

NEWSLETTER 2 / 2003 November 2003

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Intro

We are happy to present the edition of the twice-yearly Newsletter of the FSE. You will find news from the Italian, French, Dutch & Spanish Guilds and the Board.

News from the Guilds would be best sent in the mother tongue language with an English translation.

Any suggestions and comments would be appreciated.

Pictures and articles are accepted, even jokes! Let's keep the newsletter alive!

Silvia Pérez

NEWS FROM FSE: Articles regarding the Television without Frontiers Directive/sent by Phyrus Mercouris

Article on:

“Action Programme to promote bodies active at European level in the field of Culture”.

At the moment a wide ranging debate is taking place in the European Institutions – the Commission, the Parliament and the European Council of Minister on the future of the A-Lines.

What are the A-Lines ?

The Commission has two types of budgets: A-Lines and B-Lines.

B-Lines concern funding programmes like Media Plus, Culture 2000, and all the various funding programmes managed by the European Commission. These programmes can only fund *projects*. They cannot fund running costs and the day to day operations of an organisations.

A-Lines are the European Commission’s administrative budget which is so huge, millions of Euros remain unspent. With this money the Commission with the European Parliament began funding organisations on an ad-hoc basis. Many of the organisations funded are cultural organisations, like the European Baroque orchestra, or networks of cultural organisations, like EuropaNostra.

It is the ambition of the FSE to benefit from this kind of funding. FSE has already the conditional support of two MEPS – Mr. Alexandros Alavanos and Mr Eurig Wyn to support our request for funding;

Unfortunately the A-Lines have been declared illegal by the European Court and the Member States because they lack a proper legal basis. The European Commission has consequently and rather late in the day presented a proposal to replace the A-Lines which it calls: *“Action Programme to promote bodies active at European level in the field of Culture”*. This proposal outlines two funding mechanisms:

1. Call for proposals,
2. Direct selection by the European Parliament.

Selected organisations will be grants funds for three years.

It is the ambition of the FSE to benefit from this proposed programme and have its operational costs funded. However, it seems that the Commission’s proposal is beginning to fall apart. The adoption of the Programme will be decided according to the *co-decision process*. Which means that the European Council of Ministers and the European Parliament have to reach an agreement in order that the proposal can become a functioning programme. However, in Council, until the Member States decided to adopt the Convention’s recommendation to decide matters relating to culture through majority voting, the current system of unanimity still applies. That means that if just one Member State chooses to de-rail the whole proposal it can do so. Frankly the indications are that the Council will not allow the European Parliament to select specific cultural organisations and cultural networks for funding. The legal experts of the Parliament have strongly indicated to the MEPs that they should drop their wish to select organisations.

In my view, there are two possible outcomes:

- 1) the entire proposal collapses. This is a very strong possibility as it simply needs one Member State to disagree with the entire proposal and object to its existence.
- 2) A system of “calls for proposals” will be adopted. That means organisations will have to submit applications for funding.

The time-table for final agreement of this proposed programme is lengthy. The Parliament must adopt a ‘common position’ which will then be debated by the Commission and the Council. Final decision will be taken jointly by the Council and the Parliament. But if no agreement is reached, the proposal will fall.

If everything goes well, then the proposal will be adopted as a programme in the summer of 2004 and the first call for proposal may be launched in the Autumn of 2004.

Revision of Television without Frontiers Directive (TWF) – the consultation

The FSE has participated in the European Commission's consultation to revise the current Television Without Frontiers Directive by attending the consultation meetings that took place in Brussels in April and in June this year and by sending three letters to M. Jean-Eric de Cockborne, the principle functionary at the Commission responsible for the Directive's revision and re-drafting. Care was taken to send copies of the FSE's position paper to various MEPs who sit in the Cultural Affairs Committee and are in direct communication with the Commission and the Council regarding the Directive's revision.

Why is the Directive important to scriptwriters? The Directive is the principle legal instrument at European level regulating television broadcasting. It is on this law that laws and regulatory practices of the Member States must apply. Though there are Member States (eg, Sweden, UK, Ireland and France) that apply more serve rules and regulations than the TWF any undermining of the Directive would inevitably result in the weakening of more stringent nation state rules. In the light of globalisation and the rather bad situation in some countries like Italy where the rights of creators is under attack and TV broadcasting services are becoming increasing concentrated, the Directive's importance as a safeguard for the interests of artists increases.

The consultation organised by the European Commission and which took place between April to July exposed major conflicts of interests between artists like scriptwriters, directors, and writers in general and the industry's major player, ie, the broadcasters and multinational media groups.

Below is an analysis of the European Commission consultation on the revision of the Television Without Frontiers Directive (TWF). It is my own analysis. The Commission will issues its analysis in November or December. To view all the responses to the Commission's consultation, you must go to the following web-site:

<http://europa.eu.int/comm/avpolicy/regul/review-twff2003/contribution.htm>

I have focused on issues relating to culture and consequently I have on purpose focused on comments made on Articles 4, 5, 6 and 11.

- Article 4 relates to the obligation on TV broadcaster to ensure that 50% of programmes are "European works" (this does not includes commercial breaks, news or sports programmes).
- Article 5 relates to the obligation that broadcaster must devote up to 10% of viewing time to programmes made by independent producers or devote 10% of the expenditure to the purchasing of programmes made by independent producers.
- Article 6 defines what is a "European work".
- Article 11 relates to advertising – there are various regulations imposing several controls. The most important and contentious is that broadcasters can interrupt a programme only after 20 minutes have elapsed.

According to my calculations the Commission received in excess of 140 comments. Not all are on the Internet and available for public viewing. The FSE for example sent three letters, but for reasons only the Commission can explain only the first and the most general of the three letters is displayed.

Having read most of the comments, I can make certain general observations. Fourteen types of organisations submitted comments:

<ul style="list-style-type: none"> • cultural organisations, • film/cinema organisations, • trade unions, • consumer groups, • advertisers, • independent producers of TV programmes and films, 	<ul style="list-style-type: none"> • public sector broadcasters, • private sector broadcasters, • associations representing multinational organisations, • public organisation (eg, universities), 	<ul style="list-style-type: none"> • government, • regulators, • industrial groups, • other – that is mainly organisations representing sport, churches and individuals
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Articles 4, 5 and 6

I was able to indicate 48 organisations commenting on this issue. 31 organisations are in favour of retaining the quotas, while 17 organisations want to get rid of them. Quotas are vital to scriptwriters as they do provide an obligation on broadcasters to purchase European works rather than just buy cheaper imports.

Of those organisations that want to retain them, some are more consist and firm than others. For example independent producers all want to retain article 5 but do not necessarily make any comments on article 4. The cultural organisations and the trade unions are in favour of retaining the two articles. Uni-Mei's influence is enormous, with several organisations include its recommendations (eg, BECTU, FIA, Ver.di, and Danish independent producers). Cultural organisations and unions also want to do away with the words "where practicable" from the text of Article 4 as this weakens the obligation on broadcasters to show 50% European works. In many cases cultural organisations, TUs and independent producers want the quota raised and even sub-quotas on national works included.

The various governments and regulators seem quite content with the status quo, with the exception of Finland which is hostile to all quotas. Sweden is also a bit ambivalent on the quotas. But, broadly speaking it is safe to say that all the governments want is to retain control, they are opposed to self-regulation on content, but wish to retain flexibility (ie, keep the words "where practicable"). There is some concerns, (eg, UK government) that small broadcasters serving a specific audience should be treated more preferentially. The governments do not want any changes in the definitions of what is a European work and what is an independent producer, which is a pity. The principles of subsidiarity is often inferred. Curiously public sector broadcasters seem quite content with the 50% quota, but resent the 10% quota on independent producers and argue against any increase.

Those opposed to the quotas are more easily identifiable and more consistent in their demands. They are the private sectors broadcasters and multinationals (media groups). They complain that quotas are an infringement on editorial freedom, are obsolete in a changing technological environment and in several instances, recommend that funding programmes like Media Plus should cater for all the needs of independent producers and film makers. Nonetheless, in most cases, the broadcaster boast that they exceed the quotas.

Some of their comments include veiled and not so veiled threats. For example references to quotas being in breach of fair competition rules stipulated in WTO, and incompatibility with subsidiarity. Interestingly, on subsidiarity, the broadcasters often cite that Member States (eg, France, UK, Netherlands, Sweden) imposing more serve quotas on them, meaning that European quotas are unnecessary, irrelevant and even illegal.

One should bare in mind that subsidies to film making are often attacked by the USA at WTO at the promptings of these same TV broadcasters and media groups who now hypocritically advocate Media Plus and subsidy instead of quotas.

Though governments seem to be in favour of retaining the quotas (articles 4 and 5) broadcasters do control news programmes which politicians fear and there is a danger in Council that the quotas, though they harm no-one, may be weakened.

Advertisement control (including Article 11)

Passions are greater on this issue than on the quotas. I counted 54 comments to retain or strengthen advertisement control and 33 to water them down or abolish them all together. Those organisations that favour retaining advertisement controls are the cultural organisations, the trade unions, governments and regulators, and most passionately of all, various consumer groups.

The cultural organisations, with support from trades unions are very concerned that any weakening of the advertisement control will result in constant interruptions of audiovisual works. They demand that in some cases such as the showing of a film, there should be no interruptions. Authors' rights and copyrights laws are often quoted.

Consumer groups are very militant, even more so than cultural organisations and trade unions. They cite many breaches by advertisers of the various controls and want the future TWF to impose much stricter controls, particularly to protect the general public from insidious advertising and exploitation of young people, particularly from alcohol and tobacco advertisers.

Governments and regulators seem to favour the existing status quo (except Finland). Some governments and regulators (especially Sweden, the candidate states, the Netherlands) want tougher controls arguing that existing controls cannot be effectively implemented in the changing technological environment. Except for Finland, all the governments and regulators distrust self-regulation.

Interestingly, one organisation very much in favour of regulation is a private broadcaster that specialises in tele-shopping: "Home Shopping Europe" (from Germany) gives excellent arguments for further regulation and control by indicating that the technological changes taking place need regulating or they will fall apart. Also de-regulation and self-regulation as advocated by some will confuse the difference between TV broadcasting and media services like tele-shopping.

Those opposed to advertisement controls include private broadcasters, advertisers, industrial groups, media groups and some governments (UK and Finland). The key argument put forward is that current advertising control are hindering the application of new technologies. In order that new technologies are developed, investments must be made and funded somehow and that means advertising. New forms of advertising techniques like split screens simply do not correspond to the current regulations. Consequently self-regulation is demanded. The 20 minutes rule of Article 11 is loathed by the broadcasters and advertisers. The Broadcasters want to insert advertisement during ‘natural breaks’.

Other comments

There are other areas of the TWF which are contentious. Particularly Article 22 which relates to the protection of minors. Article 22 prohibits excessive showing of violence and other explicit scenes that are a danger to minors. The bulk of organisations demand that these rules remain in place, yet still you find ample examples, especially from private broadcasters who want self-regulation.

Article 3 is of great concern to all broadcasters and to governments. This Article gives governments rights to draw up lists of events that broadcasters must show for free. Events selected are invariably sporting events (eg, World Cup). I have only come across one cultural event listed – the Vienna Ball. Nonetheless, Article 3 has thrown up very important intellectual property rights issues. Broadcasters are often fighting each other over ownership of extracts, highlights or news clips of these major events. Also news organisations like Reuters are particularly concerned about being denied accesses to news extracts from the lucky broadcaster that has the rights to show the event. Interestingly UEFA, the European Football governing body, is fiercely protective of its ownership rights, obviously to protect its powerful negotiating position with broadcasters.

There is some concern from film makers regarding Article 7 which regulates the time in which a film can be sold as a DVD or Video. Film distributors want the “window” or length of time in which a film is turned into a video to be at least 6 months.

Other issues

Broadcasters, Government, industrial groups and advertisers are opposed to any broadening of the scope of the Directive. They want the Internet and multimedia industry regulated by other Directives (e-commerce, IPR, etc).

