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Edito

Should creators make their work available to be distributed online?

Thanks to International treaties, EU directives and consequent national law, European creators have the right to make their work available (It's called, logically, the "making available" right.) The terms on which you can make your work available for online distribution are not usually defined in law, leaving it up to individual creators to negotiate whatever they want – the period of time, the specific uses (territorial or whatever) – and of course any compensation, monetary or otherwise. But whatever the terms, one overwhelming fact is entirely evident:

If a creator has the right to make something available, then by logical extension he or she has the right not to make it available. The right to say "yes" is entirely meaningless if it does not encompass the right to say "no".

This is the baseline reason why creators are so uncomfortable with the tendency of many of the proposals to solve the problem of Europe wide online content which start from the assumption that the creator cannot say "no"; that the product is going to be distributed anyway; and that the only question is whether there is going to be compensation and who is going to distribute the compensation. Some negotiation this is going to be!

To make this kind of proposal even more unpalatable, the amount of compensation that creators are to receive will only be decided after creators have surrendered their making available right.

And to make even that prospect more worrying, there are proposals that that level of compensation will be negotiated exclusively

by collecting societies. Whatever the view that we creators have of our own local collecting societies (most of whom are excellent organisations!) how can we have absolute and borderless confidence in a system that the European Commission itself insists is not sufficiently transparent or accountable? And does recent fiscal reality not show that this kind of superficial harmonization is the wrong way to go?

(Of course in the real world Scandinavian extended collective licensing and British collective bargaining are already making decisions about online distribution different to many of those being discussed at the European level.)

The European market place for online distribution of European film and television product is by no means established and its shape and potential commercial and cultural success is unknowable and immeasurable. What we can say for sure is that if it is limited to forms of retransmission of existing public and private broadcasting services – such as catch-up services, it will amount to very little other than a convenient way to watch telly.

But creators want to hope that the online environment will be a major force for innovation, for creativity, a force to open up the ways in which story tellers reach audiences as well as a new, exciting creative environment for their stories. Already we see the first pioneers, new players, entrepreneurs of the digital space, producing new content in this new marketplace, made directly for the net, and trying to find creative ways to aggregate existing content, seeking whole new audiences across European borders and, of course, beyond. Good web drama reminds me of early TV drama – branded rather than interrupted by ads or product integration, dramatically limited due

to budget but asking for small-scale intimate stories, enabling creative freedom and still experimenting with form – so what if web drama is sometime in the near future as important for us writers as TV drama is today? Remember Rod Serling, Paddy Chayevsky, Gore Vidal, Reginald Rose, Tad Mosel – the “video boys”, as TV writers were called then were not represented, **but today’s European TV writers are : by their home guilds and on the European level by the Federation of Screenwriters in Europe!**

We don’t see how giving up our making available right will help create this brave new world.

**Christina Kallas,
President
Federation of Screenwriters in Europe**

European Policy: Looking for Opportunities for TV and Film in the Online Age

European Commission releases Green Paper

The European Commission has released a **Green Paper**⁽¹⁾ on “the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market”.

The European Commission sees in the fast development of digital technology new opportunities and challenges for creators, distributors, consumers and a positive impact on growth and jobs. Internal Market Commissioner Michel Barnier has launched a **public consultation** to seek views from stakeholders (creators, performers, producers, distributors and consumers). “The results of this consultation will provide a significant contribution to the initiatives I am preparing, including a legislative proposal on collective copyright licensing, an examination of the framework set by the 2001 Information Society Directive, and a review of the Intellectual Property Enforcement Directive”.

FSE is studying this text in depth, and in particular what concerns the copyright licensing framework and the remuneration of authors for the online uses of their works. FSE welcomes the fact that authors’ interests have been taken into account in the Green Paper. However screenwriters regret the lack of detailed statistical or economic analysis of this new way of distribution of their works. During the **First World Conference of Screenwriters** in Athens in 2009 they explored the opportunities and threats of a digital future in terms of remuneration and rights and discovered the lack of available analysis. Despite the complexity of the issue, such an in-depth analysis would be immensely valuable for Europe to design a real vision for the development of this new market place.

Documentation

Press release

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/868&format=HTML&aged=0&language=EN&guiLanguage=en>

Read the Green Paper

http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf

Public Consultation

http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm

(1) What is a Green Paper?

Wikipedia proposes a definition: a discussion document released by the European Commission, intended to stimulate debate and launch a process of consultation, at European level, on a particular topic. A green paper usually presents a range of ideas and is meant to invite interested individuals or organizations to contribute views and information. It may be followed by a white paper, an official set of proposals that is used as a vehicle for their development into law.

