

Report on TV and cinema practices in Germany

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1. Primary Payments (TV)

Primary payments are the responsibility of the German broadcaster (though the contracts are in general between the producer and the author): They are paid directly to the screenwriter (or the screenwriter's agent) without passing through the collecting society.

In general there are two different systems of primary payments in Germany: The „repeat-fee-system“, mainly used by the public broadcasters; and the „buy-out-system“, mainly used by the private broadcasters in Germany but increasingly also by the public ones.

a) Repeat Fee

The repeat fee system is generally used by the two German public broadcasters (ARD and ZDF and its subchannels) and goes back to the collective agreements between the trade union ver.di and the broadcasters.

The system works as follows: The screenwriter writes a script for a TV program (TV drama, soap opera, series) and is paid a basic fee. This basic fee is payment for the work involved in writing the script, to assign most of the rights to the broadcaster, and also pays for the first transmission on the German public TV channel and one repetition within 48 hours. For a 90-minutes TV drama the average basic fee is about 25.000,- Euros.

In case the programme will be repeated, the screenwriter will receive a repeat fee, which is a percentage of the original fee, depending on the channel, time and slot of the programme:

- 100 % for repetition on the same channel during prime time (19.00 – 22.30)
- 15 % for repetition on the same channel during night time (0.00 – 5.30)
- 20 % for repetition on the same channel during the morning program (5.30 – 12.30)
- 5 % for repetition on new German digital channels – every 6 months
- 20 % for repetition on KINDERKANAL (Children's channel) and PHOENIX (up to 5 repetitions within 30 days)
- 25 % for repetition on 3sat-channel (up to 3 repetitions within 3 months)
- 4,5 % for online-use (unique payment, payable at first use)

In addition, the broadcaster has to share 17,5 % of the sales revenues with the screenwriter (and 17,5 % with the director of the film), when the programme is sold to another German or foreign broadcaster, ARTE-channel, producer or any other program provider.

But there are some dramatic changes going on in Germany, as the public broadcasters are trying to improve their own financial situation by undermining the repeat fee system as well as changes concerning the shares of sales revenues. Since the summer of 2002 we realise that the repeat fee is downgraded little by little by the public broadcasters, e.g. that the original basic fee not only pays for the work involved in writing the script and for the first

transmission on the German public TV channel, but for all subsequent repetitions.

As there was no agreement with these unilateral changes of the repeat fee system, we have been negotiating since August 2008 with the two German public broadcasters and the German Film Producers' Alliance to reach an agreement on a fair fee system.

According to the German creators' and copyright law („Urheberrechtsgesetz“) 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.

As you can imagine, the negotiations were very difficult, complicated and demanding.

However, we finally managed to reach a (kind of) collective agreement with the ZDF and the German Film Producers Alliance in the summer of 2012 (which is attached to this document).

As one learns from this document, the repeat fee has been reduced by 50%, and the basic fee has been slightly raised (27,820€ – 90 minute drama). For the buy-out option (2 slightly different models – “Ein-Korb”- and “Drei-Korb”-model)) there is legal security for payments at further usage (e.g. rights).

It is also important that from now on first time television screen writers will have a share in all pre-tax (gross) proceeds – namely 4%. Previously those shares only existed for foreign sales and were charged after tax, and now include all proceeds (dvd sales etc...).

Unfortunately there was no agreement on the level of usage to determine bestseller status, so the author must refer to the existing law (§ 32 a UrhG, see below) but in the last negotiation round the broadcaster had to admit that a solution has to be found.

This VDD-ZDF-PA-agreement has attracted wide attention in Germany, as it gives other public broadcasters (those that form the ARD) a possible model to work upon.

In the meantime the ZDF has been failing to implement some parts of the agreement and has misinformed the producers (instead of an “average fee” (Regelhonorar) the fee was described as a maximum payment in an information leaflet that was sent out by the broadcaster).

b) Buy Out Fee

The buy out fee system is generally used by the German private broadcasters (RTL, SAT.1/ Pro7) but also by the DEGETO, which is a private company of the public broadcaster ARD.

