

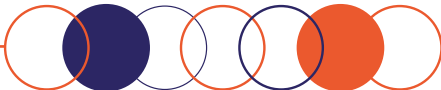
STRENGTHENING COLLECTIVE BARGAINING FOR AUDIOVISUAL CREATORS

TOOLKIT

For Directors & Screenwriters

This toolkit gives access to documents and presentations given during the many meetings for members of the Federation of European Screen Directors (FERA) and the Federation of Screenwriters in Europe (FSE), organized during a two year period from March 2021 to June 2023 in co-operation with UNI MEI as part of a programme entitled "Strengthening Collective Bargaining for Audiovisual Creators".

The information is meant to facilitate collective bargaining by guilds, unions and professional organisations to improve working conditions and remuneration in the context of the implementation of Title IV, Chapter III of the Copyright Directive.



June 2023

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Europe's writers and directors

The Federation of Screenwriters in Europe (FSE) and the Federation of European Screen Directors (FERA) represent between them some 30,000 European authors of feature films, TV fiction and documentaries.

They write and direct the 1,200 cinema films produced in Europe each year, plus 650 or so documentaries intended for cinema release, and 15,000 hours of TV fiction, which includes a rapidly growing number of short run TV fiction series (approx. 750 titles per annum).¹

They are the originators of the stories and ideas that play such a fundamental role in contemporary Europe's cultural diversity, in the world's understanding of Europe's culture, and that are at the core of an industry worth more than €120 billion in turnover and employing more than one million Europeans.²

Poorly paid, unstable careers

They are almost entirely freelance workers, working with independent film producers, public service and private broadcasters, and with global streamers, often contracting with independent producers acting as intermediaries. These contracts which govern the transfer of their rights are often disadvantageous to authors whose weak negotiating position makes them susceptible to exploitation³. They are, in general, poorly paid, with deeply unstable careers, dependent on a next contract which may or, more often, may not, occur⁴.

1. Yearbook 2022/2023, European Audiovisual Observatory (Council of Europe), Strasbourg 2023
<https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9f02>

2. <https://avdata4europe.eu/key-data/>

3. 2019/790 EU Directive on Copyright in the Digital Single Market, Recitals 72 to 81
<https://eur-lex.europa.eu/eli/dir/2019/790/oj>

4. Yearbook 2022/2023, European Audiovisual Observatory (Council of Europe), Strasbourg 2023
<https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9f02>

A joint study on the Remuneration of Audiovisual Authors⁵ provided a clear and independent analysis of the low level of income and extreme instability of authors incomes in 2016 which underpinned the need for the introduction of specific measures by the EU. This study demonstrated the low median effective annualised income of authors and suggested the severe instability that is exacerbated by that low and irregular income.

In recent months publications by the European Audiovisual Observatory⁶, based on figures over seven years, have provided specific evidence as to the near impossibility of establishing a career as an author in Europe's audiovisual industry.

Further complications

Complicating matters further their primary contractual relationship concerns the transfer of intellectual property as copyright or droit d'auteurs, with the potential economic value (or commercial success) of the rights often being unknown at the time of contract.

As a final complicating factor, the legislative and regulatory systems of the Member States differ considerably.

⁵ European survey on the remuneration of audiovisual authors, *European Film and TV Authors : Their Earnings and Working Life*, 2019

Summary of the final results :
www.authorsbargaining.eu/wp-content/uploads/2023/06/AV-authors-remuneration-Summary.pdf

Detailed results :
https://www.authorsbargaining.eu/wp-content/uploads/2023/09/EU-Audiovisual-Authors-remuneration-study-2019_FINAL.pdf

⁶ Writers and directors of film and TV/SVOD fiction 2015-2021 figures, European Audiovisual Observatory (Council of Europe), June 2023
<https://rm.coe.int/writers-and-directors-of-film-and-tv-svod-fiction-2015-2021-figures-ju/1680ab4452>

Solutions tried to date

In some Member States – usually the Member States with stronger audiovisual industries – legislative and regulatory action has been taken to try to address this anomalous situation. Most commonly legislation is established to implement exceptions to copyright which also provide a right to compensation or remuneration for the use of rights. These schemes are usually managed collectively through Collective Management Organisations (CMOs).

However, funds collected and distributed through these systems constitute a modest proportion of authors total income. The bulk of authors income is paid based on the terms of the initial contract. As noted these contracts are subject to the weak negotiating position of authors and performers.

Some Member States address this problem by facilitating collective agreements intended to address the initial contracts signed by authors with their contractual counter-parts.

Examples of these systems include :

- Joint Remuneration Agreements provided for in Article 36 of the German copyright law ;
- Interprofessional agreements provided for in French regulatory practise ;
- Collective agreements negotiated by authors organised in trade unions,
 - where that union organises only authors such as the UK,
 - or where some categories of authors are part of, or have arrangements with a larger trade union (Spain, Norway, Sweden).

Two weaknesses of these systems are acknowledged. Firstly, they are provided only in some Member States. Secondly there is considerable tension with Competition law. In the past national Competition authorities took action against authors and performers organisations in three Member States (Ireland, Spain and Netherlands) on the grounds that they were engaged in price-fixing, which had a chilling effect on collective negotiation in other Member States and in other creative professions.

New European Union initiatives

In recent years two major initiatives at European Union level have attempted to address these issues.

During the Juncker Commission a proposal to bring European copyright legislation in line with new digital age was used to introduce additional measures to address Fair Remuneration for Authors and Performers.

