



Federation of European Film Directors

Fédération Européenne des Réalisateur de l'Audiovisuel

Newsletter October 2011

Creative Council

FERA enlists the support of distinguished colleagues

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From the production of the TV series *The Borgias* created by Neil Jordan and starring Jeremy Irons

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INTRODUCING FERA'S CREATIVE COUNCIL

MARCO BELLOCCHIO

MICHAEL HANEKE

AGNIESZKA HOLLAND

NEIL JORDAN

ALAN PARKER

We are delighted to present the first five members of our *FERA Creative Council* which comprises some of Europe's most celebrated and respected directors. Together with our distinguished FERA President István Szabó we believe they will make important contributions to the debates that are now taking place and welcome their support for the work FERA does on behalf of all European film directors.

The films made by our Creative Council members represent a tradition of excellence and innovation

in European cinema, and their achievement has earned them great acclaim and admiration throughout the world.

Even as funding is being severely cut across Europe, and politicians grapple with the opportunities and challenges that the Internet represents for cultural industries, we must continue to be innovative and bold in exploring new forms of expression, and further develop the language of the cinematographic art to reach new audiences both online and offline.

FERA'S CREATIVE COUNCIL

Marco Bellochio



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Marco Bellochio began studying philosophy in Milan but then decided to enter film school. His first film *Fists in the Pocket* (1965) was funded by family members and shot on family property. He made a big impact on radical Italian cinema in the mid-sixties. In 1968 he joined the Communist Union, and began to make politically militant cinema such as *China is Near* (1967). In 1991 he won the Silver Bear at the Berlinale for his film *The Conviction*. *The Wedding Director* (2006) and *Vincere* (2009) were both screened at the Cannes Film Festival, the latter in the main competition. Bellochio was awarded the Golden Lion for Lifetime Achievement at the 2011 Venice Film Festival.

Michael Haneke



© Kurt Krieger/Allstar

Michael Haneke studied philosophy, psychology and drama at University of Vienna. After graduation he worked as a film critic and then as a television editor and dramaturg. He made his feature film debut *The Seventh Continent* in 1989. Three years later the controversial *Benny's Video* put Haneke's name on the map. *The Piano Teacher* won the Grand Prize, Best Actor and Best Actress awards at the 2001 Cannes Film Festival. *The White Ribbon* won the Palme d'Or at the 2009 Cannes Film Festival.

Agnieszka Holland



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Agnieszka Holland studied film directing at FAMU in Prague, (then) Czechoslovakia. She began her film career in her native Poland working with Krzysztof Zanussi and Andrzej Wajda. Her first major film *Provincial Actors* won the International Critics Prize at the 1980 Cannes Film Festival. Holland is a two-time Oscar nominee: Best Foreign Language Film in 1986 for *Angry Harvest*, and Best Adapted Screenplay for *Europa, Europa* in 1992. Holland has recently directed high-end television series in the US, including episodes of *The Wire*, *Cold Case*, *Treme* and *The Killing*. Her latest feature film *In Darkness* is Poland's 2012 Oscar Candidate.

Neil Jordan



© The Independent/David Conachy

Neil Jordan studied Irish history and English literature University College Dublin. He wrote and directed his first feature film *Angel* in 1982. In 1992 Jordan wrote and directed *The Crying Game* which was nominated for six Academy Awards, and won the Oscar for Best Original Screenplay. *Michael Collins* (1996), won a Golden Lion for best film at the Venice Film Festival. *The Butcher Boy* (1997) won Jordan a Silver Bear award for Best Director at the Berlin Film Festival. Jordan has written 6 novels. Jordan is also the creator of the recent TV series success *The Borgias*.

Sir Alan Parker



© Alan Parker

Sir Alan Parker Parker started out as a copywriter for advertising agencies in the 1960s and 1970s and later began to write his own television commercial scripts. He is the director of *Midnight Express* (6 Oscar nominations), *Fame* (6 Oscar nominations), *Pink Floyd – the Wall*, *Birdy* (Jury Grand Prize at the 1985 Cannes Film Festival), *Angel Heart*, *Mississippi Burning* (6 Oscar nominations), *The Commitments* and *Evita* (5 Oscar nominations), to name a few. He was a founding member of Directors Guild of Great Britain, and founding Chairman of the UK Film Council.

FERA publishes Directors' Contract Guidelines

FERA unveiled a set of Directors' Contract Guidelines at its annual General Assembly in Croatia at the end of September. With English, Hungarian, Romanian and Italian versions available, and more translations due by December, it highlights a director's creative and economic rights, and the problem of 'buyout contracts' that oblige many European directors to give away their secondary (re-use) rights to financiers without any royalty payments.

FERA will be seeking European legislation to end buyouts through an enforceable, unwaivable right to fair payment for any re-use of a director's work.

