

## **Minutes of the FSE Board Meeting Gdynia, Poland – 19-20 Septembre 2017**

---

Present : Robert Taylor, Maciej Karpinski, Carolin Otto. STAFF : Amélie Clément, David Kavanagh  
Excused : Marie Roussin, Monica Boracco

### **IN BRIEF**

#### **Official decisions taken by the board**

- approved the agenda of the meeting.
- approved the minutes of the board meeting in Brussels on 27 April 2017.
- decided to get involved in the FERA Remuneration Study.

#### **Tasks**

- Robert will write a letter to FSE members on the update of categories and to prepare the approval by the general assembly of the proposed raise of fees.
- David will propose an informal meeting on competition law at the AGM.
- David will work with FERA and contact guilds for the Remuneration Study
- David will contact the guilds on lobbying the European Council
- Amélie will organise the FSE Award and FSE AGM
- FSE Award : FSE will invite Commissioner Mariya Gabriel.
- David will write the contents of the publication for the FSE Award.
- David will find a PR person for the FSE Award.
- David and Robert will finalise the letter to Partner members (Amélie to send).
- Renew partner memberships with SACD, DAMA, SGAE

### **SUMMARY OF DISCUSSIONS**

#### **David proposed to add two items to the agenda :**

##### **A request from Margret Ornofsdottir, FLH, Iceland**

She has asked a letter to support the guild's campaign about being part of the CMO IHM. Screenwriters are currently represented by the guild of writers of literature. The Icelandic guild wants the screenwriters' guild to be the representant of screenwriters. FSE wrote a draft letter. The board approved it.

##### **Increase the membership fees**

FSE will propose its members to raise the fees (ref. minutes of the AGM 2016).

David says it is important to rebalance the proportion between membership fees and partner members' contributions. FSE will ask an increase of max. 10%.

(As a comparison, FERA gets 67 000 euros in membership fees).

FSE board will send a proposal to the guilds before the AGM so the guilds can clear the situation with their board. Robert will prepare a letter.

FSE will also update the categories according to the revised number of individual members for each guild.

**Amélie proposed to read through the task lists of the minutes of the previous board meeting, to measure progress.**

- Working with FIM and FIA (performers): some progress has been made on compromise to find a common language that can be used for both the SAA remuneration right proposal and the Better Internet proposal of FIM and FIA (campaign « Fair Internet »).
- EFADs : they issued a statement in which they talk about our issues (see previous FSE newsletter). Now they have a full time guy and are becoming more present. Their opinions are quite positive for us.
- Competition law. No meeting has been organised. David thinks it is not useful to go further without the Dutch guild involved and he got no confirmation of interest from the Dutch guild. They are the most interesting ones to have on this issue. David will propose an informal meeting at the AGM.

## EU Policies / Lobbying

David Kavanagh presented the main items of his report :

### « Summary

The **Transparency Triangle** seems to be surviving quite well to date.

The **Unwaivable Right to Remuneration** is also still in play (it has been reduced to an acronym – **URR** – which presumably is a good sign!).

The time scale for a decision is now uncertain but will almost certainly stretch into next year.

The Parliament has nearly completed its work – the JURI Committee will vote in October (or even later).

The **Council of Ministers** (including its Working Party on Intellectual property (Copyright)) has begun to engage with the proposal, not so far with any major new problems.

### The Parliament

The Commission drafted a proposed Directive on Copyright in the Digital Age, in the framework of the Digital Single Market Strategy, and sent it to the Parliament and the Council of Ministers for consideration and decision.

In July 2017, the CULT Committee (report drafted by French EPP MEP Marc Joulaud) and the ITRE Committee (report drafted by Polish ECR MEP Zdzislaw Krasnodebski) adopted their opinions with respect to the European Commission's proposal.

These reports go to the JURI Committee which will meet on 10<sup>th</sup> October to vote on their recommendation, which should in time go to the Parliament itself for a plenary vote.

A possible quirk is that the Rapporteur for the Report has changed half way through the process with Therese Comodini EPP returning to national politics in Malta, and German EPP MEP Mr Axel Voss taking over.

### The Council of Ministers

The Council of Ministers has started some work on the draft Directive. A version of the Transparency Triangle prepared by the Estonian Presidency of the Council was leaked recently. It will be discussed by the Council's Working Party on Intellectual property (Copyright) probably on 19<sup>th</sup> September.

The draft compromise as suggested by the Estonian Presidency is annexed for your

information.

SAA, FERA and FSE have responded to the members of the Working Party with comments on the leaked draft. The Authors Group is drafting something.

