



REPORT FROM THE BOARD AND STAFF OF THE FEDERATION OF SCREENWRITERS IN EUROPE

to the General Assembly

18th – 20th March 2011, Brussels

(Agenda / Saturday 19th March / Report from Staff and Board)

Introduction

At the level of day-to-day working, 2010 was a good year for the FSE. We have been able to push ahead with the policies decided by the members at the General Assembly and to make reasonable progress with many of our goals and aspirations.

We have deepened our relationship with the members of the International Affiliation of Writers Guilds (and we are delighted to welcome Ellen Stutzman, Research Director for the Writers Guild of America west to our meeting as an invited observer), made measurable progress with our shared agenda, considerably deepened and improved our work at the level of the European Union institutions and tackled all of the items on the agenda of work of the FSE.

However at the macro level we have still not reached the point of breaking through the issue of professionalising the work of the Federation, in particular in relation the vexed question of adequate funding for the activities of the organisation. A first step is that we have applied for and received a project grant from the International Affiliation of Writers Guilds, which made it possible to engage a part time basis lobbyist (D. Kavanagh) to represent our interests in matters relating to the European Union. This has also enabled us to make further applications for funding – and we are in the process of some of them. More later.

How are we to understand the likely progress of the cultures and industries in which our members struggle to make a living? Will we remain as a loose affiliation of separate cultures, united by our diversity, or will the digital revolution sweep away borders and bring us to the promised land?

What seems sure is that the time to make decisions about the legal and administrative map of the digital future is arriving in Europe, and the relationship between writers, their work and their market place is going to be changed, for good or bad, over the next years.

The Board

The Board met on five occasions during the year (two of which were virtual (Skype) meetings). The majority of the costs of the final meeting (March 12th 2011 in Brussels) were covered by the SAA meeting which took place at the same time (and is reported on separately below) and some of the costs of the earlier meeting (19th and 20th September in Dublin – also reported on below) were incidentally covered as a number of the participants were also present for the IAWG meeting.

In practice much of the Board's work is done by email in an ongoing way.

At the Board's first meeting after the General Assembly of last year, Robert Taylor, Chair of the Board of the Writers Guild of Great Britain, was co-opted to the Board under Chapter IV, Paragraph 11 d) of our statutes.

Administration

The Board has renewed the contract of Amélie Clément as our part time Manager. Amélie continues to spend a number of days per month in our Brussels office and to work on other matters from her own office in between.

The Board also entered into a contract with David Kavanagh on a part time basis, principally to represent our interests in matters relating to the European Union. David's contract is covered by a project grant from the International Affiliation of Writers Guilds. David resigned his position as member of the Board of FSE to allow the Board to consider the appointment.

We have submitted to the relevant authorities all filings of information and registration of members and directors required under Belgian law such as the amendments to the Statutes made in 2009 and all necessary annual filings.

Our office continues at the offices of UNI-EUROPA who generously provides us with a desk space and much of the office facilities that we need. We are very grateful to them.

Progress with our Policy objectives

Our policy document remains the basic statement of our aims and objectives along with the related list of activities agreed with the IAWG as joint initiatives. The policy is here if you want to remind yourself:http://www.scenaristes.org/newsletters/fse_PaperPolicyFinal.20080408.pdf

The list of objectives agreed at our last General Assembly in Berlin in date are as follows:

- Fund raising
- Monitoring EU issues

- Improving communication with members
- Organising follow up to WCOS
- The “Who Wrote it” campaign
- Unanticipated problems

We have made progress on all of these – though more in some areas than others. Each is reported on in more detail below.

Communication with the members

Amélie has invested time in trying to improve the look of the website and improving the volumes and relevance of information supplied there.

The newsletter is being published more frequently and we are also producing an occasional joint newsletter with the IAWG.

We are currently working on a leaflet on remuneration (reported on elsewhere) – which is based on a questionnaire sent to all members, which attempts to set out a template which would give us some basic information about the payment processes and amounts country by country.

PROPOSAL

Amélie has established a new contact list of approximately three hundred email addresses of related organisations and individuals and we have been considering whether to offer our newsletter to these people. In order to do so we would have to take a more considered editorial line with the newsletter, which may reduce its frequency again. Members’ views on this proposal are invited.

