

LA GUILDE

française des scénaristes

REPORT

- La Guilde française des scénaristes - IAWG 2019

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 2019.

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).

We have just hired a part-time lawyer for 8 months to set up a professional hotline for our members. This recruitment is financed by a reduction in the budgets allocated to screenwriters' social events, in a very fragile budgetary context.

Our CMO has 250 salaried employees and a payroll of 20 million euros. The French Screenwriters Guild has only 3 salaried employees and a payroll of 200,000 euros, which is more than many Guilds in Europe but still insufficient.

Worse, 2/3 of the Guild's budget depends on a subsidy from our CMO, putting it into a de facto position of economic subordination to it.

Our CMO has successively cut our subsidies every year for the past 3 years on the grounds that it has to pay subsidies to other organizations like directors, graphic artists, etc.

Symbolic context in France

We have been working in 2018 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 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.

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.

There is no 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.).

In their working relationships with producers and broadcasters, French screenwriters are not considered as employees, as are for example American screenwriters. They are considered to be self-employed.

This legal context raises two major issues for screenwriters (see below).

- (i) There is confusion between remuneration due for writing work and remuneration due for the exploitation of rights. Upfront payments are advances on exploitation revenue that are paid at the time of writing.
- (ii) This confusion leads to another, in the minds of public authorities, about the organizations responsible for defending the professional interests of screenwriters. There is confusion between guilds and collective management organizations.

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

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

Can we negotiate Minimum Compensation?

There is a 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 in April 2018 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

We still don't have an official answer yet and the government is clearly bothered by our question on a political level.

The Creation of a Shared Writing Glossary for TV fiction writers

We made a great deal of consultation in 2018 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 in September 2018.

Since then, the government, as well as the **CNC** (*National Centre for Cinema, agency of the French Ministry of culture*), have asked to attend our meetings with producer unions. Since January 2019, we have had monthly meetings with producers. Despite this, we have still not reached a common definition of what a Bible, or narrative arches, is! On the other hand, we obtained the agreement of the producers to provide a minimum and maximum number of pages for each writing step. These negotiations are terribly long.

Negotiations for an agreement on contractual practices in film

Under the continued pressure of our Guild, the CNC finally submitted a study on the remuneration of film screenwriters in April 2019. This study reveals a very high inequity in the risks that producers pose to screenwriters during the development stages of writing.

The CNC study results in an average share for writing of 4.2% of the cost of the film.

Unfortunately, this figure does not reflect the reality of the remuneration allocated to screenwriters alone. It includes remuneration for the purchase of literary rights, remuneration of consultants, and remuneration of the director. However, since the so-called "new wave" period, film directors have become accustomed to imposing on producers the fact that they systematically co-write the scenarios of their films with the screenwriters, even if their work is limited to a visual adaptation of the scenario to the screen (which is in principle their job and why they are also well paid!). In their opinion, this visual adaptation work should be considered as the co-writing of the film, which is what we are fighting against (this is not the case in television).

Following this study, the CNC officially launched a consultation between all film professionals to try to improve the situation of screenwriters in France.

The Guild submitted an 80-page document of recommendations to the CNC, requiring that real union negotiations be opened, under the mediation of the CNC.

Our recommendations are the following:

- **ON THE RECOGNITION OF THE SCREENWRITER**

1/ The creation of a Genealogical Writing Record that allows any new screenwriter working on a film to know the history of the screenwriters who have written before him.

2/ Set up rules for credits, film posters and press kits of the film.

- Concerning the opening and closing credits of the film
- About the film's poster and press kit

- **ON THE STATUS OF CONSULTANTS AND READERS**

In principle, legally, consultants and readers should be paid in salaries. However, to reduce the cost of their social security contributions (63%), producers have made it a habit to pay them in author's rights (only 3% of contributions). This creates a great deal of confusion, which we wish to put an end to by establishing a real status for these employees.

- **ON REMUNERATION OF SCREENWRITERS**

1/ Adoption of Minimas for screenwriting

2/ Implementation of standard deadlines and prohibition of "Acceptance by the producer" deadlines

3/ Implementation, in the event of a budget exceeding €1.5M, of an automatic, uncapped indexation of 3% on the film budget (from which the MG already paid to the screenwriting at the time of writing the script).

4/ Implementation of a minimum of 6% on proportional remunerations after the film is amortized

- **ON THE CNC'S "WRITING SUBVENTIONS"**

1/ Simplification of subventions

2/ Professionalization of selection committees

3/ Opening of the selection criteria

4/ Initial subventions for scripts without producers or directors affiliated yet

Bills of Law

Following the adoption of two important European directives (copyright directive and SMAD directive), our government has decided to put on the agenda their transposition by the legislator as from January 1st, 2020.

