

**Federation of Screenwriters in Europe**  
**Defining Our Rights in the Online Environment**  
**26 March 2015, Brussels**

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**Summary of discussions**

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(please contact [info@scenaristes.org](mailto:info@scenaristes.org) if you have problems to access the links.  
You might be asked by drop box to connect or sign in but it is not compulsory to access the links).

**The initial agenda is here:**

<https://www.dropbox.com/s/mvgnunz7ibvqj6h/FSE%20mtg%20Brussels%2026%20March%20Programme2.pdf?dl=0>

The **audio recordings** of this meeting are available here (mp3 – very heavy files!):

<https://www.dropbox.com/sh/4z20x3hugykzi2b/AAC5FK9q5TvG11EuVKWROO9ga?dl=0>

IMPORTANT: these files will be available until 30<sup>th</sup> May 2015.

This memo includes time references, should you want to listen to certain parts of the recordings only.

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**INTRODUCTION** (Rec. 01 / 03:50)

**by Monica Boracco**, screenwriter, chair of the Norwegian guild

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**PRESENTATION 1** (Rec. 01 / 07:40)

***Digital Distribution: Challenges & Choices***

**Presentation by Eva Van Passel**, Researcher iMinds - Digital Society at SMIT, Studies on Media, Information & Telecommunication, Vrije Universiteit Brussel

Her slides are available here:

[https://www.dropbox.com/s/jr2ckir9z6t2fcu/FSE\\_20150326\\_presentation\\_VanPassel.pdf?dl=0](https://www.dropbox.com/s/jr2ckir9z6t2fcu/FSE_20150326_presentation_VanPassel.pdf?dl=0)

A few items:

**1) Release windows in the EU**

The European Commission published a study on release windows in 2013 (SMIT was commissioned in 2012 to make this study). In general windows are getting shorter, the main reason being piracy. The aim is to get more interesting offers in VOD to counter piracy. It benefits first corporate rightholders (they can increase marketing impact for short windows) and consumers (wider offer).

It has side-effects. Cinemas are not happy with short windows. TV plays an important role in financing but broadcasters do not want to share with Netflix.

It's a tricky topic. How to develop an attractive VOD offer that does not have a negative impact on financing. Windows cannot be considered in isolation.

## **2) Multi-territoriality** (Rec. 01 / 13:40)

This issue pops up all the time now, with opposed views. Those who say: “stay away from it”. Eva quotes Janine Lorente (SACD/SAA) and Michael Price, composer for film and TV/ECSA. On the other side, there is a huge focus on this issue from the European policy (Digital Single Market). Eva quotes EU Commissioner Ansip.

There is tension between single market approach and what authors want. The EC recently commissioned a study titled “Fragmentation of the Single Market”, with the idea that fragmentation is negative to the digital single market.

## **3) Authors’ rights legislation and Remuneration** (Rec. 01 / 18:05)

She refers to the cable rights issue in Belgium and the change in legislation (law is being introduced this year: unwaivable remuneration right for cable retransmission, with compulsory collective management. It is probably a good thing for authors but it might be too little and too late (very slow legislative process). As shown by SAA White paper, authors need something for digital distribution.

The challenge for creators is to choose their battles. Do they want better remuneration through rights (she refers to a figure quoted in the SAA White Paper which she thinks can be dangerously used if put out of context – 0.37% SAA members’ collections as a percentage of audiovisual sector revenues)? Or do they want to focus on good fees upfront (collective bargaining)?

## Questions and contributions (Rec. 01 / 24:40)

Susin Linblom (Sweden) on the study on Release Windows: how will this issue affect cultural policies? In particular in small countries, national languages, etc.

Answer: the study did take cultural diversity into account and the great variety of national situations. The study recommends that this should be possible, but that it should be linked to EU policies on eCommerce and Culture.

Bernie Corbett (UK). In UK authors receive 5.5% of film and TV revenues. Be careful that the SAA figure (0.37%) doesn’t bite us on the bum.

TV will be more affected by these changes than cinema.

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## **INTERVENTION** (Rec. 01 / 32:25)

**Intervention by Peter Schønning** who is a lawyer specialising in copyright based in Copenhagen, on the project of copyright reform by the European Commission.