Authors’ rights come under attack in a few instances from powerful organisations (see ICRT, ETNO, Telefonica, Multimedia PT). They feel hindered in their buying and selling of audiovisual works and above all feel that authors’ rights are preventing them from exploiting digital technologies. However, when it come to their property rights, they want tougher legislation safeguarding their interests.

General comments

I am surprised how few cultural organisations and public sector broadcasters wrote to the Commission. Though this was compensated by film distributors and producers. I am also

surprised that certain governments failed to respond (Italian, Greek, Portuguese, Spanish). Certain countries in fact seem over represents (Germany, France and especially the UK). While organisations from Spain, Greece, Portugal and Finland have hardly responded.

Future Directive

I think that in spite of the ferocious lobbying of the broadcasters, the quotas will remain. One also needs to bare in mind the opinion of the European Parliament (**Perry Report**) which wants the quotas to remain. Also with the exception of Finland the governments and their regulators are broadly happy with the quotas. The cultural organisations, trade union and independent producers argue for increases in the quotas and their arguments counter-balance those who wish to remove the quotas. In fact the arguments of the Broadcasters and media groups are contradictory because they all boast that they far exceeding the quotas – which means that the quotas are not harming them in any way.

Unfortunately I do not think that the words “where practicable” will be deleted because governments like this words, nor do I see any strengthening of the definition of what is a European work, again because governments want to retain control over definitions within their own borders.

As for the removal of advertisement controls and the use of self-regulation for advertising. I am optimistic that the controls will stay and the future Directive will lay-out a system for co-regulation rather than self-regulation. What the critics of self-regulation and de-regulation have succeeded in arguing, in my opinion, is that advertising is still advertising in whatever form it takes (conventional means or split-screens). The arguments for self-regulation are very militant but lack substance unlike the arguments made by consumer groups and others.

Much will now depended on the results of the studies of the Commission on the effectiveness of the TWF and on the analysis the consultation.

**NEWS FROM FSE: Letters regarding the Television without
Frontiers Directive**

Date: 2003-07-09

**Pascal LAMY
Commissioner responsible for Competition Policy,
European Commission
B – 1049 Brussels
(Belgium)**

Dear Mr Lamy,

Subject: Trade negotiations at the WTO and the culture sector.

We are writing to you because we, the **Federation of Scriptwriters in Europe (FSE)** who represent 8,000 writers, who through their work touch the lives of millions of people, are concerned by the lobbying of big business on Europe to liberalise further the trade in cultural goods and services, especially audiovisual products like films and television documentaries and dramas. Specifically we are aware of the lobbying activities of the ICRT (international Communication Round Table), which is an umbrella organisation representing 26 major multinational companies concerned with audiovisual. We are encouraged by the remarks you made in Paris (4 February 2003) and more recently at the Committee on Culture, Youth, Education, the Media and Sport (19 May 2003) of the European Parliament, to up-hold at the WTO negotiations the cultural exemption. We as scriptwriters would like to take this opportunity to further explain the merits of defending this exemption.

The case for the retaining the exemption on culture

Culture is vital for Europe's social cohesion. It is at the heart of Europe and it can act as a bridge between its various Member States and new members and also with the wider world. In the grim light of 9/11, culture as a bridge between peoples is more than ever necessary.

Audiovisual and media are the lifeblood of the body politic. It is through this industry that extensive circulation of ideas, information, analysis and debate, artistic and cultural expression must exist, or else the consequences are catastrophic. And real dangers do exist. As we speak there maybe more TV channels than before, but in the last fifteen years, ownership of the audiovisual industry has moved towards ever greater concentration with decision-making

powers in few and fewer corporate hands. There is a real danger that the European Union could go the way the USA is going. Twenty years ago, former Washington Post assistant managing editor, Ben Bagdikian sketched out America's media ownership. In 1983, when his book "The Media Monopoly" was first published, "50 corporations dominated most of every mass medium". With each new edition of the book that number kept dropping: to 29 media firms in 1987, 23 in 1990, 14 in 1992, 10 in 1997, 6 in 2000.

For these reasons alone there is a case for the European Union to support the interests of culture and creative workers like artists, and to have a dynamic culture policy.

The problems our industry is facing

The European audiovisual sector is the most typical 'cultural industry'. It is a sector where creative workers and artists work in co-operation with non-artistic professions within a business environment. The main issue confronting the audiovisual sector is how to ensure the sectors' competitiveness, dynamism, and technological development while at the same time retain its ethical, creative and innovative values. Bearing this in mind, the specific problems can be summarised as follows:

- a) Firstly, it is vital that production of new European audiovisual works is encouraged and that the means to boost production are developed. Audiovisual works include feature films and television documentaries and drama. Writing a script and making it into a film or TV drama is a creative process and an innovative act in itself resulting in cultural creation, diversity and identity.
- b) There is a desire by European TV broadcasters to show cheap American imports rather than European works.
- c) Cinemas, because of the way in which distribution networks have developed and because of the fragmented nature of the European film industry, tend to show mainly American produced films.
- d) The position of the artist as a rightsholder is being undermined because of their weak negotiating position vis à vis the broadcasters, which can use their economic and political power to undermine the authors' rights through unfair contractual agreements. Artists need to receive a proper and fair income and more credit for their work so that they feel encouraged to create more and to be able to earn a proper income.
- e) Though there maybe more TV channels than ever before and more opportunities to see films, the fact is that the audiovisual sector is part of a much larger 'Media' industry where power is becoming increasingly concentrated.
- f) A single European market still does not yet exist. Europe is made up of diverse cultures which share a commonality, but are essentially diverse. This diversity contributes to cultural dynamism, creativity and identity. A single market must somehow recognise this diversity in order to embrace its creative powers. Because of the excessive media concentration there is a danger that this diversity will be ignored, resulting in poor quality products.

Expectations from the European Union at the WTO

The European Union should be mindful of lobbying by the powerful economic interests that currently dominate the audiovisual sector. These interests, namely multinational media consortiums which own much of the television industry, have interests that are contrary to those of the public. They are purely profit driven and use their powerful economic positions to undermine the rights of artists. These media groups are arguing for the alteration of regulations to suit their interests. Under the guise of technological development, competition and flexibility they are calling for a loosening of authors' rights and ownership rights to channels. They claim that rules on media ownership, competition and restrictive practices on them should be relaxed because of the Internet and the digital era. The Internet, despite billions of dollars in investment, has not seen a single original commercially viable media content site launched. More important, the value of radio and TV stations continues to grow at a fast rate. If the Internet and digital technologies were indeed undermining the value of scarce radio and TV channels, we would expect TV channels to be approaching the point where they would have much less value in the market because of all the new competition. It would be irrational to spend, say, €100 million for a TV channel when the same money could create scores of websites. But this myth spread by Media corporations of media abundance does not exist in any meaningful sense. Hence the legal justification for stronger regulation on the media ownership rules and a level negotiating playing field between employers and employees.

Globalisation is a fact. It is not something that is new, but in terms of culture the current type of globalisation is new because it tends to impose a single aesthetic. Globalised markets do not allow cultural diversity and the quality that comes with this diversity. This 'market failure' of globalisation is a good reason to argue at WTO and at the EU the need to justify state's role in culture. Nevertheless a balance has to be struck between the requirements of commerce with those of culture. Regarding WTO negotiations and the establishment of an international treaty safeguarding culture, diplomatic efforts with the USA must not be abandoned. Somehow the USA must be convinced to co-operate with any such international treaty and to drop its hostility to UNESCO otherwise, the USA will undermine international efforts.

Furthermore, The USA is trying to extend through the WTO negotiations the copyright system – this must be resisted. The USA is trying to create a regulatory framework based on copyright for new communication and transmission systems, namely the Internet and telecommunications which because of digitisation are now converging with TV. This will undermine the ownership and control of our European television programmes and films once they are disseminated on the Internet and other telecommunications systems because our system is authors' rights and not copyright. At the WTO negotiations:

- The EC must defend nations' rights to aid their cinema and TV/radio broadcasting industries. This includes defending state aid to the culture sector and that includes the audiovisual sector. The European Union should defend the integrity of public sector broadcasting and public service broadcasting. Public broadcasters provide a service to the public and offer opportunities to the artists that are not necessarily commercially led.

- The EC must also defend the existence of funding programmes like MEDIA PLUS which provide valuable funds for the productions and distribution of audiovisual works and the further training of professional in the audiovisual sector.
- The use of quotas in TV/radio broadcasting should be maintained. In the USA a quota systems is actually in operation whereby television stations are obliged to show Hollywood made films at peak viewing time and give 10% of the profits to the film makers. It is ironic that the multinational media giants that own all of Hollywood and so much of the world's television stations are lobbying the EU to dismantle the quota systems established under the Television Without Frontiers Directive which is currently under revision. Any moves at the WTO to undermine the quota systems established by this Directive must be resisted.
- The European Union should not make any commitments to open up the Union to third world audiovisual products and services as this is simply opening a back door to American multinational imports, it is better to aid third world countries through bilateral agreements between the EU and third world states, for example funding the production and distribution of films.
- The European Commission must defend and never compromise on "authors' rights". It is vitally important that the European Union recognises the importance of upholding and strengthening authors' rights and working towards some kind of European harmonisation in this area. Future European Directives that concern the regulation of the television, radio, communication, transmission and telecommunications in the digital age must recognise and include provisions of ownership and protection based on the principles of "authors' rights". By doing so this will actually enhance Europe's art and culture because it would strengthen the confidence of artists like writers, musicians and film makers in creating new work which they know will be properly protected from piracy as well as ensuring moral credit and financial gain.

We very much hope that you take these arguments of ours on board while representing the EU, if and when you need them, at the WTO negotiations.

Yours sincerely,

Katerina Marinaki
FSE President)

Pyrrhus Mercouris
(FSE Manager)

Pascal Lamy
Member of the European Commission

Date: 18.09.2003

Dear Ms Marinaki, dear Mr. Mercouris,

Thank you for your letter dated 16 May on the WTO negotiations in the field of cultural sectors.

Preservation and promotion of cultural diversity are among the funding principles of the European model. Accordingly, a number of policies have been developed and implemented in the audio-visual sector both at EC and Member States' levels. These audio-visual policies pursue general objective, *inter alia* pluralism in the media, the protection of minors, consumer protection and cultural diversity. All these objectives have to be pursued in the context of a functioning EC internal market for audio-visual services, and I would certainly welcome a larger diversity of choice in Europe, among both European and non-European audio-visual content.

The EC is determined to preserve its capacity to adapt those policies throughout the time, as well as develop new ones, according to the conditions affecting the audio-visual sector, the EC, within the framework of the Doha (DDA) negotiations at the WTO, has made no request to third countries in the audio-visual sector, nor any offer of liberalisation of the EC market, and has maintained its exemptions to the Most-Favoured-Nation treatment. The latter cover for instance co-production agreements with third countries, as well as contents requirements and funding schemes in favour of European – not only EU – productions.

Such interest in cultural diversity extends world-wide, as is illustrated by the growing international debate on a normative framework under the auspices of UNESCO to ensure the preservation and promotion of cultural diversity. The Commission put forward on 27 August 2003 a Communication on this subject and supports the establishment of a legally binding instrument for cultural diversity, which would aim at promoting cultural policies and instruments; contributing to the dialogue between cultures and to mutual understanding and respect; developing international cultural co-operation and boosting the exchanges of cultural goods and services, notably those in provenance of developing countries. The Communication can be found at http://europa.eu.int/comm/avpolicy/extern/culdi_en.htm

Yours sincerely,

Pascal LAMY

Date: 2003-07-09

Viviane REDING
Commissioner for Education and Culture
European Commission
B-1049 Brussels
(Belgium)

Dear Ms Reding,

We are writing to you because we, the **Federation of Scriptwriters in Europe** (FSE) who represent 8,000 writers, who through their work touch the lives of millions of people, are concerned about recent developments in the audiovisual sector. We are encouraged by your recent statements which you made in Thessaloniki in May in favour of a pro-active European culture and audiovisual policy. Therefore we would like you to consider our needs regarding these developments.