With regard to the copyright directive, we have already had the opportunity to issue an opinion on the draft transposition, which we will summarize below.

In addition to the challenges of the copyright directive, this timetable is a real opportunity to pass on any other legislative changes.

In association with the Professional League of Authors, a new disruptive organization that brings together book authors, we have prepared two legislative bills in addition to the draft transposition of the copyright directive.

- **Transposition of the European Copyright Directive**

France is not as concerned as other European countries by the progress made by the recent European directive on copyright. We are already benefiting from some of these advances.

We already have provisions in our legislation on the transparency of accounts (Article 19), and on the principle of appropriate and proportional remuneration (Article 18).

On the other hand, there are three provisions of the Directive that could improve the situation of screenwriters in France:

- 1°) Mechanism for adapting contracts / remuneration (Article 20)
- 2°) Dispute settlement mechanism (Article 21)
- 3°) Mechanism for revocation of the contract (article 22)

- **First draft law: legislation to impose on producers a separate negotiation of upfront and secondary payments due to authors**

We have no 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

The purpose of our bill is to require producers to negotiate separately the remuneration they pay for writing and the remuneration they pay for the exploitation of rights. It is not only for screenwriters but for all authors.

The aim here is to bring a legal and philosophical revolution in the treatment of authors who find themselves placed in a commissioning industry.

The SACD (our CMO) believes that there is no need for legislation, and that collective bargaining should achieve the same result. We are in major disagreement with them on this point. The slowness of the negotiations, as well as the symbolic framework in which we are immersed, testify, in our opinion, to the absolute necessity of regulating this issue in law.

- **Second draft law: legislation to require collective management organizations to fund professional unions**

Each year, collective management organizations must report on the collected author rights that they had not been able to distribute to their members.

These sums are described as "non-distributable". In 2018, the SACD's non-distributable assets amounted to €12 million. In 2017, there were 6 million.

Our legislation requires that a small part of these sums be used for social or cultural actions.

In 2018, only 12% of the non-distributable sums were used for cultural and social action expenditure. In 2017, this rate was 35%.

The rest is allocated to the "general budget" of our CMO, without any further details.

In parallel with this situation, the SACD has gradually reduced our subsidy by since 2016, for a total decrease of 28,000 euros.

When we asked them to finance us through their non-distributable sums, they refused. They prefer to finance us through their "general budget".

We have therefore drafted a bill that would require that all of these sums be used for social, cultural **or union actions**, and that 50% of these sums be used to finance professional authors' unions, so as to allow a real interprofessional dialogue between the different authors' professions.

Negotiation with TF1

TF1 is the leading private television broadcaster in France. They recently contacted the Guild because they wish to negotiate with us and find an agreement on development stages in writing of TV series, as they consider it takes too much time. This is a great opportunity for us, because they are in fact challenged by the arrival of platforms that bring innovation at a frenetic pace. We are just beginning discussions.

Legal Hotline

We have just set up a professional helpline. By contacting this Hotline, our members are immediately in contact with a specialized lawyer. This lawyer works closely with expert screenwriters to give our members the best possible assessment of their situation, in accordance with the law and usual professional practices. The purpose of the advice provided is to enable our members to better understand the exercise of their profession as screenwriters, and to prevent any conflict situation with their interlocutors. It's just a piece of advice. Under no circumstances does the hotline replace the work of agents in the negotiation of contracts.

Governance reform

We are considering a reform of the Guild's governance in order to empower our organization. This reflection is the result of the exhaustion of the members of our Board, and a difficulty in having candidates for its renewal.

We plan to significantly reduce the number of Board members from the current 21. The members of the Board would no longer have to carry out operational tasks. Operational tasks would be entrusted to committees of members. The choice of missions and the composition of the corresponding committees would be ensured by the Board.

Anti-Harassment Committee

On the occasion of the Annual General Assembly of the Federation of Screenwriters in Europe (FSE) held on 12 October 2018 in Berlin, the screenwriter guilds of the twenty FSE member countries unanimously adopted a resolution to combat bullying and harassment.

We have since set up a committee composed of 7 members of the Guild, whose mission is to inform the Board of Directors of its analysis of the risks of sexual and/or moral harassment to which screenwriters, men and women, are exposed in France, of their causes, and of concrete proposals to remedy them.

The results of this Committee are expected by the end of 2019.