This legislative project is one thing that is changing all the agendas in the EU and US. The Directives of recent years are nothing compared to what the Commission is planning. Now everything happens so quickly. The idea of an internal market has changed. From a market for businesses, it is now seen as a market for consumers.

Yesterday the EU Commission announced portability and modernisation of copyright (which we can understand as “destruction”). At the bottom they are talking about fair remuneration for authors.

EU Com press release: [http://europa.eu/rapid/press-release\\_IP-15-4653\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4653_en.htm)

Territoriality sounds very cool. Ansip asked, who can be against Geoblocking? A lot of people in fact. Rightholders, businesses. The EU Commission says they are listening to all parties. But

it's not true. They listen to Digital4EU - those with the most extreme positions and those with the most political power. We have never heard this scale of call for change before. What is going on right now will affect authors on the long term.

We need to keep repeating over and over again that it's not about market but about access to culture, cultural diversity.

Peter, with 25 years experience in Copyright, cannot see how the Commission will change copyright, how they will force right holders to tear down the fences, stop geoblocking without violating fundamental rights of freedom of contract, freedom of our capitalist system, freedom to choose price, freedom to choose who you sell to.

The EU Commission pre-supposes that there is a single market but that is a lie. Just compare Sweden and Bulgaria: not the same prices, not the same wages. It will destroy the industry. Peter details possible consequences of stopping geoblocking: economy, culture, education, etc.

#### On contracts and fair remuneration

The EU Commission has spoken about authors having good contracts and politicians support artists. Peter thinks this is a good idea but we need to be very, very careful. Authors can be taken hostage by the political debate (ex. Reda report which includes something on authors' contracts / how the European Writers' Council was caught like this).

#### Questions and contributions (Rec. 01 / 59:25)

From David Kavanagh, Peter Schønning, Sven Baldvinsson, Susin Lindblom, Bernie Corbett They confirm that the EU Commission wants a single market with no copyright barriers, that Reda is trying to divide authors, that the campaign against authors is massive especially from internet companies) and worldwide.

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#### **ATTEMPT AT MAKING A GLOSSARY OF TERMS**

(Rec. 01 / 01:34:00)

Introduction by Monica Boracco: What is the term broadcasting understood nowadays?

Peter Schønning thinks it is dangerous to depend on definitions.

Chuck Slocum who is Assistant Executive Director of the Writers Guild of America (west) say they try to be platform/technology agnostic. Terminology is the result of many iterations but this has an impact on price (online uses = lower prices, as companies refuse to apply tv rules to online). It's very difficult to distinguish revenue stream as traditional TV, cable and internet are merging. Contractually, better to be specific as you can maximise payments per type of use.

Peter Schønning confirms that separate remuneration streams are key. You need multiple sources of revenue.

Robert Taylor (01:34:00) on the Making Available Right and broadcasting. Anne Zeegers on the situation in the Netherlands.

How making available and broadcasting contents are evolving? Merging? Distinctions often become confusing.

Susin Lindblom and Chuck Slocum on extra payments for sling distribution and simulcast in Sweden and in the US. How to follow the development of apps and new internet services. Companies invest a lot of money in technical development but refuse to invest in contents. Broadcasters are opposed to consider internet as non-broadcasting. The crucial thing is to know better the emerging business models and fight to keep rights.

What can be a definition of broadcasting? Peter Schønning (02:03:00) on several attempts already made at defining broadcasting. One way of looking at it: broadcasting is when you create a new tool with a new use, obviously directed to a new public (CJEU has challenged this).

Maciej Karpinski on the situation in Poland.

Legislation, to fight against piracy: those that make profit from the internet would be supposed to pay a levy of 1.5% to be redistributed among right holders. A sort of online application of private copying. Being fought against by internet operators.

Anne Zeegers on the situation in the Netherlands

The Film industry is united. Cable companies do not want to share with CMOs of writers and actors. They have reinitiated and agreed a voluntary remuneration with collective management. It covers broadcasting and VOD. It only works for digital consumption if the consumer has to pay.

