, 2011.

“Oral Testimony of Coleman Bazelon, The Brattle Group, Inc. before the U.S. House of Representatives, Committee on Energy and Commerce Subcommittee on Communication and Technology,” April 12, 2011. (spectrum)

“Testimony of Coleman Bazelon, Principal, *The Brattle Group*, before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet,” June 17, 2010 (spectrum valuation).

“Supplemental Expert Report of Coleman Bazelon,” *Gemalto PTE LTD and Gemplus S.A. v. Telecommunications Industry Association*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case 1:08-cv-00776-LMB-TRJ, December 16, 2008.

“Expert Report of Coleman Bazelon,” *Gemalto PTE LTD and Gemplus S.A. v. Telecommunications Industry Association*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case 1:08-cv-00776-LMB-TRJ, November 6, 2008.

“Prefiled Rebuttal Testimony of Coleman D. Bazelon,” In re: Complaint and Request for Emergency Relief Against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers’ numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC, Florida Public Service Commission, Docket No. 070691-TP, July 25, 2008.

“Prefiled Direct Testimony of Coleman D. Bazelon,” In re: Complaint and Request for Emergency Relief Against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers’ numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC, Florida Public Service Commission, Docket No. 070691-TP, May 30, 2008.

“Declaration of Coleman Bazelon in Support of Plaintiffs’ Motion for Class Certification,” *Kenneth Stickrath, et al v. Globalstar, Inc.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 07-CV-01941 TEH, April 25, 2008.

“Testimony of Coleman Bazelon, Principal, *The Brattle Group*, before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet,” April 15, 2008 (reviewing the 700 MHz auction).

“Concerning the Meaning of ‘Fair and Reasonable Compensation’ in Section 253(c) of the Telecommunications Act of 1996 and the Comparability of the Rights-of-Way Fees Paid by Level 3 in Massachusetts and Elsewhere,” *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816, December 17, 2007.

“Concerning the Effects of the Fixed Rent Charged for Access to the Massachusetts Turnpike,” *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816, November 12, 2007.

“Affidavit of Dr. Coleman Bazelon,” *Gulfside Casino Partnership v. Mississippi Riverboat Council, et al.*, United States District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:07-CV-110-LG-JMR, May 4, 2007.

“Rebuttal Report of Dr. Coleman Bazelon,” *Level 3 Communications, LLC, v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS, June 17, 2005.

“Affidavit of Dr. Coleman Bazelon,” *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff, October 12, 2004.

EXPERT DESIGNATIONS

- *Touch America, Inc. v. Qwest Communications International, Inc.*
 - Designated as an expert in Arbitration (June 2003)
- *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff
 - Affidavit (October 12, 2004)
- *Level 3 Communications, LLC v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS
 - Rebuttal Report (June 17, 2005)
 - Deposition (July 14, 2005)
- Cable Merger before the FTC
 - Presented analysis to FTC staff (March 20, 2007)
- *Gulfside Casino Partnership v. Mississippi Riverboat Council, et al.*, United States District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:07-CV-110-LG-JMR
 - Affidavit (May 4, 2007)
- *Motorola, Inc. v. State of Mississippi Department of Information Technology Services and M/ACom, Inc.*, Chancery Court of Hinds County, Mississippi, Cause No. G2006-2179 S/2
 - Testified (May 23, 2007)
- *American Towers, Inc. v. Jackson & Campbell, P.C., et al.*, DC Superior Court, No. 003277-06
 - Deposition (March 19, 2009)

- Affidavit (May 22, 2009)
- *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816
 - Expert Report (November 12, 2007)
 - Rebuttal Report (December 17, 2007)
 - Deposition (January 21, 2008)
- *Kenneth Stickrath, et al v. Globalstar, Inc.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 07-CV-01941 THE
 - Declaration (April 25, 2008)
 - Deposition (June 11, 2008)
- In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC, Florida Public Service Commission, Docket No. 070691-TP
 - Direct Testimony (May 30, 2008)
 - Rebuttal Testimony (July 25, 2008)
 - Deposition (August 13, 2008)
- *Gemalto PTE LTD and Gemplus S.A. v. Telecommunications Industry Association*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case 1:08-cv-00776- LMB-TRJ
 - Expert Report (November 6, 2008)
 - Deposition (December 2, 2008)
 - Supplemental Expert Report (December 16, 2008)
- *Salsgiver Communications, Inc., Salsgiver Telecom, Inc., and Salsgiver Inc. v. Consolidated Communications Holdings, Inc., North Pittsburgh Systems, Inc., and North Pittsburgh Telephone Company, Inc.*, Court of Common Pleas, Allegheny County, Pennsylvania, Civil Division, No. GD 08-7616
 - Damages Analysis (February 27, 2009)
 - Deposition (April 3, 2012)
 - Expert Report (May 10, 2012)
 - Testified (May 6, 2015; May 12, 2015)