In June of 2019 the European Union passed the Directive on Copyright in the Digital Single Market⁷ whose genesis and developing content had been a key focus of the work of FSE, FERA and UNI MEI for many years before. The Directive aspires to bring copyright law, which is a competence of the European Union institutions, into the digital age. Its many articles address a wide variety of issues but **Title IV, Chapter III addresses Fair Remuneration in Exploitation contracts of Authors and Performers** and explicitly introduced collective bargaining as an approach to managing these quite complex processes.

The adoption in 2019 of the Copyright Directive combined with a general shift in political thinking in respect of the labour rights of atypical workers, including freelancers such as authors, led DG Competition to open discussions with stakeholders about the appropriateness and effectiveness of their interpretation to date of the impact on competition as defined in the treaties of the EU of collective bargaining by freelancers, leading to the publication in September of 2022 of **Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons 2022/C 374/02.**

⁷ 2019/790 EU Directive on Copyright in the Digital Single Market
<https://eur-lex.europa.eu/eli/dir/2019/790/oj>

Making the new legislation work ...

Authors have a shared commitment to their work which produces a strong sense of community. They are also very aware of their generally weak individual negotiating position. Addressing this structural obstacle to their capacity to generate an income sufficient to maintain viable careers has been the priority concern of European authors and performers.

FERA and FSE support professional organisations in negotiating the implementation of the transposed directive at national level on behalf of their members and have had, as a result, a priority intention to facilitate their members to be as ready as possible.

... through Collective Bargaining

It was against this background that, working with UNI-MEI, the two organisations have produced two, of which this is the second, programmes for members focused on collective bargaining (the first was VS/2017/0329 "Promoting Fair Remuneration and Collective Bargaining for Creators in the EU Digital Single Market").

This project, entitled VP 2020/002/0067 "Strengthening Collective Bargaining for Audio-Visual Creators", is financed by DG Employment of the European Commission. The project is developed by UNI MEI, with FERA and FSE as partners with the formal aim of strengthening collective bargaining for audiovisual authors and creators⁸.

⁸ A detailed description can be read here :
www.authorsbargaining.eu/wp-content/uploads/2023/09/UNIMEI-FERA-FSE-joint-project-detailed-presentation.pdf

The project comprises the following activities and deliverables :

6 online workshops for FERA and FSE members

- WS#1 (8th June 2021)
From representation to bargaining : engaging the members' base
- WS#2 (21st September 2021)
Building a collective bargaining campaign
- WS#3 (27th January 2022)
Competition law and collective agreements on working conditions of freelance audiovisual authors
- WS#4 (24th November 2022)
Common priorities for transnational aspects of collective bargaining
- WS#5 (14th December 2022)
Anticipating and managing change
- WS#6 (22nd February 2023)
Towards conclusions

3 webinars for a larger audience

- Webinar#1 (10th March 2022)
2019 Copyright Directive : transposition to date
- Webinar#2 (7th April 2022)
2019 Copyright Directive transposition
Sharing in the economic success of our work : collective solutions
- Webinar#3 (14th March 2023)
2019 Copyright Directive transposition
Perspectives on a new European production landscape sustainable for audiovisual authors

4 social dialogue meetings with EU employers

The development of 2 databases

- A database containing the breakdown of the transposed Title IV, Chapter III of the 2019 Copyright Directive in ten Member States.
- A database containing pre-existing collective bargaining agreements addressing issues in the context of the transposition of the 2019 Copyright Directive, such as the transparency, remuneration, etc.
- The improvement of the already existing database of directors and screenwriters' contracts, especially in terms of interactivity.

Based on those activities, and rooted in the needs and demands of the member guilds, unions and professional organisations of FSE and FERA, this TOOLKIT reprises the main activities and conclusions of the two-year programme and provides access, in one place, to the practical information, suggestions, proposals and conclusions intended to encourage and facilitate collective negotiations as a goal in themselves but also as a necessary means of ensuring effective implementation of Title IV, Chapter III of the Copyright Directive.

The TOOLKIT describes the activities of the two-year programme under the three headings **ORGANISE, EDUCATE, NEGOTIATE**.

List of the main resources

- FERA/FSE Study on the Remuneration of Europe's Screenwriters and Directors
- European Audiovisual Observatory study of the situation of Screenwriters and Directors
- Text of the 2019 Directive on Copyright in the Digital Single Market
- FERA/FSE Playbook on Chapter III of the Copyright Directive
- FERA/FSE Playbook on Chapter III of the Copyright Directive CHECKLIST
- Text of the Guidelines on Collective bargaining for solo self-employed
- Guide to organising by UNI-Europa
- European Audiovisual Observatory analysis of the current situation and likely trends for the future – presentation for FSE/FERA meeting
- FERA/FSE Database on Transposition of the Copyright Directive in ten Member States
- FERA/FSE Index of extant Collective Agreements

Where participants provided written presentations, links to these are included in the footnotes.

These resources are available on

www.authorsbargaining.eu

ORGANISE

EDUCATE

NEGOTIATE



STRENGTHENING COLLECTIVE BARGAINING FOR AUDIOVISUAL CREATORS

ORGANISE Directors & Screenwriters

The first two workshops of the programme, in June and September of 2021 addressed this issue.

As will be seen in the body of this document guilds, unions and representative organisations of authors are in general poorly resourced with, in general, inadequate access to expertise of all kinds. Their strength lies in their membership. Consequently, a baseline requirement is effective organisation, by empowering the members.



ENGAGING THE MEMBERS' BASE

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Workshop #1, 8th June 2021

From Representation to Bargaining : Engaging the Members' Base

The workshop was introduced and moderated by FERA CEO Pauline Durand-Vialle and FSE Executive Officer David Kavanagh and gathered 52 participants from the FERA and FSE network in 21 countries.