The conversation goes on on the very different situations in European countries. What some have succeeded in negotiating, others not. Existing agreements for new uses.

Susin Lindblom as a conclusion reminds that there has to be a link between this discussion and cultural diversity policy.

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## PRESENTATION 2 (Rec. 02 / 00:00)

### ***Adapting to New Media, Market Place Evolution and Contract Accommodation***

**Presentation by Chuck Slocum** who is Assistant Executive Director of the Writers Guild of America west

His slides are available here:

[https://www.dropbox.com/s/ek3h1aadfg97gcv/C.Slocum\\_Adapting%20to%20New%20Media.ppsx?dl=0](https://www.dropbox.com/s/ek3h1aadfg97gcv/C.Slocum_Adapting%20to%20New%20Media.ppsx?dl=0)

On terms and definitions in WGA contracts and agreements.

See also WGA Contracts, Compensation, and Other Rights:

<http://www.wga.org/content/default.aspx?id=1027>

### Questions and contributions (Rec. 03 / 31:20)

on specific payments, amounts, percentage, pay per click, buyouts, piracy, etc.

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## SITUATION IN VARIOUS EU COUNTRIES (part 1)

### Looking at countries where there have been new issues (legislation)

#### Introduction by David Kavanagh (Rec. 03 / 00:00)

#### Netherlands by Anne Zeegers (Rec. 03 / 01:00)

Dutch guild campaigning against UPC going on. No contracts in place at the moment. Writers working but not being paid.

New legislation, including remuneration right.

Exclusive rights / Transfer of rights, CMOs

#### Belgium by Tanguy Roosen (Rec. 03 / 16:30)

Belgian Court cases on cable retransmission. He explains what is "Direct injection": In 80's cable operators grabbed the original signals and pumped them to customers. With the arrival of digital technology the broadcasters started to send the signal directly to cable operators. Cable operators claimed that this meant there was no retransmission. The broadcasters equally claimed they no longer made the communication to the public. Technologically very complex in fact.

Massive battle in 2013 between authors on one side and producers, broadcasters, cable operators on the other side. Authors wanted to guarantee that CMOs could claim money from cable operators and broadcasters. What they gained was unwaivable right to remuneration for cable retransmission (as defined in the EU directive).

#### Spain by Teresa de Rosando (Rec. 03 / 29:00)

Private copying system

#### Finland by Jenni Toivoniemi (Rec. 03 / 32:26)

#### Questions and contributions (Rec. 03 / 34:00)

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## PRESENTATION 3 (Rec. 03 / 49:00)

### *On German TV*

**Presentation by Katharina Uppenbrink** Managing Director of the Initiative Urheberrecht (Copyright Initiative)

A few key points:

German TV: 270 TV Film premiers 2013; 5.48 m viewers; ARD and ZDF are the biggest producers

Market share of German films growing - 26.4% 2014

There are collective agreements with public and private broadcasters that include digital. Sat1 pays per click after a certain base.

#### Questions and contributions (Rec. 03 / 01:17:24)

## SITUATION IN VARIOUS EU COUNTRIES (Part 2)

**Scandinavia** by Peter Schønning (Rec. 03 / 01:18:25)

A few key points:

Cable retransmission, catch up, cloud, etc. generate remuneration.

Good cooperation.

Reservation clauses.

However it's not a paradise. Norway is challenged by the cable distributors. The major cable distributors, owned by hedge funds, look at expenditure and see rights as expensive.

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## CONCLUSION (Rec. 03 / 01:26:20)

Conclusion by **Sven Baldvinsson**

David Kavanagh proposes that FSE produces a draft similar to the one published by SAA in its White Paper, a comparison of rights. What exists, per countries and per categories (broadcasting, catch-up, etc.). Guilds are ready to take up the challenge.

Maciej Karpinski reminds how important it is to raise public awareness.

Comments by Chuck Slocum, amazed by the difference from country to country. The common principle: ongoing remuneration.

Comments by Peter Schønning, on bargaining power.

Monica Boracco proposes that guilds have this conversation at least once a year. It seems that a common glossary is not possible. She thanks all the parties involved in the organisation of this meeting.