

# LA GUILDE

française des scénaristes

## REPORT

### - La Guilde française des scénaristes - FSE 2020

#### GENERAL INFORMATION

The French Guild of Screenwriters represents about 350 professional screenwriters who write for film, television and animation in France.

#### Board Members

The current board has been elected in January 2020 and is composed of 11 members (including a Chairperson, three Vice-Chairpersons, a Secretary, a Treasurer, etc.) and divided in 3 branches: cinema, television fiction and animation.

#### Permanent Staff

In addition to those 11 board members, we have 4 permanent employees (one general manager, one lawyer, one assistant to the general manager, one person in charge of communication).

#### 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

Two priorities are currently driving the work of the board. The first concerns social protection and the question of the status of screenwriters. The second, and most important, concerns the negotiation of interprofessional agreements.

### **1. Deficient social protection**

Screenwriters are nowadays confronted, like all artist-authors, with several scandals.

#### **1.1. The pension scandal**

The first scandal concerns the lack of compulsory and automatic affiliation by AGESEA to the basic social security pension scheme since 1975. **Almost all screenwriters are concerned by this scandal.**

First of all, there are the screenwriters who have never taken the step to join, thinking that the contributions that were deducted by the producers from their authors' rights were sufficient. These screenwriters have not opened up any basic pension rights and will find themselves in a catastrophic situation on the day they retire.

For years, AGESEA has tried to blame the writers for failing to comply with their obligation to join. This was in fact to better hide the fault of AGESEA, which had the legal obligation to collect this contribution from each screenwriter, but which for unjustifiable reasons of lack of human and financial resources could not pay it. This is unjustifiable because, for its part, the Maison des Artistes (MDA), the body responsible for collecting pension contributions from graphic and plastic artists-authors, correctly fulfilled its obligation.

For these screenwriters, the State has set up a procedure to enable them to regularize their situation a posteriori, by requesting an estimate from social security. However, this procedure is limited in time. It will end on 31 December 2021. In practice, very few screenwriters make the request because it requires the creation of tedious administrative files. And many of those who do apply are offered quotes of several thousand euros, sometimes tens of thousands of euros, which they consider prohibitive.

Secondly, there are the very numerous errors in declarations noted by screenwriters regarding their pension statements. These screenwriters have done the right thing in joining and paying their contributions, but find that their career statements do not correspond to the contributions they have paid. The process of obtaining clarifications or changes to the statements is in fact too complicated for many screenwriters, who either prefer not to look at their career statements or simply note errors but do not try to have them corrected.

**[Our struggles: going to court and ensuring the sustainability of our supplementary pension system](#)**

## **Go to litigation**

The damage is now proven, and the fault of the AGESEA characterized, and recognized at the highest level of the State.

Together with the League of Professional Authors, the Guild took advice from a law firm specializing in pension restraint, which confirmed that it would be possible for any screenwriter who had not contributed to the basic pension scheme to demand the opening of his pension rights, without having to pay the contributions he would have had to pay.

The Guild is now considering assisting any screenwriter who would request it to help them in a litigation process without having to pay thousands of euros to buy back their pension rights.

## **Perpetuating our supplementary pension system**

One of the past solutions consisted in implementing a supplementary pension system specific to audiovisual artists-authors. This is the RACD scheme, which is managed by the fund called IRCEC.

However, the principle of a supplementary pension for artists-authors is criticized and opposed by a number of artists-authors' organizations, particularly in the book and graphic and plastic arts sectors. In concrete terms, these organizations are fighting against the RAAP scheme, which is the supplementary scheme common to all artists/authors.

Within the framework of the envisaged reform aimed at setting up a universal pension scheme, the Guild hopes that, should the government decide to put an end to the RAAP, i.e. the scheme common to all artists-authors, it will nevertheless maintain the RACD, i.e. the specific scheme for audiovisual artists-authors.

On the other hand, the Guild does not wish this possible decision to lead to an increase in the amount of contributions paid by screenwriters. That is why it is now campaigning for the total contributions that would eventually be paid for the universal and supplementary pension to be identical to the contributions currently paid.

## **1.2. The scandal of non-use of social rights**

AGESEA's communication has always focused on the issue of collection of social security contributions and their payment.

It has never focused on the many social rights open in return for the contributions levied on the authors' rights of screenwriters. These include the right to a basic pension, the right to receive compensation in the event of illness, maternity, childcare, adoption or death.