Surveys on Collective Representation

FERA and FSE each conducted an identical survey of its members to ascertain their organisational strengths and weaknesses.⁹

New information on the numbers of working directors and screenwriters in TV fiction with observations on the problems of their working lives, which confirm much that is known by the members of FERA and FSE is contained in a recent study by the European Audiovisual Observatory.¹⁰

A series of key issues for professional organisations interested in ensuring that the new provisions of the Directive, as transposed to their national legislation, would be of benefit to their members were identified by the studies.

The first major conclusion was the rather startling similarity, in terms of representation, resources and goals, of the two organisations and their members. FERA calculate the number of working Directors in the 29 responding states as 18,000 while FSE calculate the number of working screenwriters as 14,000 in the 22 responding states.

⁹. FERA full survey
www.authorsbargaining.eu/wp-content/uploads/2023/09/FERA-presentation-report-on-guilds-capacity-to-collectively-bargain.pdf

FSE full survey
www.authorsbargaining.eu/wp-content/uploads/2023/09/FSE-presentation-report-on-guilds-capacity-to-collectively-bargain.pdf

¹⁰. Audiovisual fiction production in the European Union 2019 edition, European Audiovisual Observatory (Council of Europe), February 2020.
<https://rm.coe.int/audiovisual-fiction-production-in-the-eu-2019-edition/16809cfd4a>

1. While numbers varied between Member States for a variety of reasons both FERA and FSE found that their members represented significantly more than 50% of working screenwriters and directors. This percentage was much higher in Scandinavian countries and lower in Southern Member States and in some Eastern and Central Member States. Given the instability of the working life of authors this number was thought to be high but clearly there is considerable room for recruitment of additional members, varying widely from one state to another.
2. Given the low income of members, few professional organisations were able to sustain themselves through fees alone (meaning that the financial benefit of recruitment via higher fees is modest) and many relied on CMOs and Film Institutes for funding with potential limitations on their freedom of activity. The approximate sum of financial resources of all responding professional organisations in each of the two organisations was just over €5m per annum with the source of the income approximately one third each from fees, CMOs and Film Institutes.
3. Most responding professional organisations (largely a function of their size) have fulltime offices and professional staff, of which a significant percentage are lawyers or have a legal background. More than one hundred full or part-time people work for the members of the two organisations combined.
4. Less than 20% of members are trade unions – the rest are generally non-profit organisations.
5. Between the two organisations there are about 75 collectively negotiated agreements of one kind or another extant.
6. The majority of members of both organisations feel that they do not have adequate resources for a campaign on Collective Bargaining.

Conclusion

- Both organisations are remarkably similar in size and resources.
- But significant problems exist in terms of resources for a campaign on collective bargaining and the implementation of the 2019 Directive on Copyright in the Digital Single Market.

Organising, collective bargaining and how to efficiently engage the members' base : an organiser's perspective

Ben Egan, Organising Director at UNI Europa outlined the basic requirements for a campaign. ¹¹

He had two very positive assessments of our situation. Firstly, he felt that our knowledge of how members are organised, as demonstrated by the results of the surveys that were presented was very positive. Secondly, he pointed out that having a very precise campaign on the transposition of the Directive and a quite specific timeline in terms of the coming into force of the new provisions was also very useful in planning and implementing any campaign.

He insisted that organisations which existed just to provide services to their members were in immediate difficulty and would find it hard to interest their members in campaigns. An organisation built on service culture – a place where members can bring complaints rather than an organisation of which they were active constituents, meant that the organisation provided no empowerment of members, and no collective consciousness, making it difficult to campaign.

In order to campaign issues had to be widely felt, deeply felt, winnable, and visible to the members.

He emphasised the importance of building a campaign based on escalation on a spiral based on conversations with members leading to collective actions on winnable goals.

¹¹. His full presentation can be viewed here : https://www.authorsbargaining.eu/wp-content/uploads/2023/09/WS1_Ben-Egan-Uni-Mei-presentation.pdf

Conclusion

Given the potential complexity of any negotiation on the implementation of Title I, Chapter III of the Copyright Directive, **the need to engage with individual members, explain the issues in immediately relevant ways and ensure their active involvement in and control of the process is evident.** The risk is not having enough weight in collective bargaining with the evident support of members and or rejection of the results of negotiation by members who have not been engaged in the process.

What does organising mean in the context of a professional organisation ?

- Main goal : give power to members of the organization
- Recruitment of volunteers from the workforce to encourage others to join and take action
- Organising vs servicing : proactive vs reactive
- Proactive recruitment drivers – volunteers, staff, both
- Mapping the workplace to identify members and find new volunteers to become active
- Proactive campaigning – specific issues, grievances using creative campaigning techniques
- Support from the wider community
- An organizing professional organization encourages and supports the lay membership to do as much as they possibly can for themselves

Why organize ?

- To grow the organisation for the future
- To encourage members to take action themselves
- Core role of professional organisations – members taking action
- Disadvantages – resources intensive (people, money)
- Staff resistance – new ways of operating, out of comfort zone
- Sometimes difficult to get members to be active (need to be creative), apathy
- Atypical workers/freelance

Important factors in organizing

- Need to get everyone onboard from the head down and from the lay membership up – bring everyone along
- Make the case : why, when, who, where ?
- Communicate regularly : social media, newsletters, meetings
- Build a community
- Resources : staff, members, finance
- Be realistic : better to win small than aim big and fail
- What can you win in the short term ?
- Who cares about the issue ? Who are the opponents ?