Fund raising

The main if rather modest success of our attempts to fundraise for the FSE has been to secure two payments of \$15,000 each from the International Affiliation of Writers’ Guilds, for the specific purpose of paying a part time lobbyist. This was a little surprising given that the IAWG is now generating a small loss each year and has become more cautious with its limited resources – we are most grateful to them for their invaluable support. It is a small sum which makes a huge difference indeed.

Our application to the European Union’s Culture Fund has been rejected. We applied to this fund three years ago and were turned down on the basis that our activities were too “union-like” (!). This time we came close to being accepted but were turned down again, while an application by FERA has been accepted. More later.

We are preparing an application to a fund in DG Employment and we will repeat our application to the European Culture Fund.

As we said last year we still have the idea to establish an online registration system and a mentoring scheme (both of which we believe could generate funds) but we continue to consider it impractical or indeed impossible to initiate such schemes without having a basic administrative structure in place to start with.

Working groups

At our General Assembly of February 2010 we agreed to set up a number of working groups. Most of them have not yet started to function. However work on the idea of a lobbyist, the second World Conference of Screenwriters, the Who Wrote It campaign and the leaflets has all proceeded to various degrees.

We had agreed to have the following working groups:

Collecting societies

- Spain, FAGA (ref. Marta Raventos)
- Poland (ref. Jan Dowjat)
- UK (ref. Robert Taylor)

Lobbyist

- UK (ref. Robert Taylor)
- Ireland (ref. David Kavanagh)

Book publishing

- Sweden (ref. Susin Lindbom) with the support of Amélie Clément

Leaflets

- Germany (ref. Katharina Uppenbrick, esp. proofreading questionnaire on remuneration)
- Ireland (ref. David Kavanagh)
- Netherlands (ref. Wim Blaauboer)
- Iceland (Sven Baldvinsson)

World Conference of Screenwriters

- Nordic Guild (Norway, Finland, Denmark, Iceland, Sweden)

Script registration Scheme ("false door")

- Ireland (ref. David Kavanagh)

"Who wrote it" campaign

- Iceland (Sven Baldvinsson) with the support of Amélie Clément FSE and Sarah Dearing IAWG

Mentoring programme

- Bulgaria (ref. Stanislav Semerdjiev)
- Spain, Faga (ref. Marta Raventos and Juan Moscardo Ruis)
- Austria (ref. Christian Neubacher and Ulrike Schweiger)
- Norway (ref. Pål Giørtz)

PROPOSAL

We revisit the idea of working groups, appointing a new convenor where necessary and setting up more groups if we think that necessary.

Co-operation with the International Affiliation of Writers Guilds

Members will recall that at the Second World Conference of Screenwriters' held in Athens in 2009 we agreed an agenda of joint activities.

Among these was an agreement to meet together when possible in the future. Consequently, at the proposals of the Irish Playwrights and Screenwriters Guild, which was organising the General Assembly of the IAWG in Dublin in September 2010, the Board of FSE had its own Board meeting in Dublin on 19th and 20th September and then held a joint meeting of the Board of the FSE and the members of the IAWG to review progress on our joint activities and to discuss future co-operation. We were joined at the meeting by a representative of FEDALA, the regional organisation of writers and directors organisations of Latin America.

The list of **joint activities** is:

1. Establish an information system on the FSE and IAWG websites to keep member guilds of each organisation informed of the activities of the other.
2. Agree a system of exchange of information between guilds about topics of collective interest, by establishing and circulating a contact list of all the world's writers' guilds and by publishing and distributing an occasional global e-newsletter.
3. Arrange to have observers at one another's meetings.
4. Set up a group to work together virtually to agree a glossary of basic terms related to writers, writing and their remuneration that could be agreed globally.
5. Set up a group to work together virtually that would agree basic terms in respect of writers' credits that could be agreed globally.
6. Establish a joint campaign on the right to collective bargaining, beginning with an analysis of common problems.
7. Establish a joint campaign on the future of collecting societies in the digital world, starting with an analysis of the relationship of writers' guilds to collecting societies worldwide.
8. Stand ready to support one another in the event of any crisis situation by appropriate solidarity activities.
9. Take note of the debates and conclusions of the first World Conference of Screenwriters.
10. Initiate a discussion about the desirability and practicality of establishing a global organisation for screenwriters.