From another point of view (1)

Digital Copyright Exchange, a proposal by Prof. Hargreaves in the UK

WGGB reports that Prof. Hargreaves, assisted by a panel of experts, wrote an **independent report** titled *Digital Opportunity, a review of Intellectual Property (IP) and Growth* and makes 10 recommendations to the government, “designed to ensure that the UK has an IP framework best suited to supporting innovation and promoting economic growth in the digital age”.

<http://www.ipo.gov.uk/ipreview.htm>

European Parliament holds Public Hearing on Future of European Audiovisual Policy

FSE attended the “authors day”, an event organised by the Brussels Film Festival in partnership with SACD, ARRF and SAA on 28 June. The event proposed a panel discussion mostly on the impact of digital technology on European cinema. The meeting was attended by representatives of several European networks of the audiovisual sector. Polish MEP Piotr Borys (Committee on Culture and Education) was invited to present his **draft report on “European cinema in the digital era”**, mostly oriented on technical issues (for example the complete digitisation of European movie theatres and VOD platforms), with recommendations to the European Commission. Some representatives of authors’ organisations, not knowing about this report, insisted on the need to consult authors beforehand and include their concerns in the recommendations.

Piotr Borys also presented his report to the European Parliament after a public hearing held on 13 July. Several panellists were invited to discuss the future of European audiovisual policy: experts from broadcasters, producers, institutions, industry, but no authors. Cécile Despringre, Executive Director of SAA, insisted in a recent editorial that “creators should surely be involved in the debates on the future of their industry, in particular when it comes to addressing copyright issues”. Piotr Borys’ report will be put to a plenary vote of the European Parliament in November...

— Documentation

Piotr Borys’ report

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-467.003+01+DOC+PDF+V0//EN&language=EN>

European Cinema in the Digital Era sends a political signal to the film industry, Piotr Borys’ editorial in Cineuropa

<http://cineuropa.org/2011/nw.aspx?t=newsdetail&l=en&did=207086>

Can Europe help authors seize the digital revolution?, Cécile Despringre’s editorial in Cineuropa

<http://cineuropa.org/2011/nw.aspx?t=newsdetail&l=en&did=207194>

From another point of view (2)

Development of VOD Market in Europe

Media Desk France recently published a detailed **focus on the development of VOD** (Video On Demand). It explores the general situation of the VOD market in France and in Europe, the legal frame, the main actors of the market, the national and European supports. While **Netflix**, for example, leader of the VOD market in the US, has planned to hit UK and Spain in 2012, the VOD market in Europe is only emerging, though its development is a priority for the European Commission. The focus points out the main reasons for this situation: fear of piracy, legal barriers and complexity of rights management, fragmentation of the European market.

Media France Focus on VOD (in French only)

http://www.mediafrance.eu/IMG/pdf/FOCUS_VOD.pdf

An article on the expansion of Netflix in Europe

<http://latimesblogs.latimes.com/entertainmentnewsbuzz/2011/08/netflix-spain-britain.html>

Are you media literate?

While the development of an audiovisual digital market is a priority for the European institutions, the European Audiovisual Observatory questions the level of **media literacy** in Europe. Digital technologies and new media require a form of literacy and their fast development create “a brand new form of social division and exclusion”.

Media Literacy: No Longer the Shrinking Violet of European Audiovisual Media Regulation?

http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus3LA_2011.pdf.en

State aid for films and other audiovisual works

The European Commission has launched a **public consultation on support to film sector in Europe**, for making and distributing films. The current criteria for providing State aid in EU Member States have been set out some 10 years ago by the **Cinema Communication**. Around 80% of state aid goes to film production.

New rules should come into effect by the end of December 2012. The Commission will review the current rules in the context of the digital market and the need to improve the competitiveness of the European audiovisual sector. Among the news trends, Commission Vice President in charge of competition policy Joaquín Almunia identifies: "support for aspects other than film and TV production (such as film distribution and digital projection), more regional film support schemes, as well as competition among some Member States to use State aid to attract inward investment from large-scale, mainly US, film production companies". Interested parties are invited to submit their comments by 30 September 2011.

What future for MEDIA within Creative Europe?

While the European Commission is consulting stakeholders on State aid to the film sector, the institution published just before the Summer a proposal for the future EU budget (for the period 2014-2020). In particular, the Commission proposed to the European Council and the European Parliament to allocate 1.6 billion euros to a **new programme** which would bring together the current Culture, MEDIA and MEDIA Mundus programmes. "The next generation of programmes funded by the EU budget will address the weaknesses that limit the growth potential of this sector, by tackling market fragmentation, strengthening competitiveness in the cultural and audiovisual sectors, and focusing on capacity building measures and support for the circulation of cultural works".