BREAKOUT GROUPS

Writers and Directors who took part developed their own views in two breakout groups which concluded that :

- While recruitment of more members is important generally (and perhaps particularly for some sections of the professions and some individual States) representativity of our organisations is generally good.
- The sense of community and solidarity among members is (especially in the absence of industrial power) a key strength, which should be enhanced where possible.
- A focus on fair contracts, while potentially complex, is correct.

Workshop #2, 21st September, 2021

Building a Collective Bargaining Campaign

In the view of the leadership of both organisations, considerable progress has been made in the last years on issues of organising. These include :

- the establishment of new guilds, unions and professional organisations of authors (particularly screenwriters) especially in the Eastern and Central Member States;
- an increase in the numbers of members, increasing their representativeness;
- and an increased focus on collective bargaining.

The agenda of legislative change at EU level has also encourages a much-improved focus on multi-lateral and bi-lateral exchanges of views and information between national guilds, unions and professional organisations as they campaigned for the effective transposition of EU legislation and now for its active implementation. This implementation will hopefully be facilitated by collective negotiation, as prefigured in the Directive itself.

Transposition of Title IV, Chapter III of the Copyright Directive

The agenda for this second workshop therefore concentrated on the transposition of the Copyright Directive and the way in which collective bargaining can be used to address the myriad details of practical implementation of the provisions of the Directive, especially those related to Title IV, Chapter III which addresses Fair Remuneration of Authors and Performers.

On the assumption that members are well informed about the basic provision of the Directive and the potential benefits of collective bargaining in that context, the focus of the meeting was on updating members about actual transposition and discussing in some detail how to move forward with this shared agenda.

35 persons attended the workshop.

Pauline Durand-Vialle gave a detailed account of the transposition of Title IV, Chapter III of the Directive focusing on the Netherlands, Hungary, France, Germany and Malta (and Italy to some degree, transposition having recently occurred).

Significant trends were already noteworthy. Firstly, was the extremely late transposition in the vast majority of Member States (presumably as a result of impact of Covid restrictions). Secondly the cut-and-paste approach was already marked. Transposition was happening in a simplistic format, which contained risks and opportunities for practical implementation of the provisions.

In the associated discussion a number of points were raised.

- The problematic situation of getting information from Streamers was raised. The potentially transformative impact of the business model of streamers, especially the global streamers, was evident and concerning.
- The associated worry that producers and broadcasters, in the absence of any sanctions for non-compliance in the national transposition to date, was referred to by many as potentially problematic - with the associated concern that they would refuse to engage in collective bargaining.
- The idea of a simple questionnaire to members asking if they had received the legally required information from those to whom they had transferred rights was thought to be a good project – but one that would clearly have to be delayed until transposition had been achieved at least in a majority of Member States.
- The benefit of discussions about the details of ongoing transposition was also noted.

BUILDING A COLLECTIVE BARGAINING CAMPAIGN

BREAKOUT GROUPS

The participants divided into breakout groups.

The agenda for the breakouts proved over ambitious. Four groups were asked to consider three categories of question

- How are you approaching the transposition process;
- Rank what resources you have or need most;
- Have you considered engaging your members in this process?

Due in large part to the delayed transposition most of those present reported that insufficient consultation had taken place in their Member State; and appeared in some instances to be rather perfunctory.

It was agreed to undertake further work before the next workshop to examine in more detail what was happening.

Conclusion

It was felt that more work was need to address the questions raised in the breakout groups and a questionnaire should be sent to members to complete before the next workshop.



STRENGTHENING COLLECTIVE BARGAINING FOR AUDIOVISUAL CREATORS

EDUCATE

Directors & Screenwriters

An important fundamental aspect of the capacity to organise is the collection of and access to detailed information and analysis of the implications of this information.

The fractured nature the film and television industries in Europe means that individual guilds and unions of authors often have very limited resources (as clearly identified in the surveys of members outlined above). These limited resources impact negatively on their guilds, unions and professional organisations in many ways – one clear problem being the difficulty of getting access to information.

The kind of information needed ranges from basic analysis of the functioning of the film and television industries in Europe; contractual practises in the film and television industries in other Member States (which may provide new solutions to problems faced at home); the structures and possibilities of existing collective bargaining agreements and so on.

These needs were addressed during the project in three ways :

- Inviting experts in the various topics of concern to speak at the workshops or webinars. Where possible the presentations that they made are available through links on the Toolkit. Within the confines of the programme the main issues where additional information and knowledge is provided are the ongoing transposition of the Copyright Directive; understanding the new Guidelines on collective bargaining for solo self-employed; organising guilds and unions.
- Encouraging bi-lateral contacts and exchanges between members of both organisations (also encouraged by having efficient contact and exchange systems on the two databases described below).
- Developing and publishing searchable databases of transpositions of the Copyright Directive and a listing of all available extant collective agreements

Both organisations also welcomed the decision of the European Audiovisual Observatory to research and publish information about the situation of screenwriters and directors.



Webinar #1, 10th March 2022

2019 Copyright Directive : Transposition to date

A broad introduction to the Webinar and a welcome to participants was given by Carolin Otto, President of FSE.

Pauline Durand-Vialle gave a general introduction to background of the much-delayed transposition of the Copyright Directive and a detailed description of the French transposition in France¹².

Experts and representatives of FERA and FSE's networks participating then heard from Ula Furgal, Lecturer in Intellectual Property and Information Law and researcher at the University of Glasgow's CREATE Centre, who presented an overview of the Directive's transposition¹³, underlining the modest engagement of Member States at this point and the fact that the digital dimension of authors' and performers' remuneration for the exploitation of their works was largely absent from national transpositions while interpretation on certain issues e.g. transparency could diverge significantly from one country to the next.

