

Verband Deutscher Drehbuchautoren e.V. (VDD)/ German Screenwriters' Guild

www.drehbuchautoren.de

Report 2016/17

ABOUT VDD

General Information

The German Scriptwriters' Guild represents about 500 professional scriptwriters who write for film and television in Germany.

The Guild's board, which is based entirely on voluntary work and is assisted by a small administrative staff, deals with a variety of issues related to the employment of scriptwriters and writers' rights in Germany.

Guild's Activities

- lobbying concerning
 - o copyright law
 - o film funding law
 - o regulations for collecting organizations
 - o new regulations on film and TV (national and EU)
 - o culture and media politics in general
- collective agreement negotiations
- service to the members (i.e. legal advice, information on prizes, grants, etc.)
- improvement of the scriptwriters' visibility
- events (a. o. Award Ceremony German Screenwriter's Prize (Goldene Lola) at Berlinale)
- networking (VDD is member of powerful national organizations of authors and industrial partners like Initiative Urheberrecht, Deutscher Kulturrat, Deutsche Content Allianz a. o.)
- annual call for ideas of VDD and private broadcaster ProSiebenSat.1 (funding of selected authors to develop their personal ideas to exposés; ProSiebenSat.1 has a first look right; if they are not interested in the final exposé, the authors hold full rights to present it elsewhere in the market)
- international campaigning
- Public Relations via website, press work, social media (facebook, twitter), VDD podcast

See www.drehbuchautoren.de

Legal background

The German Creators' and Copyright law (Urheberrechtsgesetz) is a droit d'auteur-law. The last important revisions passed Parliament in 2001 and 2016. According to the German creators' and copyright law we have the legal possibility to negotiate and reach an agreement on screenwriters' fees with associations of rights users (like the German Film Producers' Alliance) or single users of our rights (like the broadcasters); this law complies with German and EU competition law.

ORGANISATION

Board Members

A new board has been elected in February 2017. The VDD board is represented by Katharina Amling, Dinah Marte Golch, Brigitte Drodloff, Sebastian Andrae, Peter Henning, Christian Lex and Uwe Petzold.

Advisory Board

The VDD board is supported by an advisory board. Members of the advisory board are former VDD board members Carolin Otto (international affairs), Jochen Greve (VG Wort/SAA) and Pim Richter (Deutscher Kulturrat, Initiative Urheberrecht)

Managing Director

VDD managing director is Jan Herchenröder. The VDD office is located in Berlin.

NEWS

Campaign for more and sustainable development funding continues

Since 2015 VDD is rolling out a campaign which focuses on the development, the evident lack of money in this important production phase and, of course, the inequitable remuneration of authors.

The VDD is active on different levels:

1) German State Aid Legislation and federal subsidies

The reformed German State Aid Legislation (FFG) has passed parliament end of 2016. VDD has succeeded to install more funding for screenwriters and a new development funding model. The next years will prove if the new funding model starting February 2017 has the expected positive impact on German film production. (more information about the FFA – also in English: www.ffa.de).

Currently we are preparing **a round table with federal subsidies** in Germany like medienboard Berlin-Brandenburg, Bavarian Film Fund (FFF), Film Foundation North-Rhine-Westfalia (Filmstiftung NRW) a. s. o. to evaluate existing development funding models on the level of the federal states. We aim to optimize the funding models especially to make them more attractive to professional writers. We also aim to raise the budgets for development funding.

2) Collective agreement negotiations

VDD has intensified its negotiations activities. We are currently negotiating with all public and private broadcasters as well as with the German Film Producers Alliance for minimum fees concerning scripts for film. All this work is done by a small task force of three board members, the managing director and a lawyer.

The VDD has still three aims:

- higher and fair remuneration
- formal collective agreements referring to the German contract law.
- complete revision of the cooperation between the broadcasters – the editorial staff - and the

authors aiming to optimize the development process concerning decision making, defining relevant themes and programmes, better contracts and payment rates etc.

ARD (Public Broadcaster)

ARD – VDD – Workshop in 2017 in Munich/Pitching Session in 2018

VDD has succeeded to establish a dialogue with German Public Broadcaster ARD regarding a revision of the cooperation between the broadcaster and the screenwriters. As part of the VDD campaign for more and sustainable development, in summer 2017 a meeting of ARD program chiefs, editors and the ARD intendant with about 40 VDD-members has took place during the Munich Film Fest. This meeting has not focused on negotiation of minimum fees but on an intense dialogue about how in future fictional narration for ARD could be successfully developed. In four work groups there have been discussions about the topics transmedia formats, TV series, movies and event movies.