- *Certain Products Containing Interactive Program Guide and Parental Control Technology* United States International Trade Commission, Investigation No. 337-TA-820 (Judge Bullock)
 - Designated as an expert (June 8, 2012)
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REVIEWER

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- Telecommunications Policy
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- George Mason University

PROFESSIONAL AFFILIATIONS

- American Bar Association
- American Economic Association
- Federal Communications Bar Association
- National Research Council - Committee on a Survey of the Active Scientific Use of the Radio Spectrum

EDUCATION

Dr. Bazelon received his Ph.D. and M.S. in Agricultural and Resource Economics from the University of California at Berkeley. He also holds a Diploma in Economics from the London School of Economics and Political Science and a B.A. from Wesleyan University.

Appendix B: Materials Relied Upon

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Court and Bates-Stamped Documents

- Counterclaimant's First Amended Consolidated Counterclaims, *William Morris Endeavor Entertainment, LLC, Creative Artists Agency, LLC and United Talent Agency, LLC v. Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc.*, United States District Court, Central District of California, Western Division, Case No. 2:19-cv-05465-AB, May 11, 2019.
- Defendants' Answer to First Consolidated Complaint and Defendants' and Counterclaimants' Consolidated Counterclaims, *William Morris Endeavor Entertainment, LLC, Creative Artists Agency, LLC and United Talent Agency, LLC v. Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc. and Patricia Carr, Ashley Gable, Barbara Hall, Deric A. Hughes, Deirdre Mangan, David Simon, and Meredith Stiehm*, United States District Court, Central District of California, Western Division, Case No. 2:19-cv-05465-AB, October 18, 2019.
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- Plaintiff and Counterclaim-Defendant William Morris Endeavor Entertainment, LLC's Motion For Preliminary Injunction; Memorandum of Points & Authorities, *William Morris Endeavor Entertainment, LLC and Creative Artists Agency, LLC, v. Writers Guild of America West, Inc. and Writers Guild of America, East, Inc. and Patricia Carr, et al.*, United States District Court, Central District of California, Case No. 2:19-cv-05465-AB-AFM, November 18, 2020.

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 - Pension, "Pension_Showrunners_2010-2019_12012020Version.txt."
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Appendix C: Preparation of WGA Data on Staffing, Credits, and Pension Contributions

This appendix describes the data sources that I received from WGA and the steps that I took to prepare the data for analysis.

Datasets

WGA provided me with three datasets that cover the seasons 2010-2011 through 2018-2019: (1) Labor Power, (2) Credits, and (3) Pension.

Labor Power and **Credits** are the underlying data sources behind the “Find A Writer” search tool through Writers Guild of America West.¹

- **Labor Power** provides information on staffing by show, i.e., a season of a series, for WGA-covered series.
 - The data provided included scripted television and digital media series, as denoted by the genres “episodic comedy,” “episodic drama,” and “animation,” that are available through broadcast, cable, and streaming distributors. I understand from WGA that WGA covers almost all U.S.-produced scripted live-action television and digital media series and some animated series, such as *The Simpsons*.²
 - Labor Power includes information on the talent’s show credit (e.g., Executive Producer) and whether the talent was a showrunner on the show. Since showrunner is not a credited title, WGA obtains information on the showrunner through the trade press, Studio System (a database maintained by Gracenote, a Nielsen Company specializing in entertainment data),³ or a writer who worked on the staff of the show. This information is added by WGA staff in the Online Services and Member Organizing Departments.

¹ Writers Guild of America West, Find A Writer, available at <https://directories.wga.org/>.