Ula Furgal had also been appointed as Expert to the project to oversee the development of the database of transpositions of the directive in 10 Member States.

She presented general orientations for the development of this comparative database, one of the key deliverables of this FERA FSE UNI MEI joint project.

It had been intended to look in some detail at the transposition in a number of Member States. However the meeting was the first gathering of members of FERA and FSE since the invasion of Ukraine by Russia on the 24th February and it was decided to discuss instead the war and its consequences for Ukrainian audiovisual authors, performers and journalists.

¹². Transposition of the Copyright Directive in France
www.authorsbargaining.eu/wp-content/uploads/2023/09/webinar-1-presentation-CDSM-transposition-in-FR.pdf

¹³. Overview of the Directive's transposition in Europe
www.authorsbargaining.eu/wp-content/uploads/2023/09/webinar-1-presentation-Copyright-directive-implementation-by-Ula-Frugal.pdf

Workshop #3, 27th January 2022

Competition law and collective agreements on working conditions of freelance audiovisual authors

There were 38 attendees at this workshop.

An additional item was considered at this third workshop. The second workshop decided that we should continue the discussion that had started at that workshop in September of 2021 on the question of how to engage the members in discussion of the transposition of the Copyright Directive.

In the interim a brief questionnaire, based on the questions which had been discussed at the breakout sessions at Workshop #2, were answered by members and a presentation of the results made at the meeting by Pauline Durand-Vialle of FERA.

The analysis, which can be read here, confirmed the sense of the September meeting that the consultation process on the transposition of the Copyright Directive was not in general (with exceptions of course) effective, and that in the Covid and post-Covid atmosphere a sense of hurry to complete the much-delayed process was causing both inadequate consultation and a cut-and-paste approach to the legislation.

Members also felt that many of them did not have sufficient resources, legal and financial, to respond effectively and while most were actively involved in attempts to engage their individual members the issues were some-what complex and difficult to explain.

The main focus of this third workshop however concentrated on the technically complex question of the conflict between collective bargaining and the limitations explicit in competition law prohibition of price-fixing.

COMPETITION LAW AND COLLECTIVE AGREEMENTS

A thorough and comprehensive oversight of the new EU Commission draft Guidelines on collective agreements of self-employed people was presented to the meeting by Tatiana López Garrido, Policy Officer at DG Competition¹⁴, followed by a questions and answer session chaired by Johannes Studinger, Head of UNI MEI & EURO MEI.

In part in the context of the encouragement of collective bargaining as a route to effective implementation of the provisions of Chapter III of the Copyright Directive and, in general, in the context of an acknowledgement at the European Commission of a need to address problems around precarity and freelance working, DG Employment proposed to issue guidelines which would have the effect of freeing freelancers to collectively bargain in certain specified circumstances deemed not to contradict Article 101 of the Treaty on the Functioning of the European Union.

The draft guidelines refer explicitly to the provisions of Chapter III of the Copyright Directive, stating that collective negotiations in the context of the Directive would be a negative enforcement priority for the Commission.

The meeting then separated into breakout groups to consider the impact of Competition law limitations on the right to bargain in their respective countries and whether national problems with the tension between competition law and collective negotiation would be effectively resolved by the proposed guidelines in their country.

The outcome of these discussion suggested that FERA and FSE should be supportive of the Draft Guidelines as presented to the meeting.

¹⁴. Presentation on EU Guidelines on collective agreements of self-employed people
<https://www.authorsbargaining.eu/wp-content/uploads/2023/09/workshop-3-presentation-EU-Commission-on-draft-guidelines.pdf>

¹⁵. Overview of the Directive's transposition
www.authorsbargaining.eu/wp-content/uploads/2023/09/workshop-3-presentation-EU-Commission-on-draft-guidelines.pdf

¹⁶. SAA presentation on implementation of Article 18 of the Directive
www.authorsbargaining.eu/wp-content/uploads/2023/09/webinar-2-presentation-SAA-implementation-Art-18-DSM-Directive.pdf

SHARING IN THE ECONOMIC SUCCESS : COLLECTIVE SOLUTIONS

Webinar #2, 7th April 2022

2019 Copyright Directive transposition

Sharing in the economic success of our work : collective solutions

The Webinar was introduced by Klemen Dvornik, President of FERA. 63 persons participated.

Ula Furgal first introduced to the audience the up-to-date situation of the transposition of the Directive.¹⁵

She was followed by Cécile Despringre of the Society of Audiovisual Authors (SAA), the European grouping of Collective Management Organisations in the Audiovisual, who explaining both the principles and the current state of play of the implementation of Article 18 of the Directive, followed by questions from the audience.¹⁶

The second part of the Webinar was comprised of four case studies of structures for collective bargaining for freelance authors at member state level.

These were :

- **NETHERLANDS** : Interprofessional agreements on VOD remuneration, which was presented by Marcel Fokkink of the Netwerk Scenarioschrijvers part of the Auteursbond.
- **FRANCE** : Interprofessional agreements, presented by Barbara Lesclauze, of La Garrd, a union for documentary film-makers.
- **GERMANY** : Joint Remuneration Agreement under Article 36 of German Copyright law, by Peter Henning, VDD - Verband Deutscher Drehbuchautoren e.V.
- **SWEDEN** : Collective bargaining with global streamers, by Christine Strindberg, The Swedish Union for performing arts and film

The presentations demonstrated the wide variety of different procedures adopted in different Member States to allow collective bargaining for authors in the audio-visual industries.