The importance of culture to Europe

Culture is vital for Europe's social cohesion. It is at the heart of Europe and it can act as a bridge between its various Member States and new members and also with the wider world. In the grim light of 9/11, culture as a bridge between peoples is more than ever necessary.

Audiovisual and media are the lifeblood of the body politic. It is through this industry that extensive circulation of ideas, information, analysis and debate, artistic and cultural expression must exist, or else the consequences are catastrophic. And real dangers do exist. As we speak there maybe more TV channels than before, but in the last fifteen years, ownership of the audiovisual industry has moved towards ever greater concentration with decision-making powers in few and fewer corporate hands. There is a real danger that the European Union could go the way the USA is going. Twenty years ago, former Washington Post assistant managing editor, Ben Bagdikian sketched out America's media ownership. In 1983, when his book "The Media Monopoly" was first published, "50 corporations dominated most of every mass medium". With each new edition of the book that number kept dropping: to 29 media firms in 1987, 23 in 1990, 14 in 1992, 10 in 1997, 6 in 2000.

For these reasons alone there is a case for the European Union to support the interests of culture and creative workers like artists, and to have a dynamic culture policy.

The problems our industry is facing

The European audiovisual sector is the most typical 'cultural industry' and is the sector where much of our culture is transmitted. It is a sector where creators work in co-operation with non-artistic professions within a business environment. The main issue confronting the audiovisual sector is how to ensure the sectors' competitiveness, dynamism, and technological development while at the same time retain its ethical, creative and innovative values. Bearing this in mind, the specific problems can be summarised as follows:

- g) Firstly, it is vital that production of new European audiovisual works is encouraged and that the means to boost production are developed. Audiovisual works include feature films and television documentaries and drama. Writing a script and making it into a film or TV drama is a creative process and an innovative act in itself resulting in cultural creation, diversity and identity.
- h) There is a desire by European TV broadcasters to show cheap American imports rather than European works.
- i) Cinemas, because of the way in which distribution networks have developed and because of the fragmented nature of the European film industry, tend to show mainly American produced films.
- j) The position of the artist as a rightsholder is being undermined because of their weak negotiating position vis à vis the broadcasters, which can use their economic and political power to undermine the authors' rights through unfair contractual agreements. Artists need to receive a proper and fair income and more credit for their work so that they feel encouraged to create more and to be able to earn a proper income.
- k) Though there maybe more TV channels than ever before and more opportunities to see films, the fact is that the audiovisual sector is part of a much larger 'Media' industry where power is becoming increasingly concentrated.
- l) A single European market still does not yet exist. Europe is made up of diverse cultures which share a commonality, but are essentially diverse. This diversity contributes to cultural dynamism, creativity and identity. A single market must somehow recognise this diversity in order to embrace its creative powers. Because of the excessive media concentration there is a danger that this diversity will be ignored, resulting in poor quality products.

Expectations from the European Parliament and the European Union

FSE would like the European Parliament and the European Union to:

1. Support the rights of creators and recognise the importance of their creative work to the economy. Creating a work of art is an innovative act in itself. This is something that the European institutions have not entirely understood. Innovation has tended to mean technological development and application of new information and communication technologies. Innovation

has lost its intrinsic meaning to give added value to society through cultural expression and enjoyment.

2. The Parliament and the Council should defend state aid to the culture sector and that includes the audiovisual sector. The European Union should defend the integrity of public sector broadcasting and public service broadcasting. Public broadcasters provide a service to the public and offer opportunities to creators that are not necessarily commercially led.
3. The European institutions should be mindful of lobbying by the powerful economic interests that currently dominate the audiovisual sector. There may be more channels than ever before, but ownership is restrictive. These interests, namely multinational media consortiums which own much of the television industry, have interests that are contrary to those of the public. They are purely profit driven and use their powerful economic positions to undermine the rights of creators. These media groups are arguing for the alteration of regulations to suit their interests. Under the guise of technological development, competition and flexibility they are calling for a loosening of authors' rights and ownership rights to channels. They claim that rules on competition and restrictive practices on them should be relaxed because of the Internet and the digital era. The Internet, despite billions of dollars in investment, has not seen a single original commercially viable media content site launched. More important, the value of radio and TV stations continues to grow at a fast rate. If the Internet and digital technologies were indeed undermining the value of scarce radio and TV channels, we would expect TV channels to be approaching the point where they would have much less value in the market because of all the new competition. It would be irrational to spend, say, €100 million for a TV channel when the same money could create scores of websites. But this myth spread by Media corporations of media abundance does not exist in any meaningful sense. Hence the legal justification for stronger regulation on the media ownership rules and a level negotiating playing field between employers and employees.
4. The European Parliament, the Commission and the Council should put pressure on the European Convention to recognise the importance of culture and to ensure that the existing Article 151 of the Amsterdam Treaty is at least retained in the future treaty. Article 151 is important as it has given the European Community the legal right to develop culture policies. Unfortunately the scope of Article 151 has been limited by the strict definition of the Subsidiarity Principle – and this needs to be overcome. Therefore the European Convention should develop a better and more inclusive cultural article in the future EU treaty.
5. Regarding EC Directives relating to authors' rights, it is vitally important that the European Union recognises the importance of upholding and strengthening authors' rights and working towards some kind of European legal harmonisation in this area. Future European Directives that concern the regulation of the television, radio, communication, transmission and

telecommunications in the digital age must recognise and include provisions of ownership and protection based on the principles of “authors’ rights”. By doing so this will actually enhance Europe’s art and culture because it would strengthen the confidence of creators like writers, musicians and film makers in creating new work which they know will be properly protected from piracy as well as ensuring moral credit and financial gain.

6. **Regarding European funding of culture, the principal mechanism of the Community to funding production and distribution of audiovisual works and the further training of professionals in the audiovisual sector is the MEDIA PLUS programme. This programme should be expanded. In particular the budget of the next MEDIA PLUS programme should be greatly increased. With the coming enlargement the demands on this programme will increase, consequently so must its budget be increased. The future MEDIA PLUS should also encourage ‘production’ of new audiovisual works as much as ‘distribution’ and ‘promotion’ and for creators the development of scripts. Also a distinction should be made between cinema and television and radio. Though these three media are related, from an artistic point of view they are nevertheless different and these differences should be understood better in the future programme. Other programmes like Culture 2000 for the same reason should be expanded because these too must meet the needs of enlargement. More should be made of Article 151.4 of the Treaty which calls on the other funding instruments and activities of the European Commission to include a cultural aspect.**

7. **Regarding Television Without Frontiers, this Directive was initially adopted in 1989 when there were not more than 50 TV channels in the European Union. This has now increased to 1500. This technological change has not finished and it is not sure when it will finally end. Consequently, a cautious approach is necessary in the revision of this Directive. The future directive should examine:**
 - dangers of media concentration ;
 - encouraging the production and distribution of European audiovisual works;
 - eliminating restrictive and unfair practices (for example a level playing field is needed so that creators can negotiate contractual agreements with broadcasters without being forced into “buy-out agreements” or agree to unfair terms of employment);
 - DVD and digital TV; (ie, when is analogue turned off);
 - safeguard the interests of SMEs
 - retention and possible expansion of quotas (eg, limits on advertising, limits on the showing of non European films);
 - the overlap with other Directorate Generals dealing with industry (ie, particular synergy is needed with Directives like the Satellite Directive and Directives that regulate telecommunications and authors’ rights);
 - upholding the principle of state aid and public broadcasting;
 - penalties for non-compliance.

8. **Globalisation is a fact. It is not something that is new, but in terms of culture the current type of globalisation is new because it tends to impose a single aesthetic. Globalised markets do not allow cultural diversity and the quality that comes with this diversity. This ‘market failure’ of globalisation is a good reason to argue at WTO and at the EU the need to justify state’s role in culture. Nevertheless a balance has to be**

struck between the requirements of commerce with those of culture. Regarding WTO negotiations and the establishment of an international treaty safeguarding culture, diplomatic efforts with the USA must not be abandoned. Somehow the USA must be convinced to co-operate with any such international treaty and to drop its hostility to UNESCO otherwise, the USA will undermine international efforts. Furthermore, The USA is trying to extend through the WTO negotiations the copyright system – this must be resisted. The USA is trying to create a regulatory framework based on copyright for new communication and transmission systems, namely the Internet and telecommunications which because of digitisation are now converging with TV. This will undermine the ownership and control of our European television programmes and films once they are disseminated on the Internet and other telecommunications systems because our system is authors' rights and not copyright. At the WTO negotiations:

- the EC must defend nations' rights to aid their cinema and TV/radio broadcasting industries;
- the use of quotas in TV/radio broadcasting should be maintained;
- the European Union should not make any commitments to open up the Union to third world audiovisual products and services as this is simply opening a back door to American multinational imports;
- it is better to aid third world countries through bilateral agreements between the EU and third world states, for example funding the production and distribution of films;
- the European Commission must defend and never compromise on "authors' rights".

Conclusion

We underline that the present request for help from Europe has nothing to do with political ideas, but only with culture and workers' legitimate rights, and to those who might say, as some do, that writers, directors, actors, and producers are a "happy few", who choose by their own will a private and risky profession. We feel entitled to answer:

- 1) That these relatively few might have been happy in the past, but only because they were trying to produce culture and that culture is as essential to a country's welfare as money is.
- 2) That alongside the few, there are hundreds of thousands of workers whose earnings depend on these few creative artists. Workers who are currently fighting alongside us know what the industry seems to ignore -- that if a writer does not write, a producer cannot produce, a director will not direct, and actors cannot act, and so on down to the youngest stage-hand on the set.

Writers, as you see, are first in line.

Yours sincerely,

Katerina Marinaki
(FSE President)
Manager)

Pyrrhus Mercouris
(FSE

Vivane REDING
Member of the European Commission

Date: 26.08.2003

Dear Ms Marinaki, dear Mr. Mercouris,

Thank you for the interest you show in your letter dated 17 July 2003 for the future of the cultural sector in Europe. Contributions like yours will also nourish the debate on the future of European audiovisual policy, an issue I am especially interested in.

I share your feelings about the importance of culture to Europe and I am aware of the problems the industry is facing. Let me comment on some of the most topical issues you address in your letter.

The Commission subscribes fully to the objective of preserving and promoting the cultural diversity. It is in my view necessary to increase the presences of Europe in the cultural field to enable the development of more ambitious actions in favour of culture, in the common interest of our Member States.

The Convention ended its work that led to a significant improvement regarding the place of cultural diversity in the future European Constitution. The respect of cultural diversity would become an “objective of the Union” (Article I-3 of the draft Constitution). In addition, the obligation to take into account cultural diversity in EC policies is maintained in the text of the article dealing with culture. Finally, the article on trade policy provides that unanimity is required at the Council for the conclusions of international agreements on cultural and audiovisual services, where these risk prejudicing the Union’s cultural diversity would be contrary to the newly established Union’s objectives and principles.

The clarifications on the limited exceptions to qualified majority voting in trade policy are a positive step. Unanimity deliberations are required, as an extra guarantee, for agreements that would risk prejudicing cultural diversity, but not for trade agreements or initiatives that would aim at safeguarding or promoting cultural diversity. The legitimacy of EU trade policy is also greatly enhanced through a substantial increased role of the European Parliament.

I read with great interest your suggestions concerning the future Television without Frontiers directive. My services are in the process of analysing your detailed contribution in the ongoing public consultation. The Commission will draw its conclusions from the consultation process in the Communication on Audiovisual Policy that is foreseen to be published by the end of the year. It therefore seems premature to comment on your ideas right now.

Yours sincerely,

Vivane Reding

Date: 2003-06-16

Jean-Eric de COCKBORNE
Audiovisual Policy – Head of Unit
DG Education and Culture - European Commission
Rue de la LOI 200
B-1049 Brussels
(Belgium)

Dear Mr Jean-Eric de COCKBORNE

Subject: Revision of the Television without Frontiers Directive

On behalf of the Federation of Scriptwriters in Europe (FSE), I would like to thank you for allowing us to express our concerns regarding the revision of the Television without Frontiers Directive.

