

# LA GUILDE

française des scénaristes

## GENERAL INFORMATION

The French Guild of Screenwriters represents about 360 professional screenwriters who write for film, television and animation in France.

### Board Members

The current board has been elected in January 2018.

The board is composed of 21 members (including a Chairperson, three Vice-Chairpersons, a Secretary, a Treasurer, one person in charge of events and one person in charge of memberships) and divided in 3 branches: cinema, television fiction and animation. We decided to adapt our statutes to be able to maintain an equal balance for each branch, as there are not that many screenwriters working for cinema that are unionized in France.

### Permanent Staff

In addition to those 21 board members, we have 3 permanent employees (one general manager, one assistant to the general manager and one person in charge of communication).

### Legal Context in France

France is a « *droit d'auteur* » country where producers have the obligation by law to pay a proportional remuneration for any kind of exploitation.

Upfront payments are advances on exploitation revenue that are paid at the time of writing.

There is still a legal limbo in France whether European competition law applies on screenwriters or not, which prevents us from negotiating minimum compensation.

In addition, we currently have important issues on the author's social protection system driven by our government.

## EXISTING COLLECTIVE BARGAININGS

### Development Charter with our Public Broadcaster France Television

The main contribution of this agreement is that it provides screenwriters the opportunity to pitch their serial project orally to the broadcaster, together with the producer. This was not the case before. In addition, it provides an additional 30% remuneration on the writing of the pilot, framing its development within a limited period of 3 months.

## Transparency Agreement on Cinema Operating Accounts

The main contribution of this agreement is to ensure screenwriters the accurate transmission, without reprocessing, of the operating accounts sent by distributors to producers. It also defines a matrix of operating statements and accounts to avoid any lack of transparency between distributors and producers.

## Transparency Agreement on Cinema Production Accounts

The main contribution of this agreement is to define a matrix of production accounts, to avoid abuses in remunerations that are paid after the amortization of the film costs. It follows a previous agreement from 2010, which set the principles of amortization.

## Transparency Agreement for Television

The main contribution of this agreement is to provide, once the costs of a film is amortized, that the advance paid to writers and directors is deemed reimbursed. The proportional remunerations that are not managed by our CMO, and which must therefore be paid by the producers, then become effective.

The agreement defines the terms of amortization of the costs, and defines the concept of the "net revenue of the producer's share".

## Agreement on the 2012 contractual practices

This agreement laid down some basic rules. For example, the fact that no draft can be sent to a broadcaster by a producer without signing a contract with the author before. Or the fact that if a screenwriter is replaced, he must receive compensation.

We are in a negotiation today to expand and fill out this agreement.

## NEWS

### Next steps on the Transparency Agreement

On the occasion of the 2017 transparency agreement bargaining, the French Guild and the SACD (our CMO) asked the Ministry of Culture to appoint a mediator to facilitate discussions with production companies.

Following the signature of this agreement, it was decided to continue discussions with the producers, under the authority of this mediator, with the following aims: 1/to negotiate a minimum profit-sharing for television writers 2/negotiate a new agreement on contractual practices, and a minimum compensation.

Our lawyer alerted us very quickly about the risk of any future minimum compensation agreement being contested on the basis of competition law. This is why the French Guild formally addressed a letter to the government last April to find out if there is a legal possibility or not to negotiate such a minimum compensation agreement. There is indeed a possible conflict between our trade legislation and our intellectual property legislation

Article L132-25-1 of our Intellectual Property Legislation allows the Minister to extend to all stakeholders of the audiovisual sector, "agreements relating to the authors remuneration". Which would mean that the law would encourage this kind of agreement.

On the other hand, Article L420-1 of the French Trade legislation prohibits “concerted actions or agreements that would hinder the free fixing of prices in the market”.

The truth is that the disposition in our intellectual property legislation seems to have been introduced under the action of our CMO, mainly to secure its negotiation of agreements related to the content’s exploitation phase.

That is why we asked our government to tell us whether a screenwriter should indeed be considered as a company under competition law, and if so, which legislation should prevail between our trade and intellectual property code.

**We still don’t have an official answer yet and the government is clearly bothered by our question on a political level. We thus decided to take this topic to a legislative level.**

### **The Creation of a Shared Writing Glossary**

While efforts are being made on the adoption of a minimum compensation, we have undertaken at the same time a great deal of consultation with our members in order to completely rethink the glossary of screenwriting.

The goal of this glossary is to make it possible to negotiate good working practices that are applicable to all screenwriters.

We found out that for ideological reasons, most of the contracts were not reflecting the reality of the relationship between screenwriters and producers (for example: many agents refuse to mention the existence of approval by broadcasters on the grounds that they do not co-sign contracts). We have sent this glossary to the producers' unions.

### **A Social-Anthropological Research on Screenwriters**

We have been working for the past year with two *Anthropology and Social Sciences* consultants, specialized in organizations. Our aim was to understand the reasons of the lack of consideration and relational difficulties existing in France among screenwriters, as the history of our Guild has indeed been a long succession of splits and mergers.