Moreover, access to these social rights is incredibly complex for screenwriters. There is in fact no Primary Health Insurance Fund (CPAM) dedicated to artist-authors, so they have to apply to the competent CPAM in their place of residence. In fact, the population of artists-

authors likely to claim social rights (estimated at only 40,000 people in France) means that no CPAM has a dedicated service or a privileged contact person to deal with artists-authors' claims.

In concrete terms, the latter are regularly asked for pay slips which by definition they do not have, or else for certificates which AGESEA would normally have had to provide to the CPAMs. The response times are abnormally long.

All these factors lead to the fact that very few screenwriters are aware of their social rights. And those who are aware of them often choose not to use them because of the systematic administrative problems encountered.

In the end, screenwriters see their pay cut back from the payment of contributions entitling them to benefits they do not use.

This situation, unknown to a certain number of screenwriters until the beginning of the year, has unfortunately come to light with all the difficulties encountered in obtaining the childcare allowances made compulsory due to the closure of schools as a result of the Covid health crisis.

### **Our struggle: a unique referent**

The Guild is considering two possible lobbying strategies to address social rights issues.

Its preference would be for the State to designate a single CPAM, centralizing all the claims of the 40,000 artist-authors in France. This would allow the creation of a dedicated service, with several specialized people who would do just that. This would avoid the Kafkaesque situations in which screenwriters are plunged into with each claim for compensation from social security.

The other strategy would be, failing the designation of a single CPAM, to require the creation of a reference service at the social security department, which each CPAM operator could contact whenever he had an artist-author compensation file.

## **1.3. The scandal of governance in social bodies and the impossibility of conducting social dialogue in accordance with the law**

Artists' and authors' unions have been excluded from managing their own social security system since April 2014. We see a direct link between this situation and the administrative hell faced by screenwriters in obtaining their social rights.

### **Our struggle: to enforce the law**

The Guild's strategy is simple. It is to demand the application of the existing law and respect for the principle of freedom of association. If lobbying does not work, the Guild will have to consider a litigation strategy to get the law enforced.

It is not a matter of excluding collective management bodies from these governances, as some would like to make people believe, but of establishing representation that complies with the law, according to the roles of each.

#### **1.4. The social status scandal**

Screenwriters, like all artists-authors, do not have a clear specific status. They are considered fiscally as self-employed, but socially as employees.

The European Union considers them as companies subject to competition law, but social security considers them as employees, who pay the same rates of social security contributions.

The intellectual property code says that they can, like employees, enter into professional agreements with producers that may be made compulsory, but the DGMIC replies that this could be contrary to competition law.

This ubuesque situation proved particularly disastrous during the health crisis.

Normally considered as self-employed workers, screenwriters should have benefited from the solidarity fund set up by the government for very small businesses and self-employed workers as of March 2020. However, due to the lack of a SIRET number automatically assigned to artist-authors declaring their income in wages and salaries for tax purposes, the almost majority of screenwriters were not able to benefit from this fund.

The State, unable to identify the artists-authors to be helped, due to the lack of a clear professional status, has relied on collective management bodies such as SACD, SACEM or SCAM to set up alternative funds. In fact, artists-authors represent around 270,000 people in France, but the State estimates that around 40,000 artists-authors actually live from their profession, the others practicing their activity in an ancillary manner, alongside other remunerative professional activities and giving them access to other protective statuses.

In the end, it took the insistence of authors' organizations (including the Guild) to ensure that a dedicated form, still full of errors, was finally available in June so that artist-authors declaring their income in wages and salaries could benefit from the State's solidarity fund.

#### **Our fight: to impose a coherent and functional status for artist-authors**

The Guild shares the conclusions of Bruno Racine's report, as well as the approach proposed by the League of Professional Authors, which would consist of having the status of professional author recognized, enabling the public authorities to better identify artist-authors who, whatever their field of expression, intend to pursue one or more artistic activities as their main professional activity.

The Guild is on this point in a strategy of alliance with the League of Professional Authors and any organization that would share this strategy.

## **2. To be able to negotiate interprofessional agreements**

### **2.1. The lack of interprofessional agreements**

The Guild's highest priority is to make up for France's historic delay in reaching agreements on contractual practices and the remuneration of screenwriters, by using all possible means to obtain the signing of inter-professional agreements with producers' unions, which could be made compulsory by the Ministry of Culture.