We met at the conference "The Future of European Cinema and the Audiovisual Sector after the European Union Enlargement" in Thessaloniki (25th, 26th and 27th of May 2003), where I mentioned to you what the FSE represents and what it does. The FSE brings together European scriptwriters' guilds, and represents in total approximately 8000 writers. FSE is specifically concerned with the enhancement, development and protection of European creations and authors' rights and the overall developments in the audio-visual sector. The Television without Frontiers Directive, which was initially adopted in 1989 and later revised in 1997, regulates this sector.

The need for revision

The bulk of the Directive's articles were drafted in 1989 when there were no more than 50 TV channels in the European Union. This has now increased to 1500. This technological change has not finished and it is not sure when it will finally end. These changes are profoundly affecting how the industry is structured and (how it) provides services to the public. The European audio-visual sector is the most typical 'cultural industry'. It is a sector in which creative workers and artists work in co-operation with non-artistic professions within a business environment. The main issue confronting the audio-visual sector is how to ensure the sector's competitiveness, dynamism and technological development, while at the same time retaining its ethical, creative and innovative values within this period of technological

change. Bearing this in mind, the FSE has identified specific problems confronting television which can be summarised as follows:

- m) It is vital that production of new European audio-visual works is encouraged (and that the means to boost production). Audio-visual works includes feature films and television documentaries and drama.
- n) There is a desire on the part of European TV broadcasters to show cheap American imports rather than European works.
- o) The position of the artist as a rights' holders is being under-mined because of their weak negotiating position vis-à-vis the Television broadcasters. The latter can use their economic and political power to undermine the authors' rights through unfair contractual agreements. Artists need to receive a proper and fair income and more credit for their work so that they feel encouraged to create more.
- p) Though there may-be more TV channels and more opportunities to see films than ever before, the fact is that the audio-visual sector is part of a much larger 'Media' industry in which power is being increasingly concentrated.
- q) A single European market still does not exist. Europe is made up of diverse cultures which share a commonality, but are essentially diverse. This diversity contributes to cultural dynamism, creativity and identity. A single market must somehow recognise this diversity in order to embrace its creative powers. Because of the excessive media concentration, there is a danger that this diversity will be ignored, resulting in poor quality television programmes.
- r) There is concern within the world of art that the European Institutions are not taking sufficiently seriously Article 151 of the Amsterdam Treaty, and that the principle of subsidiarity is being too strongly interpreted. There is also concern that the European Institutions, especially the European Commission's Directorate General responsible for Competition are interpreting the rules governing state aid in too strict a manner. As a result of all this, the culture sector finds itself constantly having to call for and justify adequate regulation and state support.

In the light of the above, a cautious approach is necessary in the revision of this Directive. The future directive should:

- a) examine dangers of media concentration;
- b) encourage the production and distribution of European audiovisual works;
- c) eliminate restrictive and unfair practices (for example a level playing field is needed so that artists can negotiate contractual agreements with broadcasters, without being forced into "buy-out agreements" or agreeing to unfair terms of employment);
- d) up(-)hold the principle of state aid and public broadcasting;
- e) consider the retention and possible expansion of quotas (e.g., limits on advertising, limits on the showing of non European films);
- f) examine the over-lap with other Directorate Generals dealing with industry (i.e., particular synergy is needed with Directives like the Satellite Directive, and Directives that regulate telecommunications and authors' rights);

- g) consider digital TV; (i.e., when is analogue turned off);
- h) enforce stronger penalties for non-compliance.

Revision specifics

The FSE is quite happy to retain the bulk of the preamble of the Directive. That is to say paragraphs (1) to (46) of the 1997 revised Directive. Nonetheless, the FSE would like to add certain points.

- Regarding paragraph (15), the FSE would like to see a reference to the safeguarding of “cultural diversity” as mentioned in Article 151 of the Amsterdam Treaty. This is important because of the dangers of the increasing concentration of the sector is resulting in the homogenisation of television products and services.
- Regarding paragraph (27), the FSE feels that this paragraph needs to be strengthened. It is not enough to call on broadcasting organisations, programme makers, producers, authors and other experts to “...develop more detailed concepts and strategies aimed at developing European audio-visual fiction films that are addressed to an international audience”. In the light of the technological developments and changes currently affecting the sector. Broadcasting organisations should be *obliged* to encourage the development of European films and audio-visual works. The propensity to show ‘repeats’ and ‘cheap imports’ must be resisted.
- Regarding article (44), the FSE is concerned that obligations on the Member States and the European institutions to combat excessive concentration are not being taken seriously enough. It is ironic that the European Commission’s Directorate General for Competition has a very tough interpretation of state intervention and aid, but has so far not reacted to the excessive concentration that is developing within the audio-visual sector which is threatening cultural rights and diversity. Strong and identifiable measures must be taken to safeguard native languages and minority-spoken languages. Non-compliance of the future TV without Frontiers Directive by Member States and broadcasters should be severely penalised through fines and even withdrawal of broadcasting licences.

FSE review comments

Regarding articles 1 to 3, the FSE wants these article retained.

Regarding article 4(1), where it says “*Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services and teleshopping. This proportion, having regard to the broadcaster’s informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.*”

The FSE would like a new wording :

“Member States shall ensure by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, 75 % (seventy five per cent) of their transmission time, excluding the time appointed to news, magazines, sports events, games, advertising, teletext services, teleshopping, real TV and in a general way, any programs which express only a translation or a transcription of the reality, without it is modified in a significant or substantial way by the original glance of one or several authors clearly identified.”

The words “*where practicable and*” which, once, had a meaning has to be deleted in the new draft of the directive. The words “majority of the proportion of the transmission time” Must be - in order to be better defined - change into “75% of the transmission time”. This is a justifiable means of

increasing opportunities and boosting production of European works rather than cheap imports. 75% is not an excessive figure, as 80% of peak viewing time in most Member States show European productions. Furthermore, by putting a quota, broadcasters will not only be obliged to show European works, but a limit will be put on their power, which is currently over-concentrated.

Regarding articles 4(2)-(4), the FSE wants these sub-articles retained..

Regarding article 5 which states: *“Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, , excluding the time appointed to news, magazines, sports events, games, advertising, teletext services, teleshopping, real TV and in a general way, any programs which express only a translation or a transcription of the reality, without it is modified in a significant or substantial way by the original glance of one or several authors clearly identified.” or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.”*

The FSE would like this slightly changed to favour independent producers. Independent producers are in closer contact with artists (scriptwriters, directors and musicians) and are therefore in a position to develop new TV productions. Another reason is that this is a way of combating the increasing concentration of the sector. Making sure that the broadcasters deal with European independent producers is one way in reducing the power of the Media empires that dominate broadcasting. Consequently, the FSE would like to see the 10% threshold raised to 15%.

Regarding Articles 6 and 7, the FSE would like these articles retained without changes.

The FSE would like to bring back the Article 8 of the original 1989 Television without Frontiers Directive which states: *“Where they consider it necessary for purposes of language policy, the Member States, whilst observing Community law, may as regards some or all programmes of television broadcasters under their jurisdiction, lay down more detailed or stricter rules in particular on the basis of language criteria.”*

This article should be brought back because it provides some safeguard for the production of television programmes in less widely-spoken languages. In the light of the coming enlargement of the European Union, and in recognition of the many millions of Europeans who speak lesser spoken languages, it is important to safeguard this aspect of our cultural/linguistic diversity and to defend our fundamental freedom to express ourselves in our own languages. The existence of this article will also encourage the production of television programmes in lesser spoken languages in the artistic styles specific to these “minority” cultures, which could inspire innovation in the “majority” cultures.

Regarding Article 9, FSE has no comment on this article.

Regarding Article 10, the FSE has no substantial comment on this article, though what is meant by “subliminal techniques” in advertising and “surreptitious advertising” - is not clear.

Regarding Article 11 which states:

“1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.

2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.

3. *The transmission of audio-visual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.*

4. *Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.*

5. *Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.*”

The FSE does not believe that advertising spots inserted during a television drama or film cannot but hinder the integrity of the TV drama or film. Therefore article 11 should not apply to films and dramatisation, but only to light entertainment programmes, sport events, news, documentaries and other non-artistic programmes.

Consequently the FSE would like to see in the future Directive a paragraph calling for the creation of a classification system for special cultural materials that are viewed as vital example of the European audio-visual heritage, for example drama programmes and documentary films. These would be protected from the insertion of advertising spots.

This classification system would also protect films, documentary and fiction and drama programmes where such protective rules already apply, but these rules would not apply to purely commercial films and commercial mass market dramas.

It is important to understand that broadcasters pressurise producers and directors who put even more pressure on scriptwriters to write films and dramatisations that can have advertising spots and teleshopping inserted in specific intervals. This is becoming a common practice in the USA. Such practices are restrictive on artistic and cultural expression and deny the work proper artistic merit – hence the need for some kind of classification system.

Specifically relating to 11.3 – documentaries must be excluded from this category.

Specifically relating to 11.4 – The Directive should increase this time to 45 minutes as stated in 11.3.

Specifically relating to 11.5 – the FSE would prefer to stick to one interval of 45 minutes which is consistent with 11.3.

The justification for further restriction on advertising and on the insertion of advertising, is that once advertising is there, with every further revision of the Directive modifications will be inserted that will permit without difficulty the insertion of advertising almost anywhere and any time. A principle is at stake – European television is fortunate not to have uncontrolled “advertisement breaks”. This is a specificity of European Television and a sign of a certain cultural strength and self-respect and respect to viewers and not to cut into audiovisual works (feature films, fiction and drama and documentaries) whether they are of exceptional or mediocre value with advertising.

The remaining articles, 12 to 26, should all be retained.

Further FSE comments

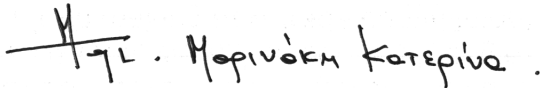
The FSE would like to stress that the future Directive should encourage as much as possible the production of European audiovisual works (feature films, fiction and drama and documentaries) and the showing of these productions. The future directive should create an(d) environment where artistic and commercial interests can work together. Currently commercial interests are too dominant.

In the current Directive (1997) there is very little reference to the safeguarding of public sector broadcasting and state aid. Nor is there any mention of the over-lap with other Directives which regulate satellite, radio, Internet broadcasting and intellectual property rights (authors' rights). The future Directive, or a separate Directive which operates in synergy, should be developed to safeguard the principle of publicly-owned and democratically-owned and democratically accountable public sector broadcasting which is not subject to 'media concentration'.

The current Television without Frontiers Directive lacks penalties. Broadcasters in breach of the Directive should be appropriately punished for non-compliance with the directive's articles. The European Union with the co-operation of the Member States should draw up a list of penalties that can be applied to broadcasters who are in breach of its articles.

Finally, a date should be should be given for when digital television replaces analogue and analogue is turned off. Such a date should be realistic. Furthermore, before analogue is finally turned off, sufficient notice, and possibly even procedures to delay this moment should be put in place.

Yours sincerely,



Katerina Marinaki
(FSE President)
Manager)

Pyrrhus Mercouris
(FSE

Copy: Mr. Roy PERRY (MEP)
Mr Michel ROCARD (MEP)
Mr. Alexandros ALAVANOS (MEP)
Ms. Barbara O'TOOLE (MEP)
Mr. Eurig WYN (MEP)
Ms. Myrsini ZORBA (MEP)
Mr Giorgio RUFFOLO (MEP)
Ms Doris PACK (MEP)
Ms Geneviève FRAISSE (MEP)
Ms Karin JUNKER (MEP)
Ms Raina A. Mercedes ECHERER (MEP)
Ms Christa PRETS (MEP)
Ms Ruth HIERONYMI (MEP)

Date: 2003-07-10

Jean-Eric de COCKBORNE
Audiovisual Policy – Head of Unit
DG Education and Culture - European Commission
Rue de la LOI 200
B-1049 Brussels
(Belgium)

Dear Mr. Jean-Eric de COCKBORNE

Subject: Revision of the Television without Frontiers Directive – Article 11 (regulation on advertising).