Some modest progress has been made on all of the activities listed here with the important exceptions of items 6 and 7. We intend to develop specific proposals for the

IAWG in respect of these areas following our own General Assembly and based on our own conclusions.

The IAWG will hold its next General Assembly in New York in October 2011.

In respect of the other items on the Joint Agenda we should specifically mention three. As mentioned elsewhere we are producing an occasional joint newsletter.

We are also pleased to note that our colleagues in the Spanish guilds are investigating the possibility that the second WCOS might take place in Spain in 2012.

Thirdly our own policy document commits us to running a **Who Wrote It** campaign, to address questions of the status of writers. Clearly the joint campaign on Film Festivals can be seen as part of this goal and we have invested some time and effort into this initiative.

Guy Hibbert (WGGB, UK), Olivier Lorelle (UGS, France), Howard A. Rodman (WGA West, US), James Schamus (WGA East, US) and Sveinbjörn Baldvinsson (FLH, Iceland) have signed a letter sent to an initial selection of Film Festivals asking them to complete a questionnaire on how they treat writers in the context of their festivals. The aim is to establish a World Screenwriters' Film Festival List of Excellence, based on how the festivals profile screenwriters and their work in programs, publications and events, in order to encourage them to honour screenwriters' contribution to the films they showcase.

A significant number of festivals have now responded, among them the Berlin and Sundance Film Festivals, as well as San Sebastian. Some other important festivals (most importantly Cannes and Venice) have failed to respond at all to letters or reminders and we have to consider how to proceed.

Essentially this means assessing whether we have enough responses to our questionnaire to make a list and then working out what is the best time to publish it.

At the joint meeting of the IAWG and the FSE we also discussed at some length the prospects of moving towards a global organisation of screenwriters at some point in the future. Simplistically, as the big conglomerate companies become global in their operations and the market place itself is concerned less and less with national borders, then those whose work depends on the conglomerates need a capacity to have a global response.

This issue will be discussed again at the IAWG meeting in New York where it is hoped to invite some other guilds who have not been involved as yet to move these issues forward.

European Union

One of the priorities decided at the last General Assembly was the need to try to have a representative of the FSE to concentrate on the issues at the European Union. As reported above, the Board to the International Affiliation of Writers' Guilds, in the weeks immediately after the General Assembly, agreed for financial help to appoint someone to work on monitoring the situation in the European Union. The idea that David Kavanagh would take the post was suggested during the General Assembly and when the idea was pitched to the IAWG on March 2nd David informed the IAWG that he might be considered for the post and withdrew from the IAWG meeting. Our application to the IAWG was successful (initially for six months and then renewed for a second six months) and David then resigned from the Board of the FSE on 25th March. The Board co-opted Robert Taylor to the Board and in its new constellation decided to appoint David starting on 1st April.

Creators group

One of the advantages of having our office in the UNI/MEI (UNI-EUROPA) offices is that those offices also house the International Federation of Actors and act as Brussels office for the International Federation of Musicians. These organisations work closely with the International Federation of Journalists and UNI/MEI and have a Creators' Group which meets quite regularly to assess various issues which arise the EU level and occasionally organise joint responses. FERA (the directors' organisation) is occasionally involved with this grouping as are one or two other artists organisations depending on the issue.

We also have useful working relationships with FERA and recently with SAA – the new organisation of audiovisual collecting societies.

We are also on the Advisory Board of the European Audiovisual Observatory.

Having access to these experienced organisations has been useful in brainstorming and coordinating common responses to matters which concern us all.

But there are also issues that arise which are not of particular interest to these organisations on which we have adopted our own perspective.

Product Placement

This issue has now come to an end in that the principles adopted in the Audio visual media services directive (the replacement for the Television without Frontiers Directive) have now been largely implemented in all of the member states of the European Union.