Participating VDD members as well as participating ARD representatives have given a very positive feedback on this workshop. One important topic has been the role of the producer in the development of commissioned production. As first results ARD and VDD are planning a direct pitching session for writers in 2018. The next ARD-VDD workshop is planned for summer 2018.

As the structure of ARD is very complex this event could be seen as a big move of ARD and a step in the right direction. It has been the first workshop directly between program planners and decision makers of a public broadcaster on one side and screenwriters on the other. So far, the traditional attitude at ARD has been that program development should be discussed solely with the Producers Alliance.

Information about ARD: [https://en.wikipedia.org/wiki/ARD_\(broadcaster\)](https://en.wikipedia.org/wiki/ARD_(broadcaster))

Negotiating a collective agreement

Negotiations with ARD have priority. ARD is the biggest producer for TV in Germany. For more than 10 years the remuneration of authors in ARD productions has not been augmented. On the contrary, compared with the growing inflation rate in this period the remuneration has evidently declined.

Since end of September 2015 VDD is trying to get into official collective agreement negotiations with ARD and the German Film Producers Alliance. Currently, we will start official negotiation in December 2017. To represent the majority of German screenwriters and to have more power at the negotiating table VDD is cooperating with German Media and Theater Publisher's Guild (VDB). VDB has a historically grown special status in the field of collective negotiations with public broadcasters in Germany. In the audio-visual sector VDB represents screenwriters and authors of radio plays. The publishers are working more or less like agencies.

At first ARD wanted to negotiate at a round table with all groups of creators and authors that are involved in film production for the public broadcasters. Instead of bargaining with the guilds of writers, directors, actors, editors, sound designer and so on separately ARD wanted to find a solution in the way "one size fits all".

The members of VDD are strictly against participation at a round table. VDD is convinced that the work situation and especially the economic risks authors take into account developing scripts could not be negotiated properly with other groups of film makers. Also VDD could not see any strategic advantage when all authors fight to raise one budget which should fit to all needs instead of fighting for adequate budgets for the main authors of a film (screenwriter, director, composer). In German copyright law the script of screenwriters has a status comparable to a drama text. As so called "vorbestehendes Werk" (work that pre-exists or work that could be licensed separately from the film as text) also the script itself has a special status which is an argument to get into direct negotiation with ARD concerning nothing else than fair minimum fees, contracts and shares for screenwriters. The round table is seen as a big step to levelling

screenwriter fees.

Currently, ARD is negotiating at three tables. One big round table with actors, editors a. s. o., one table with directors and one table with screenwriters.

ZDF (Public Broadcaster)

Since Juli 2016 we are officially negotiating a new agreement with the German Public Broadcaster ZDF and the German Producers Alliance. The members of VDD had decided in 2015 to terminate the collective agreement with ZDF and the German Film Producers Alliance which was signed in 2012. The evaluation process has proved that instead of higher fees for scripts the agreement has led to an evident decline of remuneration above all in the series sector. Also the agreement did not provide a regulation for equitable remuneration for nonlinear rights.

Currently we try again to negotiate a new agreement concentrating on defining buy outs limited by time and limited by determined levels of use of rights. But it is obvious that ZDF is not willing to move in any direction that we propose. Any amelioration of one regulation must be directly compensated by cuts in other regulations. We are discussing right now in how far VDD could use more effectively the (weak) legal instruments that are offered by the contract law.

RTL (Private Broadcaster)

In 2016, VDD has started negotiation with private broadcaster RTL about an agreement similar to the existing agreement with private broadcaster ProSiebenSat.1. With ProSiebenSat.1 we defined minimum fees for buy-out-contracts concerning movies (90 Min.) and series episodes (45 Min.) combined with defined shares at defined levels of use of rights. Hereby, the level of use of rights are defined by counting each use of rights – from the audiences reached by broadcasting a program, DVDs sold up to each click users made online. Shares in relation to the use of rights are necessary to have stable regulation compatible with the bestseller paragraph in German contract law.