The system works as follows: The screenwriter writes a script for a TV programme (TV drama, soap opera, series) and receives a single payment that „buys out“ all rights for ever, and therefore the screenwriter does not receive advance payments, repeat fees, royalties etc. For a 90-minute TV drama the buy out fee is about 45.000,- to 60.000,- Euros.

Screenwriters do, however, receive payments from copyright collecting societies („secondary“ payments).

In addition, we have to explain, that according to § 32a of the German creators' and copyright law (Urheberrechtsgesetz), there must be an extra financial compensation for the screenwriter, if the exploitation of the programme carries extraordinary gains („fairness“- or „bestseller“-clause). But the rights holders usually declare untrue that the exploitation of the programme has carried no extraordinary gains; so at the moment there are quite a few cases at court concerning the extra financial compensation for the “bestselling” programme.

Presently it looks like when the rights-user, whether producer or broadcaster, declares the programme not to be a bestseller the author must take legal action for equitable remuneration.

As many scriptwriters fear, in the case of a lawsuit there would be no further contracts, and they surrender their legally regulated claims. There are individual cases where the broadcaster threatened with the cancellation of all future contracts, which is nothing less than extortion, whereby the affected authors did not pursue their claims.

As several “Bestseller-clause“-court cases (mainly concerning fees for writers) are threatening the private Broadcaster Pro7-Sat.1, the broadcaster decided to act and invited the Writers' Guild, the Directors' Guild and the Actors' Guild according to German law to negotiate a collective agreement in March 2013. The Directors and the Actors have signed the agreement, the VDD not yet, mainly because the additional fees offered are not sufficient.

c. Payments (rates)

The usual payments to the screenwriter:

15 % on signing the contract
15 % on delivering the first draft
20 % on acceptance of the final draft
50 % on the first day of photography

or

1/3 on signing the contract
1/3 on acceptance of the final draft
1/3 on the first day of photography.

In the above mentioned agreement with the ZDF, the payments to the screenwriter are as follows:

1/3 on signing the contract
1/6 on delivering the first draft
1/6 on acceptance of the first draft
1/3 on acceptance of the final draft

or

2/12 on signing the contract
1/12 on delivering the first draft
2/12 on acceptance of the first draft
2/12 on acceptance of the final draft
5/12 on the first day of photography.

2. Payments (cinema)

Concerning cinema-contracts the payments are as follows:

The screenwriter receives as gratification 2%-4% of the post-tax production cost of the movie, where there is a minimum and maximum payment set between the author and producer.

In addition the author receives a share of the producer's net-proceeds, normally 2.5%-5%; this is something that has to be negotiated, and is dependent on the author's „standing“

or

Upon reaching a certain number of audience, the author receives a further payment from the producer (“Zuschauer (viewer)-Escalator” in German). (e.g. after 1 million viewers the author receives another 5,000 €, whereby after each further 250,000 viewers the author receives another 5,000 eur; this is dependent on the production cost and the „standing“ and negotiating ability of the author).

Seldomly, if the author negotiates well, there could be a payment based on the combination of the producer's proceeds and the “Zuschauer-Escalator”. Furthermore, it is possible to incorporate a share of additional proceeds e.g. 5% of all merchandising products (animation or kids movies), or on further publishing proceeds (book, etc...).

In the meantime the German Producer's Alliance has been requested by the Scriptwriter's guild of Germany to negotiate a remuneration agreement together.

3. Secondary Payments

In Germany our collecting society, VG WORT, is limited to collecting „secondary“ payments, embedded in a levy system, which is explicitly expressed in the law.

Some secondary payments which are collected by the German collecting society VG WORT are:

- payment for private copying (§ 54 UrhG)
- payments relating to the cable retransmission of television channels (§ 20 b UrhG)
- payments for renting and rental of video cassettes and DVD (§ 27 UrhG)
- payments for education and science usage (§ 52 a UrhG)

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