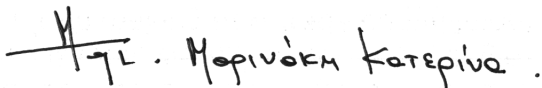
We the FSE (Federation of Scriptwriters in Europe) have already sent to you two letters – our general position regarding the overall revision of the Television Without Frontiers Directive (16.06.2003) and our remarks relating to statements made at the Commission’s recent public consultation (23-25.6.2003) on the Directive’s articles 4, 5 and 6. However, in the light of recent lobbying by broadcasters and the ICRT (International Communication Round Table - an umbrella organisation representing 26 of the most powerful broadcasting, Internet and telecommunications multinationals in the world), which are demanding self-regulation on advertising we the FSE would like to take this opportunity to add to our earlier remarks of 16.06.2003:

- The European Commission should up-hold the legal position as outlined within the current Directive, which is that advertising on television should be regulated.
- Self regulation would allow broadcasters to pressurise producers and directors to force scriptwriters to write films, documentaries and dramatisations that can have advertising spots and teleshopping inserted in specific intervals. Such practices are restrictive on artistic and cultural expression and deny the work proper artistic merit.

- FSE is also concerned about new form of advertising and sponsorship such a split screening and the sponsorship of programmes by powerful commercial interest groups. These, at the moment are seen as being acceptable. Pressures for split screen advertising and sponsorship is focused on sports programmes. However, if this practice is left to self-regulation it will inevitably spread throughout the entire spectrum of television programmes. These new forms of advertising and sponsorship are potentially even more insidious in restricting artistic and cultural expression. Spilt screen would truncate films, documentaries and dramas making them unwatchable, while sponsors could start dictating to scriptwriters the actual content that should goes into a script.

We hope these points help you in understanding better the issues at stake and in your efforts to revise the Directive.

Yours sincerely,



Katerina Marinaki
(FSE President)

Pyrrhus Mercouris
(FSE Manager)

Copy: Mr. Roy PERRY (MEP)
Mr Michel ROCARD (MEP)
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Ms Karin JUNKER (MEP)
Ms Raina A. Mercedes ECHERER (MEP)
Ms Christa PRETS (MEP)
Ms Ruth HIERONYMI (MEP)

Date: 2003-07-09

Jean-Eric de COCKBORNE
Audiovisual Policy – Head of Unit
DG Education and Culture - European Commission
Rue de la LOI 200
B-1049 Brussels
(Belgium)

Dear Mr. Jean-Eric de COCKBORNE

Subject: Revision of the Television without Frontiers Directive.

We the FSE (Federation of Scriptwriters in Europe) have sent to you our comments (16 June 2003) on the revision of the Television Without Frontiers Directive. We would like to respond to the recent consultation meeting that the European Commission organised in Brussels on the 23-25 June 2003. Specifically we would like to focus on what was said regarding the revision of Articles 4, 5 and 6.

Article 4 and 6.

In our letter to you we argue that the quota should be raised from 50% to 75%. We justified this large increase by arguing that it is not unreasonable because the indicators show that European viewers much prefer watching European programmes and programmes coming from their own nation. As we already mentioned in our letter during peak viewing time 80% of programmes watched are European. In the light of what was said, there is a further argument to raise the quota figure. At the meeting it was exposed by various speakers that broadcasters are easily meeting the quota requirements because the definition of what is a European work (article 6) is so weak. Game shows, talks show and reportage made in Europe and shown during late hours are being used in order to circumvent the Directive. Because of the difficulties in properly defining what a European work is, it is simpler to raise the quota. This would also be easier for the regulators to monitor the application of the directive. Nonetheless, attached to this letter is a possible example of a definition of a European work, which the Commission could consider adopting as well as raising the quota.

The broadcasting sector is arguably over concentrated. The quota system of article 4 does provide a minimum guarantee for European production in a sector that is heavily dominated by a few commercial interests and powerful state broadcasters that would otherwise ignore production and choose to purchase cheap imports. If this situation is allowed to continue it is inevitable that a few large companies will control an enormous share of TV, cinema and publishing and on top of this, these few companies will develop vertically integrated operations so that a single voice will dominate the media and thus destroying the plurality of this vital cultural medium. This has already happened in Italy.

Arguments were made by representatives of broadcasters that the Media Plus should replace the Article 4. Media Plus is chronically under funded and over subscribed. Unless the European Commission is confident that the Member States will allow it to massively increase the current budget of 400 million Euro (2000-04), any suggestion that this programme could possibly solve Europe's audiovisual production problems is absurd. It was ironic to hear broadcasters complaining about state aid to cinema and yet they recommend the Media Plus Programme as an alternative to Article 4.

Broadcasters' representatives also argued that the quotas are an infringement of the free market and of their editorial freedom. There is a contradiction here. Firstly of all, as already indicated, there is ample evidence to indicate that the broadcasting sector is over concentrated – and this in itself is a distortion to the market. The quotas actually reduce the imbalance between content providers and broadcasters. Secondly, the broadcasters admit that viewers prefer watching television programmes made in their own countries, which suggests that the broadcasters actually need to work with the European producers and content providers in order to fulfil this demand. Thus Article 4 cannot possibly be construed as an infringement of editorial freedom.

Many times, broadcasters' representatives cited the principle of subsidiarity and insinuated that any strengthening of the directive's articles 4, 5 and 6 would be in contravention of this principle. It is ironic that this argument has been made when considering the radical changes that technology has done to the structure of the industry which has meant that television broadcasting is now much easier to access across frontiers. Though a single European market still does not exist, the structural changes resulting from the introduction of digital technologies makes the need for a trans-frontier directive like the Television Without Frontiers Directive essential. Therefore, the Directive and its articles are entirely in keeping with the principle of subsidiarity.

Article 5

This article relates to the 10% quota on independent producers. The position of the FSE is to raise this to 15%. This is a very modest increase. Representatives of broadcasting organisations called for the abolition of this quota when in fact scientific studies carried out by the British government show that a 25% quota is necessary, and this quota has been an element of British law since 1990 and is reintroduced in the Communications bill which is being debated in the British Parliament.

One of the reasons broadcasters argued for the removal of this article is that they see it as an infringement of their right to choose who to work with and, most intriguingly they seem to resent having to respect the intellectual property rights that writers and independent producers demand for their products. This second reason is a dangerous attack on authors' rights. Broadcasters, and for that matter any publisher, must respect and give credit to the artistic work which they buy. If a TV programme or film is successful, the makers must be due proper recognition. Undermining this principle will have serious consequence to the productive and creative community in the audiovisual sector. Strengthening authors' rights would actually encourage more creation and cultural diversity. As for undermining editorial freedom, this is an unreasonable assertion. Broadcasters need to show programmes; therefore someone must make them. The indications are that some of the best and highest quality programmes are made by independent producers. Therefore it stands to reason that broadcasters should choose to work more closely with independent producers. It also needs mentioning that independent producers are more likely to contribute to the development of new creations and cultural diversity because they are in close contact with the writers and thus provide work to writers while broadcasters in most cases are multinationals which are detached and indifferent to the needs of writers. Consequently, abolition of this article is objectionable.

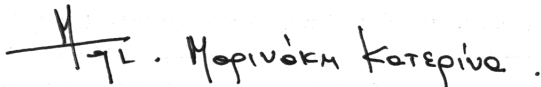
Lastly, many European countries have actually implemented tougher guidelines, especially the Franco-phone countries. The standards stipulated in the Directive are minimum standards. Surely it is wiser to raise the standards rather than to reduce them. Before any steps are taken to reduce the standards, scientific studies must be carried out justifying their

abolition. This has not been done. The onus to get rid of Article 4, 5 and 6 must lie with those who are against these articles. It is they who must come up with proper arguments and facts based on empirical studies that convincingly indicate that quotas are not needed.

Culture is what defines our European identity. In the twenty-first century, more than ever, television will be the medium in which culture is transmitted to the public. Our European culture is diverse, and this diversity must be safeguarded and enhanced because it is through this diversity that we writers are inspired to create new work. Europe's Television industry is still a dynamic industry which employs hundreds of thousands of people. To keep it dynamic it must remain productive and that means it has to commission new works rather than show cheap imports and repeats. The Televising Without Frontiers Directive and its system of quotas helps to do exactly that by guaranteeing an audience that see new European audiovisual works.

We hope you take these further comments that we have made into account in your attempt to revise the Directive.

Yours sincerely,



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(FSE President)

Pyrrhus Mercouris
(FSE Manager)

Copy: Mr. Roy PERRY (MEP)
Mr Michel ROCARD (MEP)
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Ms Christa PRETS (MEP)
Ms Ruth HIERONYMI (MEP)

Definition of a European audiovisual work.

“A cinematographic or other audiovisual work is a European work if:

- the original version of the film or production is recorded in the language or the languages of a Member State of the Union, except for any parts of the dialogue which the screenplay requires to be in another language;
- European elements achieve at least 16 points out of a total of 20 in the following schedule, a majority proportion being achieved in each group:

Creative group

Direction	3 points
Screenplay	3 points
<u>Composer</u>	<u>1 point</u>
	7 points

Performing group

First role	3 points
Second role	2 points
Third role	<u>1 point</u>
	6 points

Technical craft group

Production Designer	1 point
Director of Photography	1 point
Editor	1 point
Sound recorder	1 point
Studio or shooting locations	2 points
<u>Post-production location</u>	<u>1 point</u>
	7 points

This definition was developed by EURO-MEI, which is the European region of UNI-MEI, the media, entertainment and arts sector on Union Network International (UNI).

NEWS FROM FSE: Funding the legal work of the FSE/sent by Phyrus Mercouris

Funding the legal work of the FSE

Since January 2003 the FSE has been looking for possible ways in funding its legal work which aim at harmonising authors' rights at an EU level. For many months progress was very difficult and results were few. However, some possibilities seem to be developing. Back in January the FSE identified a project proposal then being developed by Stockholm University to research into the harmonisation of intellectual property rights in the globalised economy. Stockholm University's proposal included various other organisations such as the Max Plank Institute, Copenhagen University and the Swedish Business School in Helsinki. Their proposal included examination of authors' rights and the artist as well as other areas of intellectual property law that on the face of it, seem of little important to artists and scriptwriters. For example of patents, trade-marks and designs.

FSE contacted Stockholm University to examine the possibilities participating and submitting an application to the European Commission's Sixth Framework Programme for Research and Technological Development. Unfortunately, Professor Marianne Levine, the person with the overall responsibility for the project, informed us in April that no application would be submitted because the partners were simply not yet ready and also she was losing interest in accessing European funds due to the amount of bureaucracy demanded by the EC. So by the end of April the project went to sleep.

Nonetheless because of the importance of this research to the FSE, we began looking for another organisation that could take up this project. And hopefully we may have found one.

In June the FSE sent a detailed letter to the Legal Department of Queen Mary College, London University, asking if they would be interested in taking up this project. The response was positive. Mr. Alexander Weir, responsible for European research projects at the College, responded very favourably. He informed FSE that the University of London had already been considering developing such a project. It was agreed that the FSE would write a simple proposal and a discussion will then take place at London University on 17 October 2003 to discuss the submission of an application to the Sixth Framework Programme for RTD.

Included in the proposal would have to be the original partners lead by Stockholm University, unless they specifically do not wish to participate. Other organisations like UNI-MEI and possibly EFAH, FERA and possibly UNESCO will participate.

Some of you may be asking, what is the Sixth Framework Programme for RTD ? This is the most massive single funding programme of the European Commission. Funds like the Agricultural Funds and the Development Funds are not actually managed by the Commission but rather by the member states or donor countries. But the Sixth Framework Programme for RTD is controlled by the Commission.

The Sixth Framework Programme for RTD has a budget of 17.5 billion Euro to be spent within the 2002-06 period. It provides funding for research into new technologies and into areas, problems or issues of vital economic importance to the economy of the EU. Intellectual property law is identified as one of these areas of importance.