Download the FERA Directors' Contract Guidelines [HERE](#)



FERA replies to State Aid Consultation

In our reply to the DG Competition Issues Paper, FERA agrees that it is appropriate to extend the scope of the Cinema Communication to include all aspects from story concept to delivery to audience. Some of these activities may require higher intensity, such as scriptwriting and development.

The extent to which audiences can access European audiovisual works will affect their view of the success of public support schemes. Access is partly a question of cinema programming, and partly of the visibility given to European works by a broadcaster, online service or a film festival. State aid should be targeted at all these players and include obligations to promote European audiovisual works.

FERA also welcomes a higher overall intensity of the aid for co-productions of 60 % and encourages extending tax incentives currently available to foreign productions to national productions.

Download the full FERA State Aid Reply [HERE](#)

FERA part of AV sector joint response to proposal for Orphan Works Directive

10 organisations in the AV sector have signed a joint Position Paper on the proposed Orphan Works Directive.

The audiovisual sector has long questioned the scope of the largely undocumented problem of orphan works in our sector and therefore oppose the inclusion of cinematographic and audiovisual works within the scope of the Proposal. If audiovisual works are to be included in the Proposal, substantial modifications are required to ensure proportionality and legal certainty in the application of the Directive to the specific and unique characteristics of audiovisual content.

Audiovisual works such as films and TV programmes are made to be seen by the widest possible audience. In the case of orphan works, we cannot know what their authors and other

rightholders would have wanted for their works, but their colleagues in this sector support balanced solutions that can help facilitate the opportunity for contemporary audiences to enjoy the works concerned.

But as it stands now the Proposal prescribes an insufficient level of harmonization of the criteria constituting diligent search at the EU level.

It also includes beneficiaries that are inconsistent with its own scope.

The right to authorise or prohibit the use of one's works and the principle that remuneration is due are two of the main pillars of copyright and must be recognized by the Proposal in a manner consistent with the EU copyright *acquis*.

Download the AV Position Paper [HERE](#)



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Iranian film director Jafar Panahi prison sentence upheld by appeals court in Tehran

A court in Tehran has rejected **Jafar Panahi's** attempt to appeal his prison sentence for allegedly making propaganda films against the Iranian government. The court confirmed the original sentence handed Panahi in December last year: a six-year prison term and a 20-year-ban from making films. But Panahi has not given up yet. The director's lawyer told Iranian Student News Agency *Isna* he would appeal the ruling to Iran's supreme court. Panahi secretly shot a documentary about his life under house arrest with **Mojtaba Mirtahmasb**. *This Is Not a Film*, shot on an iPhone and smuggled out of the country in a cake, premiered at the Cannes Film Festival this year.

Shortly before the film's premiere in Toronto last month, Mirtahmasb, along with five other Iranian filmmakers, was arrested and charged with espionage for working for the BBC. Tehran recently released directors **Naser Safarian** and **Mohsen Shahnazdar** – but the fate of Mirtahmasb and the three others – **Katayoon Shahabi**, **Hadi Afarideh** and **Shahnama Bazdar** – remains unclear.

Source: Hollywood Reporter (17.10.11)

20% budget increase for MEDIA Programme

On October 21 Philippe Brunet, chef de cabinet of Culture Commissioner Vassiliou, announced that the Commission proposes a budget increase for the MEDIA Programme of 20%, from €755 to €900 millions, subject to approval by the European Parliament and the European Council on November 23.

A total budget of €1.8 billion for the new Creative Europe programme 2014-2020 was proposed by Budget Commissioner Lewandowski last July. 50% of this will go to MEDIA. In addition, the audiovisual sector will benefit from a proposed guarantee fund for cultural and creative industries of €180 millions – the third pillar in the Creative Europe programme.

FERA has been a strong advocate for the MEDIA Programme, and met with Commissioner Lewandowski about its future budget last June. We are pleased to see our efforts succeed.

FERA CEO attends Content Protection meeting in Paris

On October 19 Sacem (Société des Auteurs Compositeurs et Editeurs de Musique) in partnership with FACF (Franco American Cultural Fund) and Gesac (Groupement Européen des Sociétés d'Auteurs) organized a "Cultural Content Protection Advocacy Brainstorming Day" designed to foster an international open discussion between creators, industry representatives and policy makers, on how best to convey the importance of protecting cultural content in the digital age and enable direct and in-depth talks between French, American and European participants. Directors Guild of America (DGA) President Taylor Hackford spoke about artists' need to make a living from their work. DGA National Executive Director Jay Roth outlined recent developments in the US, while MEP Marielle Gallo (JURI) described the challenges of building consensus on IP enforcement issues in the European Parliament.

UK ISP BT ordered to block illegal website within 14 days

On October 26 the UK High Court agreed the terms of the Order that requires BT to block illegal website Newzbin2. This is the first time a website has been blocked by an ISP in the UK under copyright law. The ruling places responsibility directly on BT not only to block the site but also to finance the implementation. Newzbin has profited to the tune of over £1 million per year from other people's work.