In general the amended version is not too bad. The right for representative organisations to be involved at each stage of the triangle has been included. There is some vague language which could offer opportunities for obfuscation later on. Some issues that we had tried to have included have not been included (e.g. our proposal that “transparency must flow along the value chain” is not clear in the current draft which merely says “where the rights have subsequently been licensed to another party ...”).

Various other issues, less immediate to us, have not been entirely resolved but are not being radically altered.

The Estonian Presidency proposed two alternative versions of the proposed publishers right (article 11) and two alternative versions of the so-called “value gap” provision (Article 13). This provision is important to us in that it provides the background to the URR.

The first of the two versions proposed is similar to the original suggestion from the Commission which is that online providers with significant amounts of copyright material, provide better systems to take such material down or reach agreement with rightsholders about use of the material online. The second defines having significant copyright material online and available to the public as being “communication to the public”. Which of these is better or likely to be adopted I am not sure but at least either mean that a provision of some sort is likely to be retained.

### **Our activities**

The Summer pause since our last Board meeting significantly reduced action. We have been involved with Creativity Works! in the negative sense of preventing them from adopting positions that would have been negative for authors. They operate by consensus and do not take positions if members cannot agree.

The Authors Group has not been active. We have agreed one joint letter and are considering another. The Creators Conference which ECSA were going to organise has been downgraded to a small technical event tht ECSA will hold to fulfil contractual obligations.

We have been most active working with SAA and FERA.

Pauline Durand-Vialle from FERA and myself have been keen to improve contacts with the performers (actors and musicians) but this was not going to happen with ECSA at the Authors Group. However, SAA was keen to try to find a way to work with the performers and their CMOs in AepoArtis and we have found agreed language that gets us around the relatively minor differences between their position on the URR and ours.

SAA has organised another Parliament lunch which will be three-way FSE, FERA and SAA on September 28<sup>th</sup>. They are primarily interested in URR but in order to have us involved have agreed, at our request, that myself or Pauline will speak on the transparency triangle.

### **EFADS**

It is worth mentioning that the Film Institute Directors have their own European organisation and that, in their recently published position paper on the Copyright Directive they say “Authors, performers, producers, distributors and sales agents should be generally encouraged to conclude voluntary collective agreements establishing standard reporting statements and procedures, as well as setting norms for equitable and proportionate remuneration of authors and performers for the use of their works and performances, taking into account the specificities of the audiovisual sector.”

### Next steps

As already discussed we want to go to the member guilds and encourage them to start lobbying their national governments and perm. reps. in Brussels. I have delayed moving on that until the remuneration study (approved by the Board) is ready to go to the guilds but should not wait much longer.

My expectation is that our closest allies in this will be FERA and to some extent SAA. »

David thinks it is quite encouraging. Two main proposals are still surviving in the Directive : Transparency triangle and the unwaivable right to remuneration. What is also positive from our perspective : all committees of the EU Parliament proposed to have representatives for collective negotiation. Surprisingly there is no big campaign from producers against this proposal. The Legal committee (JURI) will not approve the draft directive until the end of the year or even until Spring.

SAA is doing a very good job. FSE supports SAA's regularly.

The Council of ministers has started to work on the directive. The Estonian presidency will write some proposals. **The next task for FSE : ask the members to contact their national ministries and representatives in Brussels at the national level.** David said he delayed the task because :

- 1) the launch of the remuneration study : he wants to contact the guilds once with the two items.
- 2) The approval of the directive has been delayed.

If the transparency triangle succeeds, what will be the role of FSE and guilds in terms of collective negotiation ? It is important to place ourselves in front to negotiate the rules. Guilds have 12 months to work on the details. We still hope to get money from the European Commission to develop workshops with Uni-Mei and FERA to work on details and be at the centre of deciding how it will work.

What can FSE do more : be in Brussels ! It still depends on financial resources. However the very good relationship with SAA and FERA helps FSE remain active in Brussels. In these debates directors' and screenwriters' cases are the same. Now no letter or statement goes out without FSE being asked to co-sign.

David confirms that the Authors' Group is not really efficient anymore.

## FSE European Screenwriters Award 2017

Amélie asked the board to make some decisions on the best ways to use the FSE Award as a lobbying tool. The board discussed names of EU representatives to invite.

The board agreed to have a new series of illustrated portraits of screenwriters (If the budget allows it, FSE will hang large prints of the portraits on the evening of the ceremony.)

The board agreed on the musicians proposed by the Belgian Screen Composers Guild.

The board agreed to hire the event manager proposed by Amélie (Benjamin Moncarey).

David will draft the contents of a new publication. Amélie will do the graphic design / printing.

David proposed to find a PR person to improve the communication around the FSE Award.

A report to the Board by David Kavanagh :

« FERA has raised a considerable (€120,000ish) amount, mostly from Directors CMOs, to undertake a study of authors remuneration.