This programme only will fund projects lead by research organisations like Universities. Which is why the FSE cannot lead a project. In fact the FSE, in order to be funded, can only be involved as a *participant* that would bring vital added value to the research work of the universities. The preferred mechanism of funding is through calls for proposal to fund so called '*networks of excellence*' – that is to say a group of about twelve universities in different member states working with grass-roots organisations like FSE carrying out joint research in an area of vital importance to the EU. The average subsidies for network of excellence is 8 million Euro.

Though the EC prefers call for proposals, if you can convince it that you are the only network in Europe examining such a vital topic, you are then by definition the network of excellence and therefore the Commission very quickly considers funding your proposal. There is a possibility that no network of excellence exists at the movement on IPR and if we with London University develop a strong partnership, we may be selected very quickly for funding. This of course is a big hope. Nothing is guaranteed.

What sort of project is envisaged? At this stage, it is difficult to say, however, it is safe to say that the research would be examining several economic sectors, of which culture and audio-visual would be one. In all probability bio-technology and the ownership of medicine, DNA, genetics, etc, would be another sector to be researched.

The project would operate for at least three years, and if we are involved, I would expect FSE to acquire 150,000 – 200,000 Euro for the research and this would for sure finance all our legal work and probably cover much of our operational cost too.

When does on apply? Probably a call for proposals will be launched by the European Commission in December 2003 with the probable deadline for submissions in mid April 2004. Before then a partnership will have been created and roles and tasks for the partners and participants decided. Queen Mary College of London University is ideally suitable for this work as it has the contract to run the Intellectual Property Help-Line of - the Sixth Framework Programme for RTD!

NEWS FROM ITALY: SACT (Scrittori Associati Cinema e Televisone) Italian Scriptwriters Guild

The job of the Sact Laboratory

The Sact Laboratory, founded in May 2002, is been born in order to create plans for the cinema and the fiction tv. It is not a school, but a search place on the imaginary one. All we know that, before still to write a history, any narrator, it must know or imagine a scene, is it a forest, the ocean or a city. Taking risks he will discover little by little the nature, the inhabitants, the mysteries and the myths that it encloses.

The Sact Laboratory is a place of departure for these travels in the imagination. The only way that from always the man know in order to enter and to exit from those worlds is one single: the story. He is not necessary neither advisable, to have endured one goal. Only after to have travelled in that territory and it are to us confronts to you with the creatures who inhabit it, we can have of the maps to design and something to tell. An adventure that every traveller will have living in first person, with the own ideas and feelings, becoming the same personage, forming an alliance or meeting with the other personages who meet.

The Writer travel will come therefore to coincide with the travel of the Hero. Some times our traveller scares himself or miss himself , other times is not enough expert in order to read the traces that they guide it, other times is not here what he are looking for. But after some adventures, after several paths and encounters and mistakes, he will be able to find again if same and its distance. It's our conviction that often many ideas of value do not have the due attention from producers and broadcasters publics or privates. Neither it comes given to their authors the possibility to develop and to perfect such ideas. Often it is also the network of 'rules' and 'conventions' to prevent to the author the movement freedom. A creative identity therefore is limited or darkened from obedience or the constriction to models it consumes to you and repetitive. And little by little the energies, desires and the dreams are extinguished.

In this first experience we have excluded the scenes of the past and of the future and there are today limits you to the observation of the Italian reality and its continuous mutations. We have tried to read its narrative geography and to find some routes in order to travel inside. During this job we have characterized some territories that in part are unexplored, others are in abandonment and other , disowned and fascinating, is being outlined to the horizon.

The FOUR STEPS 1) the participants to the laboratory, after a first period of collection of report facts and of argument on the various truths that emerged, have chosen their routes and have begun to cover them.

2)

In the second phase we have analyzed the first reports of their travels, to observe the collected material and to trace of the story lines. We have discussed that material in order to understand if the territory were barren or rich. And if the traveller were adapted to that kind of travel.

3)

In the third phase we have begun to characterize the obstacles and the dangers, to discover to the possible friends and enemies of the traveller, to delineate a plan that could make it to reach the center of that territory, to living for some time within of it, to fight the battles necessary in order to center its objective.

4)

In the quarter and last phase we have collected storys of the various adventures. Such storys have taken or to the shape of subjects or treatments for the cinema or the fiction tv.

SACT

Scrittori Associati Cinema e Televisone
Italian Scriptwriters Guild

NEWS FROM FRANCE: UNION-GUILDE des SCENARISTES

UNION-GUILDE des SCENARISTES

Activity Report 2002-2003

In 2002 and in the first half of 2003, the Union-Gilde des Scénaristes (the UGS) expanded its activity considerably, which allowed it to establish its representivity as a professional union.

A recognized actor in the defence of the interests, moral and material rights of scriptwriters, both collectively and individually, the UGS solicited and obtained discussions with the appropriate members of the new government. The Prime Minister's counsellors in charge of audiovisual, as well as those in the Ministry of Culture, have been made aware of our concerns regarding the current state of affairs in audiovisual and of our proposals for the evolution of a sector of activity in constant expansion and perpetual adaptation.

The public and private broadcasters have received the UGS and heard it present its reflexions on the future of the script and the scriptwriter in the chain of audiovisual production.

The UGS has further reinforced its presence on all the fronts previously opened, along with opening new ones with the CSA, the CNC, the States General of Audiovisual Creation, the Committee of Vigilance for Cultural Diversity, and with AGESEA, CREA and other social services.

The recognition of the representivity of the UGS, an obligatory acquisition given the legal definition of a scriptwriter's professional status, as well as its efficiency in the defence of author's rights, is the result of the internal restructuring undertaken in 2001.

In 2003, the UGS has also improved its modes of communication :

toward members, principally, with the reconstruction of the UGS website (www.ugs-online.org) permitting a better diffusion of information. And the quarterly Gazette des Scénaristes, henceforth housed by a satellite association of the UGS and distributed in newsstands by the

NMPP, is entirely written by scriptwriters and has enjoyed a growing success with its new format.

The UGS defends Author's Rights and the rights of authors.

The defence of Author's Rights, with respect to the "Intellectual Property Code" remains the driving principle behind all actions undertaken in 2002 and in 2003.

1) In 2002, the UGS set up a permanent procedure for alerting its adherents and warning against certain scriptwriter recruitments practices.

The proliferation of appeals for scripts or synopses in the context of a "competition" have endowed the organizing production companies with a reservoir of unprotected ideas, often accompanied by unacceptable contract conditions.

In a comparable manner, the economy of short formats broadcasted on television – "Un gars, une fille" and "Caméra café", to name only the best known, tend to industrialize the writing and fabrication of these programs by diverse means.

The UGS cannot observe this insidious drift toward 'collective works' without reacting, especially considering that the subsidiary and allied rights of these programs often bring in considerable sums to their producers.

Simultaneously with warning the scriptwriters, the UGS has established the principle of systematically alerting the production companies concerned, and inviting them to discussions concerning the respect of the law and author's rights.

In the extreme cases, in which it is impossible to persuade the offending parties to respect the law, the UGS stands by the authors concerned, in their indispensable legal procedures.

2) In October 2001, the UGS opened a bureau of legal advice to inform the scriptwriting members of the UGS on legal dispositions relative to the ceding of exploitation rights to their works, and to furnish them with analyses necessitated by the arising of litigation with

producers in the execution of their contracts, orienting them if need be, toward any recourses available.

The bureau has been filled with complainants ever since its creation. Bi-monthly, its services were extended in 2002 by a telephone hotline to handle the most urgent requests.

This bureau, reserved in priority to members, has also been opened to non-members as far as possible, as a very concrete means of increasing awareness of the role and efficiency of union action.

Undertaken jointly by our union representative and the UGS's legal counsellor, Christophe Pascal, attorney-at law, this highly essential undertaking of the UGS is very costly and time-consuming.

3) The negotiations within the World Trade Organization will resume in 2003. New attacks on author's rights may be expected within the context of the Trade Services negotiations to which cinematic and audiovisual works have been assimilated.

The UGS, through its participation in the Committee of Vigilance, maintains that 'cultural exception' is the indispensable argument for at least maintaining, if not consolidating, cultural diversity.

As a member of ADRIC, the UGS is pursuing the activities begun in Montreal in 2001 during the first "Rencontre internationale des associations professionnelles du milieu de la culture" and in February of 2003, it participated in the organizing of the second international meeting.

4) Attentive to the encroachments which could result in the appearance of new methods of exploitation, the UGS expects to affiliate its actions to those of the following organizations in 2003:

- The Conseil Supérieur de la Propriété Littéraire et Artistique (CSPLA) because of its work concerning the writings of salaried authors in the business domains ;
- The Comité de liaison des industries culturelles (CLIC);

◦ The Bureau de liaison des organisations du cinéma (BLOC) because of the questions raised by new modes of exploiting films, new services and especially online communications regarding the protection of author's rights.

The UGS is working at reasserting the value of the screenplay in the chain of production:

The UGS militates for better recognition of the irreplaceable contribution scriptwriters make to the development and prosperity of the audiovisual industry's economic sector, so that scriptwriters may join the first beneficiaries of the financial rewards of their successes.

1) Since its creation , the UGS has participated in the Etats-Généraux de la Création Audiovisuelle (EGCA).

A consensus between the two organizations has been arrived at, notably on questions concerning alternative financing for public service audiovisual, better definitions of the missions of this public service and a reorganizing of the support fund for program industries (COSIP – Compte de soutien aux industries de programmes) that is more favorable toward innovation and creation. On the other hand, divergences with the representatives of producers were brought to light, particularly regarding the definition of an audiovisual work in estimating the obligatory quotas of production.

The UGS cannot approve the classification of "creative documentaries" the CSA and the CNC have accorded certain programs, and the consequent access to financial aid it will earn companies producing them for the benefit of COSIP. The UGS maintains that there is no political or economical coherence in regenerating finances by this means for programs of low levels of creation, whose profitability is assured *a priori* by financial arrangements at the outset, and by the large secondary rights deals (audiovisual production, music and graphic publishing rights, funds raised by the networks from call-ins from the audience, etc..) which can generate considerable profits.

For this reason, the UGS has affiliated itself with the appeal to State Counsel regarding the CNC's classification decisions.

2) Also in connection with its participation in the EGCA, **the UGS has started an appeal against the decree of July 9, 2001 and the agreements reached between TF1 and M6**, in the conviction that these agreements can only result in a decline of the financing committed to works of fiction in French, and consequently, further precarities for professional scriptwriters.

3) The UGS adopts a citizen's approach to the role of television in our society:

- **The UGS has participated in political meetings organized by the EGCA** to examine the platforms of the different political parties present and participating in the presidential and legislative elections. Furthermore, the UGS expressed its opposition to the rise of the 'Front National' before the second round of elections and supported the demonstrations at the Zenith on April 28.

- **Conscience of the role played by television fiction in the arousal and preservation of a democratic conscience among its viewers, the UGS has publically questioned both public and private network heads and directors of fiction regarding their responsibilities.** The UGS has demonstrated the necessity of greater liberty and diversity of expression for script-writers in the development of fiction screenplays targeting primetime audiences. Meetings will be held regularly between fiction directors and the UGS in order to concert efforts and exchange information.

- **The UGS has solicited and obtained a series of meetings with the principle directors in government concerned with the public service aspects of television.** The UGS has reaffirmed its attachment to a strong public service which could become the spearhead of authentic creation in French television, in which scriptwriters play a fundamental role.

- **As a representative union, the UGS is working with these same institutional and political directors toward a veritable professional status for scriptwriters.**

Towards this end, the UGS is currently conducting several inquiries and studies on the role of the screenplay recognized in audiovisual production:

A highly documented investigation on the role of the scriptwriter in the film industry was given to the Counsel of Administration of the SACD in July, 2002. This report will appear in La Gazette des Scénaristes in its October issue of 2003. These endeavors have received and continue to receive the support of the SACD and the CNC.