In July, Arnold J. of the High Court of Justice in London handed down his landmark judgment. It reflects a clear recognition that under the existing law, courts can issue orders to prevent illegal activity online and that ISPs are best placed to take that action. This judgment set a clear legal precedent which will enable content creators and distributors to secure greater cooperation from ISPs to address content theft on the internet and in particular to deal with websites that are focused on wholesale copyright theft.



FERA Chairman Piers Haggard and Bond Director Michael Apted

© Rune Hellestad/DGA

Directing 007

Directors Guild of America (DGA) celebrates 75th anniversary in London

The DGA is celebrating its 75th anniversary throughout 2011 with a series of events in the United States and abroad. The anniversary theme is "Game Changers" – directors and members of the directorial team whose impact on film and television forever changed the game and influenced generations of filmmakers that followed.

FERA chairman Piers Haggard (himself a DGA member) attended the London anniversary event "Directing 007" on September 20, where a handful of Bond directors including Martin Campbell (*Casino Royale*), John Glen (*A View to a Kill*), Roger Spottiswoode (*Tomorrow Never Dies*) and moderator Michael Apted (*The World is Not Enough*) gathered for a special Q&A discussion on the challenging and thrilling ride of directing "Bond. James Bond" - the world's most popular spy.

When a film about a suave secret agent hit the screens in 1962, it single-handedly invented the spy thriller, created a pop culture phenomenon and changed the game for the British film industry. Nearly 50 years later, James Bond remains the most enduring and successful movie franchise in history, and it continues to thrill audiences on an unprecedented global scale. The iconic, stylish super-agent with a flair for fast cars, beautiful women and martinis "shaken, not stirred" has become a deeply-rooted cultural fixture, due in no small part to the dynamic vision of the franchise's many directors. Over the span of some 22 films, they have continued to reinvent and rejuvenate the franchise with consistently bankable, big-budget features; their off-camera journey often just as gripping as the on-camera action.

FERA Chairman speaks at online debate in Rome

On October 17 FERA member 100 autori hosted a debate on "Authors on the Internet" gathering representatives from the Italian film industry, ISPs and regulators, MEPs Luigi Berlinguer (JURI) and Silvia Costa (CULT), and European colleagues from SACD, and SAA as well as FERA Executive Committee Chairman Piers Haggard and Chief Executive Elisabeth Sjaastad. In his speech, Haggard addressed the question of how to get more growth in the sector, suggesting that FERA's forthcoming proposal for National One Stop Shops to clear rights (based on the Dutch PAM model) might perhaps offer something to a nation such as Italy that is going through difficult times. A spirit of national effort and cohesion can sometimes reinvigorate an industry and a culture, particularly in the face of global competition.



FERA CEO
Elisabeth O. Sjaastad

Rubik's Cube: Defragging the digital single market

Last week even UK Culture Minister Ed Vaizey preached the EU gospel(!): "A single digital market across the EU is a massive opportunity. It has the potential to be one of the key drivers for growth across the continent and would help create the new jobs we need. That is why we must act now to deliver a digital single market."

He then went on to target copyright licensing, calling for new rules to abolish territoriality and regulations to help online companies negotiate Europe-wide deals with rights holders - something many companies have previously not been interested in buying - for instance when the Premier League last put their media rights on the market and received no bids for the pan-European package.

Lately I have been thinking about how best to describe this relentless political effort to create the so-called digital single market to somebody who isn't familiar with Brussels lingo. What is the EU trying to achieve? Why? And who stands to benefit?

At a EU Presidency conference in Budapest earlier this year, all the participants received a Rubik's Cube as a gift. I did not know that Ernő Rubik was a Hungarian sculptor and professor of architecture and that his invention is the world's best-selling toy (350 million cubes sold between 1980 and 2009).

According to Wikipedia it is often reported that Rubik built the cube to help his students at the Academy of

Applied Arts and Crafts understand 3D objects, but his actual purpose was to solve the structural problem of moving the parts independently without the entire mechanism falling apart. He didn't realize that he had created a puzzle until the first time he scrambled it.

The Hungarian EU Presidency gift is actually a very good illustration of what the European Commission sees as a scrambled European market, and itches to rearrange the 26 fragments (i.e. the 27 member states) into harmonized blocks of solid colours. The desired effect is "smart, sustainable and inclusive growth" – the mantra of the EU 2020 Strategy.

But Rubik did not invent a Magic Cube (as it was actually first called) and when you try to solve it you manage some parts and mess up others...

These days the audiovisual sector is engaged in public consultations on major issues such as enforcement, state aid rules, digitisation of film archives and online distribution.