² See also Basin 2019, 113 (“...most major scripted television production is subject to the jurisdiction of the WGA, which has exclusive control over the determination of writing and series creation credits for WGA-covered series.”).

³ For information on Studio System, see “StudioSystem by Gracenote,” available at <https://studiosystem.com/> and Gracenote, “About Us,” available at <https://www.gracenote.com/company/about-us/>.

- **Credits** provides information on writing credits by episode. Writing credits of WGA-covered series are determined and governed by WGA.⁴ These credits include credits at the series level (such as “created by” and “developed by”) and credits at the episode level (such as “written by,” “teleplay by,” and “story by”).⁵ My analysis focuses on writing credits at the episode level.

Pension is a dataset of pension contributions on reportable writing compensation for each WGA member and calendar quarter, such as the first quarter of 2011.⁶ The dataset that I used for my analysis only includes WGA members who were identified as having worked as a showrunner over the period analyzed. Information on whether the member had worked as a showrunner comes from Labor Power.

Data Preparation

To perform my analysis, I prepared these datasets with the following steps:

1. My analysis focuses on shows that have one or more showrunners listed in Labor Power.⁷ Shows with at least one showrunner comprise 2,481 out of 2,649 shows in Labor Power (94 percent).⁸
2. I used the Credits dataset to count the total number of writing credits and the number of writing credits attributed to the showrunner. I identified the showrunner(s) on a show by combining the Labor Power and Credits datasets using the talent’s unique identifier, series identifier, and season number. Among the 2,481 shows with a listed showrunner in Labor Power, 2,385 shows also appear in the Credits dataset.
3. Table 1 presents the number of shows and number of writing credits for three categories of shows:
 - a. Shows where the showrunner has writing credits, including writing credits for the pilot (i.e., episode 1 of season 1);

⁴ Basin 2019, 113. See also Writers Guild of America West, “Credits Survival Guide,” at “II. Before You Make a Deal,” available at <https://www.wga.org/contracts/credits/manuals/survival-guide> (“The Guild has the sole authority to determine writing credits on theatrical, television, and new media projects written under its jurisdiction. A company cannot guarantee that you will receive writing credit or any particular form of writing credit.”).

⁵ See *supra* fn. 7 on writing credits.

⁶ See *supra* ¶17 on studio contributions to WGA’s pension and health plans.

⁷ There are 3 shows where one of the listed showrunners is not a WGA member.

⁸ There are 2,649 shows in Labor Power that have a series identifier (*series_id*).

- b. Shows where the showrunner has writing credits but not for the pilot; and
 - c. Shows where the showrunner does not have any writing credits.
4. For each category of shows, I counted the number of unique shows. I also counted the number of writing credits attributed to the showrunner and the number of credits attributed to non-showrunner writers on the show.
 5. I calculated the share of showrunners who received pension contributions between the seasons 2010-2011 and 2018-2019 as follows:
 - a. First, I counted the number of talents who worked as showrunners on the shows included in Table 1 (i.e., shows that appear in the Credits dataset and have a showrunner listed in Labor Power). The number of showrunners is 1,166.
 - b. Second, I counted the number of showrunners who also appear in the Pension data. I combined the datasets using the talent's unique identifier. The number of showrunners in the Pension data is 1,157.
 - c. Third, the share of showrunners is the ratio of 1,157 to 1,166, or 99.23 percent.