° **The UGS is currently leading a survey among its members on the level of application of the Protocol Agreement concluded with the Union Syndicale des Producteurs Audiovisuels (USPA) and setting up an internal evaluation of the revenues of scriptwriters.**

One of the UGS's priorities is the general improvement of the revenues and financial conditions for scriptwriters in the exploitation of their films, and a share in the benefits of their successes in an activity which summons multiple talents, abilities, and know-how.

Negotiations with organizations representing audiovisual, film and multimedia professionals:

Fortified by their representivity, the UGS has esteemed that one of their priorities for 2002-2003 is the proliferation of agreements with other organizations representing audiovisual professionals in the aim of establishing codes of conduct and of creating healthier practises and relationships.

1) In 2003 will begin **a new volley of negotiations with the Union Syndicale des Producteurs Audiovisuels** to improve and further spread applications of the Protocol Agreement signed in 2001.

The goal is to pursue efforts toward a better mutual understanding of our respective interests, while working for the same company and facing the pressures exerted by the networks.

2) As provided for in the Protocol of 2001, **the UGS and the USPA united to create the Association de Médiation et d'Arbitrage des Professionnels de l'Audiovisuel (AMAPA)**, to facilitate the settling of litigation and disputes between audiovisual writers and producers through mediation and/or arbitration, to avoid recourse to the law courts.

The Protocol Agreement concluded between the UGS and the USPA, and in particular, the “code of good conduct” will serve as the reference text in cases of arbitration.

The vocation of AMAPA is to receive any individual person involved in disputes of a proven collective interest which may arise between audiovisual writers and producers.

Given this goal, Groupe 26 Images, the SPI, the SNAC and the SPFA have expressed interest in AMAPA and are considering adhering to it.

3) Relationships with film directors are a recurrent preoccupation of scriptwriters in the exercise of their creative activities. Concerted efforts are underway along with the “**Groupe 25 Images**” toward the establishment of a “Code of Good Conduct” to better define modes of functioning and prerogatives. It is expected to become applicable in 2003, pending its acceptance by the General Assemblies of both organizations.

4) Meetings have been arranged with the **Syndicat des producteurs indépendants (SPI)**. The Protocol Agreement with the USPA, will be used as the reference text and will be the object of minor modifications to adapt it to the specificities of the SPI members. Pending approbation by our respective general assemblies, this agreement should be concluded by the end of 2003.

5) Throughout 2002, the UGS and the **Syndicat des producteurs français de l'animation (SPFA)** have been meeting and negotiating to reach a similar Protocol Agreement which takes into account the particularities of producing animated series.

6) In 2002, the UGS became a member of the **Conseil permanent des écrivains (CPE)**. The representatives of the UGS initiated discussions and reflection regarding the establishment of a code of ethics between literary authors and scriptwriters assigned to adapt published works to screenplays for film or television.

7) The **Syndicat Français des Agents Artistiques et Littéraires (SFAAL)** has many agents representing members of the UGS among its members.

As active partners in the contractual relationships between writers and producers, their agents are informed of all of the undertakings of the UGS.

International and national rallies and exchanges:

1) FSE

Except by his participation in FSE, being an active member of the Board...

2) IAWG

The signing of the Protocol Agreement between the UGS and USPA made the UGS eligible for membership in the International Association of Writers Guilds.

The UGS attended its General Assembly in Dublin on October 7, 2002 as an observer and will attend the 2003 G.A in Toronto (oct 2003).

The Redeployment of Séquence 7:

Launched in June of 2001 under the Association Law of 1901, the original mission of “Séquence 7” was to accommodate the cultural and educational events for scriptwriters initiated by the UGS, and to inform beginning scriptwriters.

“Séquence 7” also housed the editorial activities of the UGS and especially those concerning publication of “La Gazette des Scénaristes”.

In 2003, “Séquence 7” was redefined and given the principle mission of putting an end to the socio-professional isolation of beginning scriptwriters. This association, which receives the

support of the UGS, the Authors Bureau of the CNC and the Conservatoire Européen d'écriture Audiovisuelle (CEEA) accepts only highly motivated members (currently, about 60) who wish to see their projects through to the end.

Laying the foundations of a communications policy:

From the study of the survey taken among our members, it appears that the simple fact of mentioning their membership in the union during negotiations with production companies has both accelerated and improved contractual conditions in the majority of cases.

1) Anxious to increase the number of visits to its website by both members and non-members, the UGS has entrusted a webmaster with the restructuring of its database with a view to expanding its simplicity, content and to granting easier access to the site and its downloading procedures.

The revised site has been operational since the beginning of 2003, relaying the union's activities in real time to members as well as all the documentation available on the activity of scriptwriting.

2) The UGS strives to hold regular think-tank and informational seminars for its members.

3) In 2002-2003, the UGS printed publicity cards which were widely distributed and published in professional journals and magazines.

4) La Gazette des Scénaristes, the mouthpiece organ of the UGS which had been dormant, has just reappeared on the scene. Still exclusively written by scriptwriters, La Gazette des Scénaristes has been entrusted to a satellite association and is being distributed to newsstands by the RNPP.

A veritable showcase of the scriptwriting profession, in both its professional and artistic aspects, La Gazette remains the UGS's best means of communication with non-member scriptwriters and other audiovisual professionals.

5) In the objective of mediatizing our efforts in the service of the screenplay, the following two headlight operations have taken on a determining role :

The upcoming European Scriptwriters' Encounter in Strasbourg in 2004 and a Symposium on the scriptwriter's role in film at the end of 2003.

Vocational training for writers and scriptwriters:

Among the UGS's priorities, both **initial and on-going training are high on the list, due to the current absence of recognized criteria giving access to the profession**, as well as the impossibility for authors to benefit by any in-house training.

1) The UGS is an active and founding member of the Administrative Counsel of the Conservatoire Européen d'écriture Audiovisuelle (CEEA) or the European Conservatory of Audiovisual Writing, one of the institutes which guarantees such training.

2) The UGS is working on the defining of a system of on-going training specifically designed for scriptwriters and on the obtention of the necessary funding.

3) The training commission of the UGS held several training sessions in 2002-2003. Open to everyone, they enjoyed considerable success. The UGS has therefore decided to pursue these activities in 2003, until such training becomes better institutionalized.

Perspectives and objectives for 2003-2004

2003-2004, The year of development

In 2003, the UGS has continued activities began in 2002 for the defence of author's rights and for the improvement of working conditions for scriptwriters, and particularly for the improvement of contractual conditions linked to the production and exploitation of screenplays.

It will also pursue its endeavors in the following domains:

- Professional training for scriptwriters
- Gaining recognition of the importance of the screenplay in the chain of production
- The hosting of gatherings for reflection and information exchanges

The UGS will also continue to affirm its representivity and its role as a necessary negotiator in matters relating to the individual and collective defence of French author-scriptwriters by working at:

- **the establishment of professional codes of ethics and/or “Protocol Agreements” with other representative professional organizations;**
- **the organization of “International Encounters between European Scriptwriters” for the FSE, and adding “Screenplay Day”, sponsored by the CNC, to the agenda;**
- **Establishing the legal bases of a professional status for scriptwriters with the appropriate institutions;**
- **Obtaining official recognition of the right of scriptwriters to professional training and education and setting up material conditions for a concrete option;**
- **Confirming its presence internationally.**

**NEWS FROM HOLLAND: the Dutch Screenwriters Guild Network
Scenarioschrijvers**

television

The Dutch Guild of Screenwriters is at the moment investigating the possibility of introducing a Dutch ?Writersroom? based on the idea of the Writersroom of the BBC (www.bbc.org.uk/writersroom).

We invited for our annual activity for members a.o. at the Dutch Film Festival on the 26th of September 2003 Kate Rowland (creative director), Emma Frost (a.o. Casualty) and Karen Laws (a comedy writer) to tell us more about their project.

film

There is great concern that the Dutch Government will abolish the measures to stimulate film for Dutch feature film projects, of which the financing incentive or tax shelter was the major one. We do have hope that the measures will be prolonged for one year. But the government seems to think that the Dutch film industry in the end should be able to do without a special kind of support. This ofcourse is not true. Since the introduction of these particular film stimulating measures 5 years ago 12% of the Dutch public chooses to go to a Dutch Film instead of a foreign film.

The consequences of the abolition of the mentioned measures could proof disastrous for Dutch Film Industry. The Dutch Guild of Screenwriters as a member of the Dutch Federation of Filminterests, has objected therefore against the plans of the government.

FERA (Federation of European Film Directors) has issued a declaration to support the concerns of the Dutch filmmakers.

NEWS FROM SPAIN: ALMA (Asociación Literaria de Medios Audiovisuales), Spain's screenwriters' guild:

Script Contest ALMA-SPANISH VERSION

(supported by Spanish Television TVE and El Deseo production company)

ALMA convoca la primera edición del concurso de guiones ALMA-VERSIÓN ESPAÑOLA, para promover el descubrimiento de nuevo talento en el campo del guión en España. El concurso consiste en la selección de un guión premiado con 30.000 euros. El guión premiado será realizado, y producido por El Deseo, productora de Pedro Almodóvar, socio de ALMA, y contará con el apoyo de TVE, que comprará los derechos de antena. TVE publicita el concurso a través de su programa Versión Española, dedicado a la promoción del cine español. Otros colaboradores son la editorial 8 y medio y Fnac España.

640 guiones escritos por guionistas noveles (es requisito imprescindible que los guionistas no hayan participado en ningún guión cinematográfico producido) han sido recibidos. De estos, se seleccionarán los 6 finalistas, que tendrán unas tutorías con los más prestigiosos guionistas españoles, que les ayudarán al desarrollo de una versión mejorada de sus guiones. De estos, uno será elegido ganador del concurso.

ALMA starts the first edition of the script contest ALMA-SPANISH VERSION to promote new talent in the screenwriting field in Spain. Through the contest a script will be selected and awarded with 30.000 euros. The winner script will be made into film and will be produced by El Deseo, film company of Pedro Almodovar, ALMA's associate, with the support of Spanish Television TVE, that will buy the television rights of the movie. TVE also gives publicity of the contest through its program Spanish Version, dedicated to the promotion of spanish cinema. Other collaborators are publishers 8 and 1/2 and Fnac Spain.

640 scripts written by novel screenwriters (it is required that screenwriters shouldn't have credit in any movie) have been received. From those, 6 finalists will be selected, and writers will have a workshop with renowned spanish screenwriters to develop a better draft of their scripts. One of these scripts will be elected as winner of the contest.

Defending Spanish Cinema

La Plataforma de Defensa del Cine Español, en la que está integrada ALMA, en representación de los guionistas de España, junto a las asociaciones y federaciones de productores, actores, técnicos y directores, promueve la presentación de una proposición no de ley de una serie de medidas de estímulo de la industria cinematográfica y audiovisual española ante el Congreso de los Diputados.

Entre las medidas está el incremento de las cuantías destinadas al Fondo de Protección de la cinematografía, la creación de nuevas medidas fiscales y nuevos métodos de financiación, la promoción del cine y de la producción audiovisual españolas, la creación de un organismo estatal independiente que regule el sector, la defensa de la excepción cultural, la promoción del cine comunitario, el cumplimiento de la legalidad vigente sobre inversiones cinematográficas por parte de los operadores televisivos y el compromiso por parte de los mismos de la promoción del cine español.

The Platform of Defence of the Spanish Cinema, with ALMA joins, representing the screenwriters of Spain, together with the associations and federations of producers, actors, technicians and directors, promotes the presentation at the Congress of a non-law proposition that contains a series of measures to stimulate the cinema and audiovisual industry.

Some of that measures are the rising of the funds giving to the Fund of Protection of Cinema, the creation of new tax measures and new funding methods, the promotion of the spanish cinema and audiovisual production, the creation of a state observatory that regulate the sector, the defence of the cultural exception, the promotion of european union films, the obedience to the laws on film investment by television networks and its commitment to promote spanish cinema.

GENERAL NEWS: NEWS FROM UNESCO/sent by Elizabeth Verry

(French & Spanish follow)

We are pleased to advise that UNESCO member states agreed by consensus during the closing plenary sessions of its 32nd General Conference to proceed with development of an international convention on cultural diversity.