The study will be undertaken by CUDOS, the Cultural Policy Research Centre at the University of Ghent. The lead researcher is Dr. Jessy Siongers (who undertook a similar study authors in Flanders among her other publications).

UGent has contracted with BVR Services, a German company, established by BVR, the German Directors Guild to provide the administrative services necessary. (BVR services is a VAT-registered company).

A Memorandum of Understanding between BVR Services, FERA and FSE is drafted and is to be signed, subject to the approval of FSE Board.

A letter (already drafted) goes from FERA and FSE to each of their separate member Guilds (and in some countries to other authors of the audio-visual work) explaining what we propose to do and what the Guilds must do.

Each Guild is asked to :

- a) sign a confidentiality agreement directly with UGent,
- b) write to its individual members, using a draft provided by us, giving them an opportunity individually not to participate and,
- c) provide directly to UGent a list of its full members with their email addresses (excluding those who have individually asked not to participate).

The Confidentiality agreement with UGent commits UGent not to share the information with anyone and to destroy it as soon as the research project is complete. The Agreement is signed directly between UGent and the individual Guilds for maximum simplicity and clarity. But also to ensure that there is no “third party” receiving the names and email addresses. This system makes the process compliant with data protection law, so far as we can ascertain.

Assuming that a sufficient number of Guilds provide the information, that the researchers assess to be enough for the research to be representative, then the researchers proceed to contact the individual authors asking them to fill in the questionnaire.

The questionnaire will be translated into all the languages.

At this stage, yet again, individuals are given the opportunity to drop out if they wish. The researchers have well-established systems of reminding participants – each will be contacted three times to encourage them to participate.

The Questionnaire is very well drafted with similar questions to those that we used in our 2012 study (so could be compared).

The analyses (excluding, of course, any information that could identify individual authors) will be shared with BVR Services and then, according to the MOU, with us. We will have the opportunity to interrogate initial analyses and to ask ancillary questions.

The ambition, probably, in my view, not achievable, is to have the study published by year’s end.

There is a real possibility that it could be ready before the Copyright Directive is completed so could be useful for lobbying purposes. In any event it could be a useful tool for the future.

We can probably have some small financial compensation to FSE for any administrative work that we have to do.

My view is that we should go ahead with this proposal and hope that it works. »

The board discussed various aspects of the project : doubts about guilds accepting or not to provide the contacts of their individual members (confidentiality), the real representativity of the data collected, the level of participation of screenwriters, deadline, length of questionnaire, method chosen, quality of the research work, the need for detailed figures for lobbying purposes, balance between FERA and FSE in the project, control of the data by FERA and FSE, etc.

### >>> Decision

Despite the reservation and uncertain success, the board of FSE thinks it is worth getting involved in this project which will not cost money to FSE and might, in the best case, help us have detailed figures to support our campaigns.

## FSE AGM

dates : 24-25 November 2017

Amélie reminded that the convocation must be sent 6 weeks before the AGM (12 octobre).

The board discussed the agenda :

### External speakers

Bring in FERA and SAA to discuss the Copyright Directive, present the « URR » and Transparency Triangle.  
PPT + video + publication

Followed by a general discussion on how to lobby the council before the implementation of the directive in national law. It should be wise to ask guilds to think about it before.

### **Members' presentations**

Ask guilds to write/send reports.  
Identify most interesting issues.  
But we might not have time to discuss these issues.

### **Elections**

David proposed to have more members on the board (unfortunately in 2017 it has been impossible to gather all the board members once). The challenge is to change the statutes to make it possible. However, as Maciej suggests, will there be enough people to want to do the job ?

## World Conference Berlin 2018

Carolin presented a proposal of the agenda that will be discussed at IAWG meeting in Los Angeles (meeting of the WCOS Steering Committee).

Amélie proposed to invite the FSE Award winners as speakers.

Robert suggested to ask IAWG money to hire someone to make a research on international contacts.

Carolin reported on progress of fundraising and organisation.

Amélie proposed to design a leaflet of presentation to give to the guilds at the AGM, so they can encourage their individual members to attend and look for travel subsidies.

Give visibility to Cinema Feature films.

David and Robert recommended to add item on Collective Bargaining in the agenda.

### **Communication**

- David and Robert will finalise the letter to partner members. Later we will send them an invitation to the AGM (open session).
- Robert will write a new letter to the member guilds.
- If time allows it, David and Amélie will send another letter from FSE staff. However the priority remains the newsletter.

### **Partner membership**

The board discussed the renewal of some partner memberships which will end at the end of 2017.

---

Before ending the board meeting, we prepared the public meeting of the afternoon, part of the programme of the Industry meetings of the Polish Film Festival.