Documentation

Press release

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/757&format=HTML&aged=0&language=EN&guiLanguage=fr>

Issues Paper and related documents

http://ec.europa.eu/competition/consultations/2011_state_aid_films/index_en.html

The current « Cinema Communication » (IP/01/1326)

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1326&format=HTML&aged=1&language=EN&guiLanguage=en>

A few publications

Public Funding for Film and Audiovisual Works in Europe, a new report from the European Audiovisual Observatory
http://www.obs.coe.int/oea_publ/funding/fundingreport2011.html

An Insight into Selected Film Funding Systems (in particular in the states of South-East Europe), European Audiovisual Observatory, IRIS Plus 2011-2
http://www.obs.coe.int/oea_publ/iris/iris_plus/2011-2.html

National Film Production Aid: Legislative Characteristics and Trends, European Audiovisual Observatory, IRIS Plus 2001-4
http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus4_2001.pdf

Documentation

See p. 30 of the proposal

http://ec.europa.eu/budget/library/biblio/documents/fin_fw1420/MFF_COM-2011-500_Part_II_en.pdf

And more in details from p. 156 to 160 of the following document

http://ec.europa.eu/budget/library/biblio/documents/fin_fw1420/SEC-868_en.pdf

EU Commissioner Lewandowski defends MEDIA Programme

An article by Dorota Hartwich on Cineuropa: <http://cineuropa.org/2011/nw.aspx?t=newsdetail&lang=en&documentID=206513>

European Film Directors meet EU Commissioner Lewandowski to discuss budget increase for MEDIA programme, on FERA's website

<http://www.filmdirectors.eu/wp-content/uploads/2011/06/FERA-IFF-MEDIA-Budget-Press-Release1.pdf>

Digital Age : Challenges for Film Heritage

FSE has been invited to join the Cinema Expert Group on Film Heritage organized by the European Commission on 19 September in Brussels, "to facilitate the exchange of best practices between European Film Heritage institutions as well as to discuss directly with experts from Member states, industry and other stakeholders", such as... screenwriters of course! Bringing EU film heritage online raises numerous questions and is related to copyright, collective rights management, orphan works (1), conservation, public access, etc. Film Heritage institutions see copyright as a limiting factor in providing wider access to their collections. "Identifying the right-holders for works that in some cases date from 100 years ago, but also locating them in order to negotiate whatever agreement", takes time and costs money.

The Commission is also launching a **public consultation** on the "Challenges of the Digital Era for Film Heritage Institutions". On page 106 of the related study we can read: "The issue of rights tracking and orphan rights is one that impacts many organisations in the audio-visual media, and is not limited to cinematic archives. In the case where rights cannot be traced, archives are faced with a choice: Watch irreplaceable heritage disintegrate, or act without legal clearance. Which course of action should the responsible archivist choose?". The Commission invites interested parties to comment on this study before 29 September.

Besides, the Legal Committee of the European Parliament is in charge of examining the **Commission proposal for a Directive on orphan works**. The purpose is to create a legal framework to ensure the lawful, cross-border online access to orphan works. "The Commission considers that an approach based on mutual recognition of the orphan status allows libraries and other beneficiaries to enjoy legal certainty as to the «orphan status» of a particular work. Mutual recognition ensures that the orphan works contained in a digital library would be available to citizens across Europe".

Documentation

Consultation paper on *Challenges of the Digital Era for Film Heritage Institutions* (in particular p.82-87)
http://www.dae-filmheritage.eu/mediapool/100/1000452/data/DAEFH_Consultation_Paper_FINAL.pdf

European policies for the protection of Film Heritage
http://ec.europa.eu/avpolicy/reg/cinema/index_en.htm

After three years of preparation and development, the **European Film Gateway portal** is now online: <http://www.europeanfilmgateway.eu/>

The European Commission adopted a proposal for a **Directive on certain permitted uses of orphan works with a view to establishing common rules on the digitisation and online display of so-called orphan works**
http://ec.europa.eu/internal_market/copyright/orphan_works_en.htm

(1) What are Orphan Works?

A definition by the European Commission: works like books, newspaper and magazine articles, and films that are still protected by copyright but whose authors are not known or cannot be located or contacted to obtain copyright permissions.

Conference

Second EUScreen International Conference on Use and Creativity
15-16 September 2011, Stockholm. Organised by EUScreen, the best practice network for Europe's television heritage . Focus: online potential of European television heritage; creative approaches to enhance online accessibility of European television heritage.
<http://euscreen2011.eventbrite.com>

Publication

Digitisation and Online Exploitation of Broadcasters' Archives, European Audiovisual Observatory, IRIS Special December 2010
http://www.obs.coe.int/oea_publ/iris_special/2010_02.html

Another point of view

While the European institutions seek ways to design and implement policies to develop the European online digital market, some professionals question the identity of European cinema, or the European identity through films produced in Europe... Here is a selection of two articles from Cineuropa:

Three suggestions for the diversity of films and European audiences

By Frédéric Sojcher, Director

<http://www.cineuropa.org/newsdetail.aspx?lang=en&documentID=205806>

A cinema without borders in Europe, rather than European cinema

By Aude Hesbert, Déléguée générale of Festival Paris Cinéma

<http://www.cineuropa.org/newsdetail.aspx?lang=en&documentID=205990>

Screenwriting events

London Screenwriters Festival 2011

On 28-30 October 2011, the **London Screenwriters' Festival** will run over seventy seminars, workshops and networking events for professional screenwriters. If you can afford registration costs of £300, you will probably not regret the feeling of joining a community of creators dedicated to the script.