As we have expected that the most critical aspect of the negotiations is to define reasonable and fair levels of use of rights, even if in our perspectives the definitions found in the agreement with ProSiebenSat.1 should be a market standard to be valid also to RTL.

RTL is market leader in audience reach but compared to ProSiebenSat.1 RTL has obviously less media revenues. It shows up that the system of the agreement with ProSiebenSat.1 - a system which defines shares according to levels of audience reach - does not fit to RTL or rather could bring disadvantages to writers.

In general it is a problem that private broadcasters do not provide accurate information about their media revenues because this information is the core of their business secrets. We accept that some information is held back but at same time it is difficult to accept higher levels of use of rights for a market leader without having comprehensible documents.

ProSiebenSat.1

Since more than a year VDD is evaluating the collective agreement with ProSiebenSat.1. Even if this collective agreement has positive effects for screenwriters and is accepted by our members there are still problems in detail which make the evaluation process complicated.

Especially the annual call for ideas made by VDD and ProSiebenSat.1 which is part of the agreement was a reason for longer discussions with the broadcaster.

Finally, with beginning of November we have launched the new call for ideas which is more focussed on the needs of P7S1's channels. This year we call for ideas for procedural series. Also it is new that the selected writers will get into direct contact with the editorial staff and get feedback on their projects.

Producers Alliance (scripts for film)

VDD has started negotiation with the German Producers Alliance about an agreement for scripts for film. We have developed a new model how to fairly remunerate a script for the big screen reflecting especially the economic risks authors take into account developing scripts during a long period of time not knowing if they will ever get paid for the last shooting rate (50%). The model should stop the tendencies in the German feature film market to reduce the value of scripts and the remuneration for screenwriters. Also it should avoid that minimum fees could be used as standard fees in the future.

Our model determined a fixed minimum fee which should be paid for each script for film. We call it the "value" of a script.

Because in Germany financing feature film is still very difficult and complicated we wanted to create a regulation that is flexible and takes into account the possible lower cash situation of a production. So in addition to the "value" of a script we defined a minimum script fee referring to the realistic production budget.

The minimum script fee has to be paid by producer in any case. In case of lower production budgets there will be a gap between the paid minimum script fee and the determined "value" of a script. This gap should be filled by an author's share of the producer's revenues – beginning with the first Euro.

In addition for successful films there should also be determined shares after recoupment of the mentioned gap and an escalator fee.

Producers Alliance does not accept this new model. But we are aware that the producers are accepting our argumentation concerning the economic risks of authors.

Interstate broadcasting law (Rundfunkstaatsvertrag) and restructuring of public broadcasters

Politicians and representatives of public broadcasters (ARD, ZDF) want to change the German interstate broadcasting law regarding regulations for the online use of rights. The so called Telemedienauftrag (public-service remit concerning online use) should enable ARD and ZDF to make their programs available online without any limitations. Main argument is that the people – or better: the electors - who have to contribute to ARD and ZDF by a monthly fee will not accept that programs they think they have already paid for are only available online for a limited period of time.

VDD is campaigning against this reform because there are still no functioning regulations regarding- writers remuneration for online use. It is obvious that the platforms of ZDF and ARD offering a wide range of fiction program for free will have negative effects on the German SVOD market and on the refinancing of film productions.

This legislation process is still open. VDD is currently part of a broad alliance of the whole TV and film industry including private broadcasters, producers, distributors, documentary filmmakers and directors.

Parallel to this legislation process there is a political process to determine future structures of ARD and ZDF. While populism gets raising attention in Germany political voices get louder that try to minimize or even to distinguish the German public broadcasting system. ARD and ZDF are main commissioners of fiction production written by our members. That's why VDD will lobby to secure strong public broadcasters while at the same time we are demanding more money and new structures for storytelling in TV series and movies.

Copyright law

The new German copyright law including a new contract law has passed parliament end of last year and is enacted since March 2017.

VDD has been very active in lobbying the legislation process in public debates by single talks to politicians or organizing manifestations, all this as member of the Initiative Urheberrecht.

In the end there have been slight positive changes in aspects that are especially important to screenwriters. These aspects concern transparency about use made of rights required not only by the contractual partner (producer) but also by the main user of rights (f. e. broadcasters) and remuneration for each use of rights. The new law still lacks binding arbitration.

Currently we focus on EU copyright legislation.