Closing words for the webinar were given by Carolin Otto, President of FSE.

2 databases have been constructed during this programme.

2019 COPYRIGHT DIRECTIVE DATABASE

The database of transposition of Chapter III of the Copyright Directive provides an overview in English comparing national provisions on fair remuneration (transparency obligation, contractual readjustment mechanism and dispute resolution) in 10 EU member states (Belgium, Croatia, Czechia, France, Germany, Italy, Netherlands, Slovenia, Spain and Sweden). It mirrors the analysis in the FERA/FSE Playbook on Chapter III of the Copyright Directive.¹⁷

COLLECTIVE AGREEMENTS INDEX

The index provides an overview of at present more than 50 national collective agreements and access to public agreements, many translated in English. It is intended that this index will be added to as new agreements come into place or existing ones are altered or re-negotiated.

Ula Furgal (Copyright Directive database), Barbara Persyn (Collective agreements Index) and Olivier Vancappellen (web designer) worked with FSE and FERA staff and members to assemble the necessary information.

**The databases are accessible here :
www.authorsbargaining.eu**

¹⁷. FERA/FSE Playbook

www.authorsbargaining.eu/copyright-directive-implementation-a-playbook

Workshop #4, 24th November, 2022

**Common priorities for transnational aspects
of collective bargaining**

26 participants attended.

An overview of the now rapidly occurring transposition of the Copyright Directive and a series of case studies of the situation of collective bargaining in a number of Member States place the fourth workshop in a situation of providing information and evidence but also started discussion on how to move to practical collective bargaining where that was not happening.

Ula Furgal, who lectures in Intellectual Property Law at the University of Glasgow, and has been appointed as an expert to this programme "Strengthening Collective Bargaining for Audiovisual Creators" to research the content of the database on the 2019 Copyright Directive transposition of provisions on the fair remuneration in exploitation contracts of authors and performers in 10 Member States.

Since Pauline Durand-Vialle's presentation of the five Member States that had transposed the Directive by the time of the second workshop in September 2021, thirteen others had completed the process. Ula Furgal outlined the commonalities of these transpositions which mirrored the tendencies already noted of inadequate consultation and copy-and-paste transpositions.

She also detailed any variation from the Directive which had been spotted in the national transpositions - some positive, some negative.

TRANSNATIONAL ASPECTS OF COLLECTIVE BARGAINING

The meeting then heard three case studies of transposition where particular circumstances made them especially interesting for participants.

Barbara Persyn, an intellectual property lawyer working with the Flemish Belgian writers' guild and directors' guild introduced the provisions in the law which required that collective bargaining be undertaken to address the details of implementation of Chapter III of the Copyright Directive. At the time of speaking these new provisions had not resulted in active negotiation.

The presentation on Collective Agreements (Art.XI 167/5) can be accessed here¹⁸.

Kasper Halkier of Create Denmark explained the problematic situation which had developed in Denmark. On the completion of negotiations which had produced an agreement between seven unions of authors, performers and crafts with producers, the main streaming commissioners of new production had separately announced that they were delaying or halting production if it was to be based on this new collective agreement.

Negotiations had quickly produced new agreements with the streamers (except Netflix where negotiations were ongoing at the time of the meeting).

Finally the workshop heard from Guillaume Prieur, of the Société des Auteurs et Compositeurs Dramatiques (SACD) in France. Guillaume pointed out that the transposition of the Directive had taken place in France in May 2021¹⁹. In France much of the infrastructure mandated by the Directive already existed, at least to some degree, in the Intellectual Property Code. The changes brought about by the Directive strengthened certain of these aspects. French law now requires negotiation between authors and Producers, and requires that negotiations would be completed within one year after which the Minister may impose regulations. In fact, the one-year period has already gone by in respect of some of these negotiations but it was decided to continue as the negotiations were thought to be making progress.

TRANSNATIONAL ASPECTS OF COLLECTIVE BARGAINING

Since November 2022 when this discussion took place two of these agreements have been completed. They are included in the Collective Agreements database and can be read here²⁰.

At the conclusion of the case studies participants separated into breakout groups to discuss the question of how to move from being informed to negotiating. Each of the two groups pointed to the familiar problems of lack of resources both legal and organisational, but also to a commitment to try to start the process in those Member States where collective negotiations is not at present normal for authors or for freelancers.

Finally the meeting welcomed Ellen Stutzman, Deputy Director of the Writers Guild of America west, who outlined the parallel situation in the USA, where despite many legislative and structural differences writers still are trying to address the radical effect of the new distribution model that is streaming, with similar problems in respect of payment of residuals and reluctance on the part of streaming companies to share information.

¹⁸. Presentation on Collective Agreements (Art.XI 167/5) in Belgium
<https://www.authorsbargaining.eu/wp-content/uploads/2023/09/workshop-4-presentation-collective-agreements-Belgium.pdf>

¹⁹. Ordonnance n°2021-580 of 12 May 2021 transposing Article 2(6) and Articles 17 to 23 of Directive 2019/790

²⁰. Databases
<https://www.authorsbargaining.eu/#Databases>

STRENGTHENING COLLECTIVE BARGAINING FOR AUDIOVISUAL CREATORS

NEGOTIATE

Bringing the guilds, unions and professional organisations of authors together to debate and discuss organisation and education was intended to encourage and facilitate engagement with the contractual counterparts and their organisations in collective negotiation.

The measure of success of the programme will be the extent to which guilds, unions and professional organisations engage in negotiation to agree mutually beneficial terms and conditions of engagement including rates of remuneration.