A more detailed report on the UNESCO decision will be the focus of a special report of Coalition Currents, to be distributed next week.

Report of Commission IV

<http://unesdoc.unesco.org/images/0013/001321/132141e.pdf>

////////// Français

Nous sommes heureux de vous annoncer que les États membres de l'UNESCO ont accepté par consensus, durant la séance plénière du vendredi 17 octobre clôturant la 32^{ème} Conférence générale, de procéder à l'élaboration d'une convention internationale sur la diversité culturelle.

Cette décision de l'UNESCO fera l'objet d'un rapport plus détaillé dans une édition spéciale de Coalitions en mouvement, à paraître la semaine prochaine.

Rapport de la Commission IV

<http://unesdoc.unesco.org/images/0013/001321/132141f.pdf>

////////// Español

Nos complace anunciarles que durante las sesiones plenarias de clausura de la 32^a Conferencia General, viernes 17 de octubre, los Estados miembros de la UNESCO acordaron por consenso proceder con el desarrollo de una convención internacional sobre diversidad cultural.

Un reporte más detallado sobre la decisión de UNESCO será el foco de un reportaje especial de Coaliciones en Movimiento, a distribuirse durante la próxima semana.

Report of Commission IV

<http://unesdoc.unesco.org/images/0013/001321/132141e.pdf>

Rapport de la Commission IV

<http://unesdoc.unesco.org/images/0013/001321/132141f.pdf>

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Coalition pour la diversité culturelle

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**GENERAL NEWS: OPATIJA DECLARATION/ sent by Katerina
Marinaki**

**The FSE through its participation in the INCD's Steering Committee maintains
the Convention and particularly the author's rights.
(See the Final Declaration's article 5, as it is formulated after the intervention of
Katerina Marinaki)**



**International Network for Cultural Diversity
Réseau International pour la Diversité Culturelle
Red Internacional para la Diversidad Cultural**

OPATIJA CONFERENCE
FINAL DECLARATION AND REPORT TO THE INCP
16 OCTOBER 2003

This week, 110 artists, producers, publishers, distributors, exhibitors, curators, cultural activists and scholars from 37 countries, representing NGOs on every continent and region, gathered in Croatia to discuss the state of the civil society Cultural Diversity movement. This was the Annual Conference of the INCD, the fourth time we have met in conjunction with meetings of the International Network on Cultural Policy and have had an opportunity to share our conclusions with culture ministers.

Our Conference, *Advancing Cultural Diversity Globally: The Role of Civil Society Movements* had three objectives:

- To discuss challenges to cultural diversity that arise from technology, human conflict, absence of cultural industry capacity in many countries, media concentration and other issues
- To analyze our relationships, with other civil society groups working for cultural diversity, with governments and intergovernmental institutions and with broader social activist movements.
- To determine INCD priorities and strategies for the coming period.

Celebrating successes

Delegates celebrated remarkable progress in a short period of time. The INCD's work has contributed significantly to these developments:

- The growing awareness among governments and civil society of the corrosive effects that globalization can have on world cultures, in the North and South, in the developing world, developed countries and countries in transition.
- The proposed Convention on Cultural Diversity, a component of the solution, has moved from being a general concept discussed by only a few, to this week's UNESCO General Conference decision to launch formal negotiations to develop a legal instrument.

The INCD also celebrated its own growth and activities as part of this process.

- Our network of more than 400 members in 70 countries plays a significant role in raising the concerns, analysing developments, advocating actions and lobbying actively for the Convention at national and international levels.
- Our regional organizing efforts are bearing fruit. We opened a permanent office in Cape Town and engaged a part-time staff member in Mumbai and a temporary coordinator for our Cultural Impact Assessment project in Dakar.
- In Cancún last month, we released a letter (copy attached) signed by leading international artists with the following call to world leaders:
 - "don't bargain away culture in trade talks
 - implement a legally binding convention
 - use your powers to support diverse local artists and cultural producers
 - help those countries that don't yet have the capacity to bring their stories, music and other artistic expressions to audiences everywhere."
- We were the first to release a text of possible terms of a Convention to make the concept concrete. Modestly, we also claim some success in encouraging you to adjust your draft to respond positively to the issues we have raised.
- We encouraged your UNESCO initiative, wrote to all ambassadors and national commissions to support the Convention and had an opportunity to meet with several UNESCO delegations. The INCD also responded by letter to the proposed U.S. Resolution tabled at the UNESCO Conference (copy attached).
- There is increasing recognition at WTO, UNCTAD, UNESCO and elsewhere that the INCD speaks on behalf of a significant and growing constituency.
- Our members have approved a formal new structure for INCD highlighted by an electronic and mail ballot voting procedure that will permit all members to participate fully in all aspects of the process of selecting our Steering Committee and guiding the decisions.

In celebrating our successes, we acknowledge and applaud the pivotal role played by Ministers organized in the International Network for Cultural Policy.

A long-term engagement built upon community involvement

At our meeting, we reached substantive and sometimes challenging conclusions on some of the issues before us.

- We will continue our focus on regional organizing, with the long-term objective of securing a truly equal North/South partnership in building our global

movement. A second INCD office in Africa will open next year and we have meetings planned in Brazil, India, United States and Botswana in the next few months.

- Our cultural impact assessment project has started and we will build on these initial steps as we secure the necessary funds.
- We will continue our campaign of active engagement with the World Social Forum, the World Summit on the Information Society, the WTO and our governments in bilateral and regional trade talks.
- Our delegates concluded that media concentration, convergence and aspects of digital technologies are significant threats to cultural diversity and we have resolved to develop and implement strategies to deal with these issues as our capacity permits.
- Our delegates explored how intercultural dialogue can prevent conflicts and contribute to reconciliation.
- We began a discussion of cultural diversity aspects of education and hope to continue it in the future.
- Understanding the urgent need to fully integrate culture into sustainable development strategies, the INCD will work with development agencies, the World Bank and others to seek a commitment to allocate an appropriate and fixed percentage of all development funds to support cultural development projects that are consistent with our objectives.
- Building on our Artists Letter, we will bring together a group of high profile artists in Paris to encourage the UNESCO process.
- We will continue to respond to new challenges that threaten cultural diversity as they arise.

Convention on Cultural Diversity

The INCD has a vital stake in the development of the Convention on Cultural Diversity and are pleased UNESCO has agreed to take on this task. We welcome your latest Draft, appreciate the positive progress and commit to continue to monitor the developments and engage the process.

If adequately financed and sensitively administered, the proposed Development Fund, a concept we discussed at our Cape Town Conference, will make a significant contribution. We note your acknowledgement of the importance of preserving threatened languages and cultures, including those of indigenous peoples. We also appreciate that you have adopted the INCD approach that States must make positive commitments when they ratify and implement the Convention.

But, we have several substantive concerns about the Draft Treaty that is before you at this meeting.

1. Article 4 – Relation to Other Treaties

Existing international law provides clear rules for resolving any ambiguities that might exist between international treaties and conventions. Article 4 explicitly overturns these established principles.

We submit that adopting the language in Article 4 would essentially subvert one of the principal objectives of the Convention, which is to ensure that, wherever possible, disputes about trade in cultural goods and services will be adjudicated under its terms, rather than trade agreements.

The commitment in Article 12 for parties to cooperate in other fora to promote the principles of the Convention, is welcome but insufficient to overcome the relationship established by Article 4.

Further, where two states are members of both this Convention and another treaty, the INCD believes they should be free to agree to adjudicate a dispute under this Convention rather than a trade treaty. Article 4 precludes such an understanding.

2. Promotion of Cultural Diversity

We need a powerful incentive for countries from the South to ratify and implement the Convention. The INCD believes the Ministers and UNESCO have a unique opportunity to take a bold and significant step toward cultural diversity. We propose that you include in the Convention a concrete undertaking from economically rich countries to provide specific and defined market access for artists and artistic expressions from economically poorer countries which accede to the Convention. We suggest that an appropriate short-term target would be to double the volume of material available from these countries. This could be accomplished through tariffs, quotas, formal bilateral arrangements or other arrangements.

The INCD notes that such a provision would provide citizens in the North with increased access to the work of artists from other countries, thus contributing directly to cultural diversity.

3. Public Service Institutions

The INCD feels it is vital to recognize the fundamental importance of public service institutions in promoting and maintaining cultural diversity. We urge you to include the language found in Article 12 of the INCD's Draft Convention on the role of the public sector or, alternatively, language such as: "Parties recognize that public institutions, including public service broadcasters, libraries, archives and museums, play an important role in safeguarding and promoting cultural diversity; each Party is free to organize such institutions, define their objectives, provide for their funding and encourage their use." Such a clause may perhaps best fit in the preamble.

4. Dispute Settlement

We continue to urge that principles for a dispute settlement system must be included in the Convention, and repeat our submission from Cape Town that the dispute settlement system must be transparent, must guarantee input from third parties, including NGOs and must reflect that rights of individuals are equivalent to corporate rights.

5. Rights of Artists

The INCD urges you to recognize, as UNESCO has done, the fundamental role of artists and creators in the development of cultural activities and the cultural industries, and consequently to include stronger language on the rights of artists and creators, especially:

- the right to freedom of expression and freedom from censorship;
- the right to respect for the moral rights in their works;
- the right to equitable remuneration for the exploitation of their works.

6. Rights of Indigenous Peoples

The INCD urges you to recognize the special contribution of Indigenous Peoples to the world's cultures and to protect it under an appropriate regime(s).

In our work on the Convention over the past four years, we have demonstrated that non-governmental organizations such as the INCD play a positive and supportive role. We call on you to continue to embrace this contribution and to assist us to play a formal role in the development of the Convention through an appropriate status at UNESCO.

We finally reiterate our caution of last year. All of us must ensure that our urgency to conclude a Convention does not result in an ineffective Treaty.

Relationships

The INCP is central to the cultural diversity movement. The INCD continues to seek to improve our collaborative relationship with members of our Network, those committed to similar principles outside the Network, and Ministers within the INCP. Over the past four years we have developed a valued relationship and dialogue with the INCP.

In the past year this appears to have changed, without any prior discussion or opportunity to develop shared understandings about the nature of our future collaboration. We can point to at least three examples, relating to our request to meet with Ministers in Paris last February, the timing of the current INCP meeting, and the invitation to various groups, including one INCD member, but not to other members which also represent large constituencies, to meet with Ministers today together with us. We in no way wish to claim an exclusive relationship with the INCP; the more engagement which Ministers have with advocates of cultural diversity around the world, the better. However, we feel the need to meet urgently with senior officials of the INCP to clarify the basis for the INCD's future engagement to ensure that the voices of our Network can be heard in the most effective, democratic and transparent way possible. We request that you facilitate such a meeting.

Like all NGOs, the funding that is the most difficult for us to raise is the most essential, that which pays for a basic office and professional staff necessary to keep the central operation functioning. This is a precondition of our ability to undertake our work and to collaborate with you. We note that we have raised considerable amounts of project funding, but our ability to continue to function as an international NGO is threatened unless we can maintain a basic infrastructure. We need all

governments involved in INCP who understand the importance of a strong civil society movement to be sensitive to this reality.

While the INCD sometimes places challenging issues before you, we assure you our comments are put forward as constructive suggestions for how you, and we, can work better together toward the shared vision.

We intend to reflect upon relationship issues in the coming months.

Acknowledgements

We wish sincerely to thank those who have made it possible for us to meet here in Opatija. We congratulate our co-hosts from the Institute of International Relations and Culturelink who have done outstanding work.

We appreciate the substantive support we received from the Ministry of Culture of the Republic of Croatia.

We thank all governments which contribute financially, Sweden, Canada, France, the Republic of South Africa and Greece,

We thank our others sponsors, including the Ford Foundation, European Cultural Foundation, the Open Society Institute and MetLife Canada as well as our local sponsors, the City of Opatija, Croatian Telecom and the Croatian Tourist Board.

INCD Steering Committee

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