The research demonstrated the existence of a confusion in the screenwriters' perception of their status and work. In France, screenwriters are placed in a legal and symbolic framework inherited from the 18th century, that of a single author writing independently of any commission. This results in huge misunderstandings about the collaborative process involved in writing a script. On one hand, screenwriters consider that their script is irremovable and live as a betrayal any arrangement that can be made later by any other co-author or director. On the other hand, producers and broadcasters do not understand that a first version of a script is a working document, a step to be reworked, as they expect a masterpiece or nothing.

This research’s results lead us to reconsider our priorities. The French Guild will now particularly focus on completely rethinking the cooperation between producer-directors and screenwriters in order to get out of the myth of the “author’s attitude” of being unique.

### **Screenwriter’s Status in France**

A bad combination of circumstances results in a lack of social status for authors in France.

We are currently facing major reforms in France under President Macron’s government:

- Concerning pensions, France intends to move from an intergenerational solidarity system to a system of capitalization of pension rights
- Concerning taxes, France will finally move to an **income tax at source** system

In addition, authors have been the main losers in a reform aimed at reducing the social security contributions of the French, and are currently trying to obtain compensation from the government.

All these reforms are hampered by the lack of a specific status for authors in France, who are artificially linked to different schemes (employee schemes in terms of social protection, self-employed schemes in terms of taxation, etc.).

Writers don't understand much about it. And the government even less so.

**Therefore, a global reflection on the status of authors in France has just been launched by the government.**

In this regard, the French Guild of Screenwriters wishes to draw the attention of the government and the legislator to the particularly damaging consequences of the absence of a clear distinction between remunerations paid for writing and those paid for the exploitation of their rights.

Indeed, France qualifies as "**droits d'auteur**" all remuneration paid to screenwriters.

Secondary payments are under "**droits d'auteur**".

Upfront payments are advances on these "**droits d'auteurs**".

**This has the following consequences:**

- Writing work is not really paid

The legal counterpart to the remuneration allocated for writing is the transfer of rights for a finished and approved text, and the exploitation of these rights. This situation explains, for example, why producers' standard contracts specify that a text can be rewritten as many times as needed, and in fact as many times the broadcaster wants it to be. In practice, this usually leads to abnormally long development times, sometimes up to 4 years or more.

- This lack of remuneration for the writing work leads to a devaluation and disregard for the work done by screenwriters, as their specialization in dramatic construction is not recognized as having any value itself

This lack of remuneration was justified at the time of the adoption of the great law on literary and artistic property in 1957, as it happened in a film sector where projects were mainly launched on the basis of "on spec" scripts (i.e. outside any commission), but today it is no longer justified in an commissioning industry which has gradually expanded with the arrival of television in all homes, and the need for constantly renewed program schedules.

- The double approval by producers and broadcasters of all writing work, which conditions the payment of an essential part of screenwriters' remuneration (writing remuneration and CMO rights), contributes to a role confusion

Everyone thinks they can be a screenwriter and influence the narrative development of a script, as long as requests for changes to a script by a broadcaster or producer are not framed, and have no additional cost, given that the main economic value of the script is linked to its final acceptance. This situation prevents the emergence and maintenance of coherence from a strong author's perspective throughout development.

- The fact that a large part of screenwriters' remuneration depends on the decision whether or not to broadcast their program once it is finished creates a significant "entry cost" to the screenwriting profession, requiring several years before they can make a full living from writing

It is a brake on the emergence of screenwriters from disadvantaged social backgrounds, or from diversity, and therefore on the possibility of integrating and questioning the collective narratives of the French, and allowing the recognition of these diversities in French culture.

- This qualification of "advances on copyright" or "guaranteed minimum" constitutes a diversion of the law, because the percentage rates allocated by producers to screenwriters for the exploitation of their works do not in fact make it possible to repay these advances, and prevent any sharing of value
- Writers almost bear the cost of their social protection alone

### **A Worldwide Benchmark on Minimum Compensation in Cinema**

We are currently in the process of drawing up a benchmark of minimum compensation for film screenwriters on a worldwide basis as the CNC (agency of the French Ministry of Culture, responsible for the production and promotion of cinematic and audiovisual arts in France) has commissioned a study on screenwriters' remuneration in France. As this study will certainly rise to a discussion aimed at establishing minimum compensation in France, we are trying to get a global idea on how the situation is in other countries.

### **Interrogations about Censorship in TV Animation**

Our members working in animation series for television are reporting worrying situations related to the application of standards & practices brought by broadcasters (for example Disney US). These S&Ps sometimes lead to the rejection in of some emotions and real situations faced by children. We believe that this form of censorship challenges the primary purpose of a story for children, which is to help children build their socialization skills. Our Guild is asking itself the question of the possible consequences of this censorship on future generations, and has undertaken to question specialists in child psychology on this subject.

This situation is all the more incomprehensible since, in the film industry, the same studios give much more freedom to creators.

**The French Guild would like to have the feedback of other Guilds around the world on this subject, to reflect -if necessary- on common actions.**