To date, only audiovisual works of fiction produced in live action must comply, in the context of their writing, with an inter-professional agreement signed in 2012, relating to contractual practices between authors and producers.

This agreement has enabled significant progress to be made by audiovisual fiction writers in real-life shoots lasting more than 5 minutes, among which:

- The obligation to remunerate any writing order beyond the pitch stage;
- The prohibition to send to a broadcaster a text that has not been the subject of an option contract or a rights assignment contract;
- The introduction of a genealogical record;
- The prohibition to contractually divide the writing of the different stages of a script, except when a structured writing workshop is set up by the producer;
- The obligation to compensate any substitution of the screenwriter in case of refusal of a writing step;
- The obligation to qualify at least 30% of the screenwriter's remuneration as a bonus for novelty;
- The obligation to resort to AMAPA (a mediation institute) in the event of a dispute between the screenwriter and the producers.

However, this agreement does not provide for minimum remuneration for screenwriters, and it does not prevent producers from being able to ask for as many rewrites as they wish from screenwriters of fiction films in real life, without any contractual time limit.

Therefore, since 2018, the Guild, the USPA, the SPI and the SACD, have undertaken to re-discuss a new agreement that provides for minimum remunerations, a limit on the number of versions of the same text that can be requested and the implementation of a specific remuneration system for structured workshops. These negotiations are unfortunately extremely long, as they require a real change in the mentality of producers, and come up against problems of competition law (see below). The delay in bringing these discussions to a successful conclusion could lead to a change of strategy and a preference to start discussions directly with the producers' principals, i.e. the broadcasters.

While we can observe a certain maturity among producers of audiovisual fiction in real-life shooting, who accept the principle of inter-professional discussions and minimum remuneration, this is unfortunately not the case for screenwriters of short or feature-length

films, animation screenwriters, as well as screenwriters of short formats. For the latter, negotiations are either incipient or non-existent.

Moreover, the application of the 2012 protocol is very imperfect, as the Guild has regularly had to intervene, since the creation of the HOT LINE, to assist members who are abusively qualified as pitch synopses, to allow producers to have them rewrite several versions of the same text before sending it to the broadcaster, without any additional remuneration. Many members also testify to the sending of texts to broadcasters without any contract.

As recently as 18 months ago, the Independent Producers' Union (SPI) reminded the Guild's elected representatives that the intellectual property code does not impose any remuneration for writing scripts, and that the only obligation of producers is to provide for the payment of proportional remuneration.

This state of mind explains the feeling of impunity for producers of fiction in real-life shoots who do not respect the 2012 protocol, even if fortunately, thanks to this protocol, it is now possible for the Guild to intervene.

This is not the case for other screenwriters.

Whether they are screenwriters for cinema, animation or short formats, many are confronted with the following practices:

- Texts commissioned by producers without financial compensation;
- Multiple rewrites requested before sending a draft contract;
- Presentation of written texts to broadcasters or other financial partners without a prior contract signed with the screenwriter;
- Multiple rewritings requested without any compensation once the contract is signed;
- Addition and substitution clauses without any compensation;
- 100% payment in the form of cash on delivery;
- Absence of a genealogical sheet regularly leading to conflicts of rights distribution to the SACD;
- Fragmentation of contracts.

The absence of applicable inter-professional agreements for these screenwriters prevents the Guild from easily intervening to put an end to these abusive practices.

To remedy this delay, it is necessary to open inter-professional discussions with the film and animation producers' unions, and for the latter to accept the idea of concluding inter-professional agreements that could be made compulsory by the Ministry of Culture.

- In the film sector, the Guild obtained from the CNC in 2019, after many years of solicitations and alerts on the situation of screenwriters, that it encourages producers to engage in inter-professional discussions on contractual practices and screenwriters' remuneration.



However, to date, the film producers' unions have still not formally accepted the principle of an inter-professional agreement that could be made compulsory by the Ministry of Culture. During our last discussions, the producers' unions proposed instead the adoption of a non-binding charter of good conduct. Moreover, they are opposed to the presence of the SACD in the discussions. We can see here that there is still a long way to go. Even more because the belief that a screenwriter does not deserve to be paid before the film is exploited is even stronger in the film industry.