<http://londonscreenwritersfestival.com>

Spanish guilds organise the Second Spanish Screenwriting Meeting

EDAV (Escriptors de l'Audiovisual Valencià), in collaboration with FAGA (Foro de Asociaciones de Guionistas del Audiovisual) and ALMA (Sindicato de Guionistas) and with the support of FSE, is currently organising the **Second Spanish Screenwriters Meeting**, which will take place on 4-6 November 2011 in Madrid. The first edition held in Valencia in October 2010 had a big impact in the media and gathered more than 200 participants, mostly of them screenwriters. The second edition will get together during three days renowned European and international experts and professionals related to the audiovisual sector, to debate about various issues that affect writers of TV, cinema and new media. The conference aims to reach a higher number of participants than last year, as well as to give them the occasion to meet with some of the most influential representatives of the Spanish cultural institutions.

The program of the Second Spanish Screenwriters Meeting will focus on these seven areas: Cinematographic writing; Television fiction writing; Non-fiction writing; Script trends on film, television and new media; New employment horizons for screenwriters; Models of copyright management; Current situation for screenwriters in Spain.

The event will take place thanks to the support of the most important Spanish cultural institutions, like the Ministry of Culture in Spain, the Academy of the Arts and the Cinematographic Sciences of Spain, the Valencian Audiovisual Institute (IVAC), the Pontifical University of Salamanca and the Spanish collecting societies SGAE and DAMA; as well as to sponsors.

<https://www.facebook.com/pages/Encuentro-de-Guionistas/148622331827536>

15th International Festival of Screenwriters in France

A new **call for projects** has been launched, to discover and support young talented authors of the French speaking audiovisual sector. The festival will be organised in Bourges, France, on 28-31 March 2010.

<http://www.scenarioaulongcourt.com/wordpress>

Droit d'auteur & Copyright

Digital Uses : Who Pays for Private Copying?

The authors of a **new publication** of the European Audiovisual Observatory know that the debate on private copying (rights of reproduction for private usage) and compensation for the rights holders of creative contents (without forgetting the authors of primary contents) is not new, but its adaptation to the digital age raises new questions. This publication studies in depth the European legal frame, the national exceptions - with a particular insight on the "Padawan Case", the various existing and future levy systems to manage the rights, the various and often opposed interests of the industry, creators, consumers, etc.

Who Pays for Private Copying? - IRIS plus 2011-4
http://www.obs.coe.int/oea_publ/iris/iris_plus/2011-4.html

EFJ Launches Handbook to Help Journalists Protect Authors' Rights

"Journalists, whether they are employed or freelance, face increasing difficulties in securing their authors' rights", said Arne König, President of the European Federation of Journalists, "The **handbook** rightly addresses these challenges and provides a set of guidelines and best practices to help our colleagues face the new challenge."

Organised in seven chapters, the handbook offers essentials tips for journalists on authors' rights and copyright; latest developments on EU and International authors' rights law; guidelines for concluding contracts; models for collective agreements; functioning of collecting societies; suggestions for dealing with infringement; future trends and challenges for authors' rights.

<http://admin.ifj.org/assets/docs/254/103/9adb2fe-a308e67.pdf>

Federation of Screenwriters in Europe

The **Federation of Screenwriters in Europe (FSE)** is the voice of almost 7,000 professional writers of the audiovisual sector at European level. Created in June 2001, it is a network of national and regional associations, guilds and unions of writers for the screen. In 2011, it comprises 25 members from 19 European countries.

The common concerns of European writers are reflected in policy documents : the FSE Policy Paper, published in December 2007; the European Screenwriters Manifesto, launched in November 2006 and the Founding Charter of the FSE, written in June 2001.

The FSE is monitoring European debates and legislative issues. The FSE launches campaigns in favour of screenwriters' rights, collaborates with other creators' groups on joint campaigns and seeks constructive dialogue with the other creative forces of the audiovisual sector. It organizes major events where screenwriters debate on the new challenges of their profession (First World Conference of Screenwriters, Athens, 2009; European Conference of Screenwriters, Thessaloniki, 2006; RISE festival, Strasbourg, 2004).

The FSE is also active at international level, works closely with the International Affiliation of Writers Guilds (IAWG) and keeps contacts with other writers' organisations around the world.

Visit www.scenaristes.org