In addition to the training provided in this programme some practical routes towards such collective negotiation were considered by the programme.

For example the 2019 Copyright Directive actively encourages Collective agreements as a means to address the many matters of detail in applying the requirements of the transposed Directive. How this might be done will largely be determined in practice.

Secondly the Guidelines on collective bargaining for solo self-employed makes specific reference to the Copyright Directive. How this might be applied at a national level can only be assessed by engaging in negotiation and assessing in practise what problems there might be.

The fact that some Member States already successfully address the issue of the weak negotiating position of authors, and the damage that is done to the prospect of credible career opportunities as a result, by facilitating collective agreements argues for the extension of the principle throughout the Member States.

These issues were addressed in the further meetings of the programme.



ANTICIPATING AND MANAGING CHANGE

Workshop #5, 14th December, 2022 Anticipating and managing change

34 participants attended.

The fifth workshop concentrated on existing collective agreements and existing negotiations as means to examine how possible collective bargaining might go and what the critical factors might be, by examining the current state of play with existing collective agreements.

Pauline Durand-Vialle of FERA outlined the current situation of extant collective agreements.

She also examined in some detail publicly available information on negotiations with global streamers, particularly how those negotiations, and in some instances agreements, are structured around the idea of so-called completer models.

The ensuing discussion focused on negotiations with streaming companies.

The meeting then discussed in some detail the proposed index of existing collective agreements which are to be codified in the second database (along with the database of transpositions of the 2019 Copyright Directive). Barbara Persyn who had been appointed as expert to oversee the collection and organisation of the data participated in the discussion.

Initial research by FSE and FERA indicate that there more than 70 extant agreements of various kinds and status.

These however differ so widely from one another in their aims and intentions (and in the legal background of each) that direct comparisons do not seem likely to be effective or useful.

The idea of an index listing all and making them available, both in their original language and in translation, with a broad delineation of their contents, rather than try to make detailed comparisons, seem to be a more effective idea.

Workshop #6, 22nd February, 2023 Towards Conclusions

34 participants attended.

Experts and representatives of FERA and FSE's networks heard about the progress made on the project various workstreams, and had the opportunity to comment on the project deliverables to be finalised mid 2023 such as the Database of national transpositions of 2019 Directive on Copyright in the Digital Single Market provisions on fair remuneration of authors and performers, the Index of existing collective bargaining agreements and the Toolkit for screenwriters and directors professional organisations seeking to reinforce their ability to enter into collective negotiations.

The workshop was also a platform to take stock of the lessons learnt through this programme's various workshops and webinars organised over the last two years, the benefits of an ongoing platform on the topic between screenwriters' and directors' representatives, for further exchange on priorities for a potential new edition of this joint project, as well as on activities and deliverables that would be most useful for FERA and FSE members at this stage.

Webinar #3, 14th March, 2023

2019 Copyright Directive transposition Perspectives on a new European production landscape sustainable for audiovisual authors

The Webinar was opened by Carolin Otto German screenwriters and President of FSE to an audience of 58 persons.

The main focus of the meeting was on a presentation by Gilles Fontaine Head of Department for Market Information at the European Audiovisual Observatory.

His presentation, based on the wide perspectives of research and publication of the EAO, drew broad and general analysis of the current situation of the film and television industries in Europe and broad speculation about the long-term prospects. He drew attention to the inherent structural problems of the current expansion of production volumes, in particular in the rapid growth of short-run TV series and suggested likely scenarios for the inevitable downturn.

His presentation can be found here²¹.

The second session of the webinar was chaired by Bill Anderson, a British director and chair of the board of FERA, with Jérôme Dechesne, French producers, CEPI (European Audiovisual Production) Board member and USPA Délégué général adjoint (France) as well as Marianne Wendt, German screenwriter. The panel discussed the implications of the presentation by Gilles Fontaine and tried to assess the future impact on Europe's audiovisual authors.

Closing words for the webinar came from Carolin Otto, German screenwriter and FSE president

²¹. Gilles Fontaine's presentation, *The changing landscape for film and TV production*
www.authorsbargaining.eu/wp-content/uploads/2023/09/webinar-3-presentation-EAO-Gilles-Fontaine-Chaging-landscape-for-film-and-TV-production.pdf

Dissemination Seminar, Brussels, 11th and 12th May, 2023

Taking stock - now what ?

The final event of the programme was the first and only in-person meeting. 61 persons attended the meeting which took place over two days.

Nearly transposed, but not yet working. What now for the Copyright Directive and the legislative agenda of the EU ?

Under this broad heading, and following a welcome from Bill Anderson, Chair of the Board of FERA and Carolin Otto, FSE President, Ida Dojcinovic, Legal and policy officer at DG CNECT Copyright Unit of the European Commission, made a presentation on the "2019 Directive on Copyright in the Digital Single Market transposition".

The presentation introduced new information about the Commissions next formal procedural steps including the conformity exercise, actions to be undertaken in the event that states are found not to have correctly transposed the Directive and eventual review, which should take place after the 7th June 2026.

There was a brief discussion of the presentation.

Dr. Ula Furgal, Project Expert & Lecturer in Intellectual Property and Information Law at CREATE Centre in the University of Glasgow presented our "Database on Transposition."

The database can be viewed here^{NB}.

Authors and Performers discuss future prospects

A panel discussion followed. Entitled "Authors and Performers discuss future prospects", it was co-moderated by Pauline Durand-Vialle, FERA CEO & David Kavanagh, FSE Executive Officer.