- In animation, the SPFA and the SPI have informally informed the Guild of their agreement in principle to enter into inter-professional discussions. However, the Guild is faced with the problem of resources dedicated to this discussion, due to the lack of resources to recruit a deputy general delegate. The Guild's animation screenwriters are also confronted with the fact that they rarely use artistic agents, except on occasion to write and transfer the rights to series bibles. The numerous episodes that make up each season of an animation series mean that, in practice, the contracts offered are membership contracts for which the producers refuse any possible negotiation. This results in a lack of legal culture of authors' contracts by screenwriters in the animation repertoire, unlike screenwriters in the fiction repertoire.

### **Our struggles: strengthening the screenwriters' negotiating power**

While waiting for a balanced social dialogue to be established (see our last point), the Guild is now campaigning for the intellectual property code to strengthen the bargaining power of screenwriters through several mechanisms.

#### **Compulsory remuneration for writing work**

The Guild is now campaigning for the intellectual property code to impose a contractual distinction between remuneration paid for the order and that paid for the exploitation of rights.

The Guild has convinced Bruno Racine and all the many experts in its mission of the merits of this request. The Guild thus obtained an assignment from the CSPLA to determine the advisability of a legislative amendment to this effect.

The Guild is currently engaged in a lobbying strategy on this issue. Should it not obtain satisfaction from a political point of view, it is considering a strategy of legal litigation to systematically sanction any producer who does not pay for commissioned writing or rewriting work.

The law is indeed very clear but not respected. The 2012 agreement on contractual practices, by requiring producers to remunerate any writing work beyond the pitch stage, has merely taken over the legislation on book rental.

It is therefore not a concession obtained from the producers, but the recognition of a legally provided right. Under these conditions, it is perfectly unbearable that film and animation

screenwriters continue to be subjected to an ideology whereby they are paid only upon acceptance of their texts.

Impose on literary publishers a period of 3 months after publication before being able to negotiate and sign a contract for the transfer of audiovisual adaptation rights.

The agreement concluded between the SACD board and SCELFF in 2017 concerning animation works highlighted the incredible bargaining power of literary publishers, who hold the rights to adapt pre-existing audiovisual works.

This power reflects the inability of the current legislative provisions to protect the authors of books, and by extension the screenwriters of audiovisual works.

The law of July 3, 1992 had indeed introduced an article L131-3 to the intellectual property code, to ensure artists-authors that the signature of their publishing contract is not conditioned to the transfer of their audiovisual rights.

The artist-author is indeed the weak party in the negotiation with a publisher: the publishing contract is very often a membership contract, in which he has no room for maneuver. In fact, despite this legislative will to protect authors, the signature of a contract for the transfer of audiovisual rights is imposed as an imperative condition for the signature of the publishing contract.

However, the profession of literary publisher and that of audiovisual producer are not the same. Publishing houses rarely have services dedicated to audiovisual prospecting. The fact of imposing the signature of a contract for the transfer of audiovisual adaptation rights is part of a strategy aimed at maximizing the capture of all authors' rights, excluding publishing rights, in order to increase the intangible assets of publishing houses.

The latter thus most often impose a transfer of 50% of the audiovisual economic rights, where an agent, whose job it is, takes 10%.

Given the context of overproduction, prospecting work is very rarely carried out for French authors, even in well-equipped publishing houses, due to the abundance of new releases (200 books per day). Prospecting is often carried out by the authors themselves, who are deprived of 50% of their rights even though the work has been done by them.

This is why the Guild is now campaigning for the intellectual property code to impose a 3-month deadline after publication before publishers can start negotiating and signing a contract for the transfer of audiovisual adaptation rights.

Price revision mechanism in case of disproportionately low remuneration

The EU Copyright Directive of 2017 requires France to put in place a mechanism to revise the price in case of disproportionately low remuneration.

Unfortunately, despite the Guild's lobbying efforts with Members of Parliament, the current plan to transpose this mechanism will have no concrete effect on screenwriters.

In concrete terms, this project has chosen a translation that is not favorable for writers from "disproportionately low" to "exaggeratedly low".

It refers to "uses", whereas the European legislator wanted this mechanism to compensate for uses that are contrary to the interests of authors.

It makes it possible to remedy a remuneration that would be disproportionately low by a lump sum payment, in complete inconsistency with the French copyright tradition.

It makes it possible to displace professional organizations of artists-authors in favor of collective management bodies within the framework of inter-professional agreements that may be concluded at a later date to set the terms and conditions for the application of this mechanism.

The Guild has drafted proposals for amendments to this text and is now trying to convince the government responsible for transposing this mechanism by means of an ordinance.