Net Neutrality

FSE has responded to a public consultation launched by the European Commission on the issue of net neutrality. In its brief document FSE supported the concept of net neutrality and argued that multinational conglomerates should not be able to buy any kind of preferential treatment on the internet that would disadvantage small innovative production companies or creative individuals trying to reach new audiences through distribution on the internet.

The Commission organised a Summit on “The open internet and net neutrality in Europe” on November 11th following up on the public consultation to which FSE responded. The Commission seems to have concluded that there is wide spread support for the principle of an open internet, although there are complex technical questions which may have an impact on freedom of access to the internet, but that there is no demand for additional legislation at present.

FSE seems to have been the only organisation among creators to take any interest in this issue.

Piracy, filesharing and graduated response

A report “on enforcement of intellectual property rights in the internal market”, written by Marielle Gallo, a French member of the European People’s Party (Christian Democrats) for the Committee on Legal Affairs of the European Parliament, has been adopted by the European Parliament, by 328 to 245 votes on 22nd September 2010.

The report suggests that the Commission “introduces a set of measures to combat intellectual property infringements” and calls for voluntary agreements between ISPs and rights holders to enforce copyright online.

The FSE, along with other creators’ organisations representing musicians, actors, technicians, journalists, screenwriters, writers, directors, etc. at European level, issued a joint statement giving their full support to MEP Gallo’s report. “We believe that this report represents a good compromise between the different political groups. We equally appreciate the fact that it advocates a balanced and fair approach to illegal file sharing, with an emphasis on educational and awareness raising measures rather than repressive provisions, as it has been often inaccurately reported. We fully acknowledge the need to create a favourable environment enabling consumers to access creative and in-copyright works of high quality. We look forward to further initiatives promoting employment, better remuneration for creators in the sector and the value of intellectual property as a tool to sustain cultural diversity in Europe”.

Read full statement : <http://www.scenaristes.org/pdfs/gallostatement.pdf>

In parallel with the consideration of the Gallo report, the EU and a number of other members of the World Trade Organization began work on a new international agreement, the Anti-Counterfeiting Trade Agreement (ACTA). The EU's objective with ACTA partners is to have a new plurilateral treaty improving global standards for the enforcement of IPR (Intellectual Property Rights), to more effectively combat trade in counterfeit and pirated goods. The consolidated text, released on 6th October, reflects the changes made during the 11th and final round of the negotiations held in Tokyo in September 2010.

ACTA however is a very modest step in the right direction. It will not change the body of EU law, which is considered to be already considerably in advance of any of the provisions of the proposed new treaty. According to the Commission the proposed treaty "creates a minimal level of harmonisation and transparency" on the internet.

The treaty now goes for acceptance by the various potential signatories. At EU level this means acceptance by the Commission College, then agreement and signature by the Council and finally to the Parliament for acceptance.

However the two main issues which have concerned us at the European Union are those related directly to the right to collective bargaining and the related issue of the prospect for the distribution of audio visual material online written by our members.

Competition law

The key issue in respect of the first of these is the complex issue of the application of competition law to the territory of free lance writers. There are no initiatives directly in this area in the European Union. There is a considerable amount of discussion of the question of "atypical workers" such as freelancers, part-time workers and so on, but the general orientation is to find ways to ensure that this category is not used by unscrupulous employers to deny legal rights to workers or to change the working practises of freelance workers to make them more like full time colleagues.

The Creators Group prepared a statement on freelance workers and, particularly from the side of the Actors, invested time and energy in trying to get some attention to this issue from the different Directorates General in the Commission who might be considered interested if not directly responsible. We have met with a representative of the cabinet of Commissioner Barnier of Internal Market on the issue. Someone from DG Employment has also taken a certain level of interest but we have not as yet succeeded in getting much response from DG Competition.

In parallel with this work in the Commission we have also been trying to make some approaches to the parliament not so far with success.

Finally on the initiative of the Musicians a small grant has been offered by the International Labour Organisation to commission a report specifically on the topic of the contradiction between competition law and labour law. We attended a meeting of the Creators' Group to consider what questions the report might consider.