Additional Results

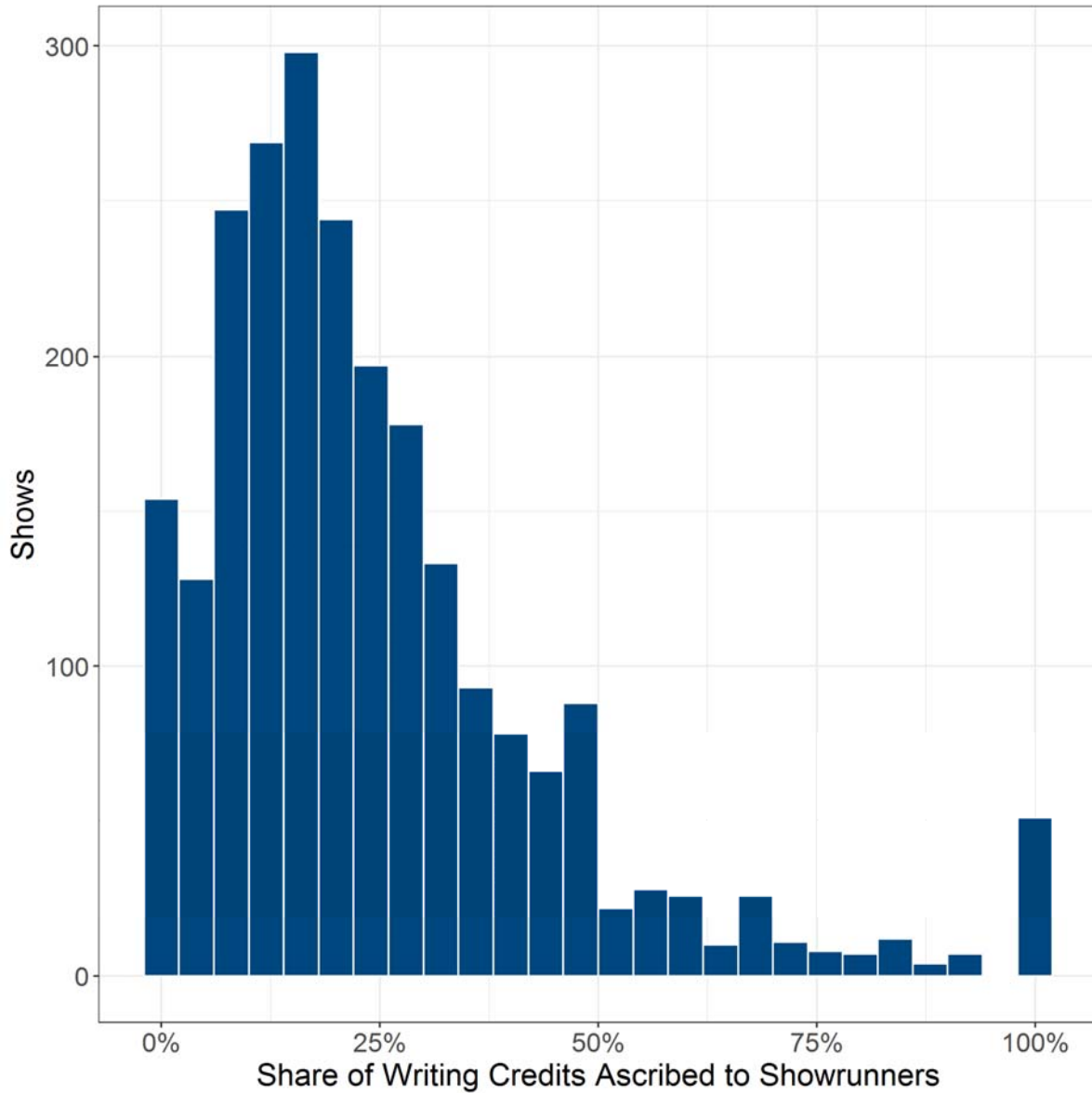
Figure 1 presents the distribution of shows by the share of writing credits that are ascribed to the showrunner(s) on the show. The figure shows that:

- For most shows (over 93 percent⁹), showrunners received writing credits.
- For 51 shows (or 2 percent¹⁰), showrunners received all writing credits.
- The distribution does not have obvious “peaks” that would be indicative of an industry norm; instead, the smoothness of the distribution suggests that showrunners’ share of writing credits is a fluid decision depending on the show.

⁹ See *supra* Table 1; $100\% - (6.5\% \text{ in row [2], column [D]}) = 93.5\%$.

¹⁰ $51 / 2,385 = 0.021$

FIGURE 1: DISTRIBUTION OF THE SHARE OF WRITING CREDITS RECEIVED BY SHOWRUNNERS ACROSS SHOWS (2010-11 THROUGH 2018-19 SEASONS)



Notes: “Show” is defined as a series-season, e.g., *New Girl*, Season 3. Sample includes television shows on broadcast, cable, and streaming platforms in the following genres: episodic comedy, episodic drama, and animation. Sample includes shows that appear in the Credits data and have a showrunner listed in Labor Power. Writing credits include “written by,” “story by,” “television story by,” “teleplay by,” “written for television by,” and “written and directed by.”