## **2.2 Minimas: the European difficulty**

One of the other difficulties the Guild may face is that of European competition law. The General Directorate of Media and Cultural Industries (DGMIC) of the Ministry of Culture informed the Guild and the producers' unions in 2019 that the current provisions of the intellectual property code, which make the signed interprofessional agreements compulsory, could be contrary to European Union law.

At the European Union level, screenwriters are in fact considered as independent workers, and therefore as economic entities in the same way as companies. Therefore, any agreement aiming at setting minimum wages or imposing certain practices could be considered as cartels likely to distort competition between European screenwriters.

### **Our fight: fighting to impose minimum remunerations**

The Guild strongly disagrees with the DGMIC's conclusions as to the risk that an agreement on minimum wages or contractual practices could be found to be contrary to competition law. The current Board is considering drafting a contradictory document explaining all the counter-arguments to this position of the DGMIC.

## **2.3. The lack of resources of authors' organizations**

We must also note that the slow progress of negotiations is today linked to the lack of resources of authors' organizations and their weak position compared to the better organized and financially endowed producers' unions.

To put it another way: authors - already in a precarious situation - find themselves taking their demands to professional lawyers and lobbyists on a pro bono basis, paid full time so that they have no financial impact on their employers.

Faced with this situation, the Guild has developed two strategies, one consisting of and lightening the workload of the Guild's board members (by creating a professional hotline and seeking to better mobilize the union's internal resources to deal with all the ongoing cases), the other consisting of seeking external funding.

- To make it easier for members to turn to experts, the Board decided to reallocate part of the Guild's budget to the recruitment of a lawyer on a permanent contract, who now runs the professional HOT LINE with referent screenwriters. Initially recruited to provide contractual advice to members, the current health crisis has led the Board to extend its scope of intervention to social protection issues, so that she can advise members on the various aid mechanisms set up by the government or the SACD. However, the Guild's budget does not currently allow it to be recruited on a full-time basis. And the significant drop in the SACD subsidy, which is likely to continue in the years to come, is likely to call into question the existence of this post.

- The audit commissioned by the Guild in 2018, followed by the Board of Directors' report presented to the January 2020 General Meeting, testified to the inevitable exhaustion of these volunteers and the impossibility for the Board of Directors, given the expectations that members and the public authorities have of the Guild, to reconcile their union involvement with their professional lives.

To remedy this situation of exhaustion, the General Meeting of 20 January 2020 mandated the current Board to propose a reform of the Articles of Association consisting of the creation of negotiating committees or the appointment of permanent representatives.

In addition, a Governance Reform Committee has been set up to consider how alternative ways of involving members in the decisions taken by the union can be envisaged in a more active, democratic and efficient way.

It also aims to move the union away from a culture of service, where membership dues are paid and then the Guild's advisers, who in turn are volunteers, are required to serve the membership. The dues paid must once again become a membership fee for adherence to the union values promoted by the Guild, which go beyond the simple interests of the members, but do indeed concern the interests of all writers.

(To this end, the Guild also intends to think about reliable and fast online polling and voting tools, enabling it to multiply the use of members whenever possible).

- But it is essential to understand that the work of these committees, to be fully effective, will eventually require permanent employees to inform members about the legal rules in force, to meet them regularly, and to report on the debates.

The Guild's funding is currently insufficient to recruit the number of employees needed to coordinate and lead all the work of volunteer members and to respond to all the issues raised above.

The Guild now needs legal specialists who can provide members and the Board with the best possible information. A single delegate general, who is busy with many issues, cannot alone have the time to lead and coordinate the working groups that will be set up to establish common demands shared by all members in the area of inter-professional negotiations.

### **Our struggle: sustainable financing, without subordination links**

For all these reasons, the Guild is campaigning for the solution advocated by Bruno Racine's report entitled "The Author and the Act of Creation" to be applied by the government or for another lasting solution to be put in place.

The Guild's strategy is to make as many authors and political decision-makers as possible aware of the impossible financial situation of professional artist-author organizations in order to properly defend creative work.

The aim is to enable the emergence of autonomous, independent, non-subordinate organizations, fully assuming the role provided for by law and thus offering artists-authors, and particularly screenwriters, the full exercise of their trade union freedom, which is today denied.

To this end, the Guild is in a strategy of alliance with all professional organizations that would like to do so. This strategy is not limited only to audiovisual organizations. All the difficulties encountered in terms of status and social protections are in fact common to all artist-authors, whatever their profession.