²². Database
www.authorsbargaining.eu/#Databases

The panel was comprised of representatives of other authors and performers organisations likewise effected by Chapter III of the Copyright Directive but with significantly different perspectives based on the somewhat different needs and expectation of their members. Present were :

- Marc du Moulin, Secretary General of the European Composer and Songwriter Alliance (ECSA)
- Nina George, President of the European Writers' Council (EWC)
- Dominick Luquer, General Secretary of the International Federation of Actors (FIA)

The session ended with a remote intervention from Michele Mulroney, Writers Guild of America (WGA) West board and negotiating committee member and screenwriter, on the ongoing WGA strike in the US.

EU guidelines for self-employed collective bargaining

The following day began with a presentation by Jean-François Guillaudeau, Policy Officer at DGCOMP European Competition Network and Private Enforcement Unit in the European Commission on the "European Commission guidelines for self-employed collective bargaining" which had come into force on 29th September 2022. He was able to go into additional details about the processes that would be in place for the management of the guidelines, introducing participants to the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition.

He also, in response to questions was clear about the continuing restrictions on the publication of recommended rates of remuneration outside the context of negotiations.

Oliver Roethig, UNI Europa Regional Secretary responded to the remarks by Jean-François Guillaudeau and welcomed the publication of the guidelines. He also spoke about social dialogue at EU-level for the film and television industries.

Barbara Persyn, Project expert to the programme next presented our index on Collective Bargaining agreements, which can be seen here²³.

The future, speculate for the next decade : what our contractual counterparts think ?

The final panel discussion, was moderated by Johannes Studinger, Head of UNI MEI on the title "The future, speculate for the next decade - what our contractual counterparts think?"

Participating were :

- Benoît Ginisty, Managing Director of FIAPF
- Wouter Gekiere, Head of Brussels office for the EBU
- Miruna Herovanu, Director of ACT
- Juliette Prissard, Déléguée Générale of EuroCinema

The participants expressed themselves open to the possibilities of collective bargaining, especially in the context of Chapter III of the 2019 Copyright Directive and remained committed to the ongoing series of discussions on the topic.

Conclusion

Pauline Durand-Vialle, FERA CEO and David Kavanagh, FSE Executive Office undertook some concluding remarks - remarks not only concluding this particular meeting but also the programme itself.

Despite the fact that, in large measure because of COVID-related delays the Copyright Directive, on which much of the programme is predicated, was still not yet fully transposed in all Member States had succeeded in its goal of bringing member guilds, unions and professional organisations of both FSE and FERA to the point where they were ready and able to undertake collective bargaining on behalf of their members in respect of the application of the Copyright Directive, enabled and encouraged by the Guidelines for self-employed collective bargaining.

They thanked the many people who had contributed to making the programme successful, in particular Johannes Studinger at UNI-Europa and brought the meeting to a close.

²³. Index on Collective Agreements
www.authorsbargaining.eu/#Databases

During the period of the programme staff of FSE, FERA and UNI-MEI met with representatives of their main contractual counterparts on four occasions.

Present were staff from the following organisations :

- European Broadcasting Union (EBU)
- International Federation of Film Producers Associations (FIAPF)
- European Audiovisual Production (CEPI)
- Association of Commercial Television and Video on Demand Services in Europe (ACT).

Further meetings are envisaged.



STRENGTHENING COLLECTIVE BARGAINING FOR AUDIOVISUAL CREATORS

CONCLUSIONS AND FUTURE PLANS

Six online workshops, three webinars, an in-person seminar, and all of the various important activities in parallel with these regular meetings have succeeded in our view in effecting significant change in the determination and capacity of authors guilds, unions and professional organisations to work to improve the working conditions and remuneration of their members through collective bargaining.

This new focus developed over a number of years inevitably, in an industry and a world going through dramatic changes, has to address different challenges.

Very substantial change is happening in the audio-visual industries and cultural sectors worldwide as a result of digitisation and the move of the industry to the internet.

Global streaming companies have introduced a model which is extremely disruptive and not yet proven to be sustainable in its current form. The impact of this new model has undermined existing structures in every category.

The concepts of a European audio-visual industry, of European cultural diversity are fundamentally challenged. Sustaining European talent, already in a problematic situation, potentially challenged now by more disruptive new technology in Artificial Intelligence, certainly requires a united and unified voice at national and European level.

The capacity to organise and to negotiate are essential.



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Writers Guild of America West
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FERA

Founded in 1980, the Federation of European Film Directors gathers 43 organisations from 33 countries. It speaks for approximately 20,000 European screen directors, representing their cultural, creative and economic interests at national and EU level.

<https://screendirectors.eu>

EU Transparency Register ID :
29280842236- 21



UNI MEI

UNI MEI Global Union is the division of UNI GLOBAL, representing over 400 000 workers and 170 unions and guilds in over 70 countries in the media, entertainment and arts.

www.uniglobalunion.org

EU Transparency Register ID :
605859248462-93



FSE

The Federation of Screenwriters in Europe is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 31 screenwriters' organisations from 25 European countries. It represents more than 8,000 professional screenwriters in Europe.

www.federationscreenwriters.eu

EU Transparency Register ID :
642670217507-74



This project has received the support of the European Union. The publication reflects the views of the authors only and the European Commission cannot be held responsible for any use of the information contained therein.

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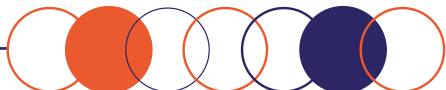
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TOOLKIT

For Directors & Screenwriters



This project has received the support
of the European Union.



June 2023