Online distribution of Audiovisual works

Both the last Commission and the one now working since February of last year have taken a clear interest in the creation of an online market for Europe audiovisual product.

Since the publication of Commissioner McCreevy's first attack on Collecting societies in the context of the Commission's challenge to private copying levies there has been a narrative supported by the various sections of the Commission that a massive market for Europe's audio visual back catalogues exists and that the major constraint on the development of such a market is the severe difficulties that new online distributors would face in clearing complex rights in order to operate at European level.

A substantial amount of effort has been put into the elaboration of this idea by the Commission, an effort that is coming to a conclusion over the next period.

A significant difference of opinion apparently exists between Neelie Kroes vice President of the 'commission with responsibility for the Digital Agenda (her mission statement says that she will address " both supply and demand for digital services, products and contents, ensuring that Europe remains at the technological forefront in this area" and Michel Barnier, Commissioner for the Internal Market who is quoted as saying that "there is no creation without creators"

One eccentricity in the long sequence of different approaches to this problem is the lack of any serious study on the actual business prospects for extant audio visual content online in Europe. The closest is a report published in October 2010 on Multi-Territory Licensing prepared by KEA for the Commission. The report sets out recommendations to ensure the presence of European films' on new digital distribution platforms. The study presents interesting arguments about the potential of the development of the online market

for audio visual content, based very strongly on a realistic understanding of the workings of the European audiovisual marketplace, with some useful policy recommendations. Noteworthy are the reference to the EBU proposal that the Cable and Satellite directive may have usable principles for the online market and a reference to the Collecting societies proposition that there should be an unwaivable right to equitable remuneration for the "making available" right.

Full report : http://ec.europa.eu/avpolicy/docs/library/studies/multiterr/final_rep_en.pdf

In December of 2010 the Commission held a meeting entitled AUDIOVISUAL PRODUCTION IN THE EU: OPPORTUNITIES AND CHALLENGES which is in preparation for the possible publication of a Green Paper on the presence of the audio visual online.

It would seem that the question of how (or whether) authors are to be remunerated for the use of their work online is to be addressed over the next period.

The FSE was invited by the Commission to participate in a panel on Video On Demand (VOD) and its implications during this hearing.

David Kavanagh, speaking on behalf of FSE, argued that the debate on VOD should not be limited to just the question of how the VOD market will operate but also why. What are the policy goals of the European Union in respect of the emerging market? He suggested that the new VOD platforms could offer an opportunity for creativity, for new writing and new production and not be limited just to a new form of distribution of pre-existing production.

Much of the session was taken up with descriptions by a variety of players of different market offerings and technological solutions to the extraordinarily complex business of getting the film/programme from owner to audience.

But there were also useful, if inconclusive discussions, about many of the issues on which the Commission is expected to act over the next period.

The European Broadcasting Union (EBU)'s idea that the principles of the Cable and Satellite directive could apply to the online environment was not welcomed by the private broadcasters or by the independent producers.

The Society of Audiovisual Authors (SAA) put their proposal for an unwaivable right to equitable remuneration on the table. There was little discussion of this without the details, but the idea is clearly of interest to writers.

A whole session was dedicated to the problem of orphan works (works whose creators and rights holders cannot be found to give permission for reuse).

As is usually the case with such meetings more heat was generated than light, but the meeting nonetheless marks an important point in the process of producing the promised Green Paper on online distribution of audiovisual works.

In parallel with the process of producing the Green Paper on Audiovisual content online the Commission is committed to producing a **Framework Directive on Collective Rights Management** which was supposed to be published already. There was some considerable speculation as to whether this directive would be limited to the music collecting societies or would also include the audio-visual. It seems that the directive will be limited to music only and will be published shortly.

CONCLUSION

It seems likely that this will be the year when the Commission decides whether authors are to be compensated for the use of their work online and how. It is obviously essential that writers organisations are involved in that decision.

The Board

Christina Kallas, President
Sveinbjorn Baldvinnson, Vice President
Stanislav Semerdjev, Treasurer
Robert Taylor
Gino Ventriglia

Brussels, March 12, 2011