Many film professionals are eager to take advantage of the opportunities that the Internet offers. But they also fear that upcoming EU decisions in our field could prove anything but smart and sustainable, and that the real beneficiaries of the economic growth our works actually help drive may not even include us.

A media analyst recently called our predicament a tale of two value chains: Content providers vs. Access providers.

In the online environment the access providers have been playing hardball, using (often illegally procured) professional creative content as collateral to jumpstart their service or sell hardware, and with scant regard for the resulting value depreciation of our inherently high-risk and high-cost works.

And the fear does not exactly subside when witnessing what to us seems like kafkaesque fragmentation within the European institutions themselves:

Internal Market Commissioner Barnier launched an IPR Strategy on May 24 to "serve as a blueprint for a series of future IPR-initiatives aimed at fostering the EU's economic growth, cultural diversity and international competitiveness as well as providing consumers with a wide choice of first class products and services."

The first initiative, the "Proposal for a Directive on certain permitted uses of orphan works" was tabled the very same day, and initially aimed at dealing exclusively with the alleged massive problem of orphan works in the print sector. Now, as the Directive makes its way through the European Parliament and Council, it is turning into an inglorious bastard!

EDITORIAL

With audiovisual and audio works thrown in at the last minute, and both public service broadcasters and commercial broadcasters added to the list of beneficiaries, it now far exceeds its original scope and public interest purpose, and seems to have become a surrogate vehicle for mass digitisation.

DG Internal Market (MARKT) is also preparing legislation to create one-stop shops for pan-European rights clearance (especially for music) to remove the perceived barriers to the single market and make Europe more competitive vis a vis the US. They now acknowledge the 2005 blunder when the **European Court of Justice (ECJ)** ruling in the CISAC case actually dismantled what was then a well functioning one-stop shop.

The recent ECJ ruling in the Premier League case, in which the Court has declared the selling of territorial rights to be in violation of the freedom to provide services, could turn out to be the same mistake all over again. SKY may become the pan-European broadcaster of English football and everybody will have to watch the same generic programme because their national broadcasters can no longer buy the rights limited to the territory that happens to be their chosen market. But rest assured, should SKY turn into such a monopolist, the ECJ will of course cut it down to size again in a few years.

Competition Commissioner Almunia's DG does not seem to temper their 2005 anti-trust concerns when it comes to collective management and takes every opportunity to admonish rightsholders that their "middle men" must respect competition law. So will they even allow DG Markt's much desired one-stop-shops, which by nature will have certain monopolistic traits? And will tariffs for creators end up being set by a tribunal when the likes of Apple,

Nokia and Google see fit to accuse them of being price fixing cartels?

DG Competition is incidentally investigating Google for abuse of dominant market position. With market shares around 95% in many European countries Google is in effect a European search monopolist.

DG Competition also happens to be responsible for revising the Cinema Communication on State Aid rules in 2012, and have, in the first consultation, put forward ideas such as requiring publicly funded films to be released under Creative Commons licenses to make them available online by force. This pretty much translates into an EU expropriation of intellectual property, that would likely push our industry from the edge of market failure into the abyss of market collapse.

Digital Agenda Commissioner Kroes dreams of rolling out a fibre optic broadband network filled with Europe's cultural heritage. Her DG Information Society fully finances Europeana, a webportal for public institutions aimed at becoming a European cultural Google. Last Friday the European Commission adopted Kroes' Recommendation to the member states on how to achieve this: "Europe has probably the world's greatest cultural heritage. It cannot afford to miss the opportunities offered by digitisation and hence face cultural decline. Digitisation brings culture into people's homes and is a valuable resource for education, tourism, games, animation and the whole creative industry. Investing in digitisation will create new companies and generate new jobs."

So far the only jobs her policy seems to generate are in telecoms whom the EU will support to the tune of

€9.2 billion, in Europeana, which intends to hire 2 "public interest" lobbyists in Brussels to "tell the other side of the story" - as opposed to the one told by creators and copyright owners.

And not to forget! There will be more jobs at Google, because in its public-private partnerships with under-financed and understaffed European public institutions, it will get 7 years of "preferential commercial use" of our cultural heritage masterpieces in return for their digitisation services.

In Rubik's cubists' parlance, a memorised sequence of moves that has a desired effect on the cube is called an algorithm, meaning a list of well-defined instructions from a given initial state, through well-defined successive states, to a desired end-state. Each method of solving Rubik's Cube employs its own set of algorithms. And the closer you get to the solution, the more specific (and usually more complicated) algorithms are needed to avoid fatal mistakes.

While we applaud the efforts of **Culture Commissioner Vassiliou** to promote a Creative Europe, and **Budget Commissioner Lewandowski's** will to propose a budget increase for culture and the MEDIA Programme in a time of financial crisis, we sincerely hope that other EU officials will also consider supporting our specific place in the single market, by applying more appropriate algorithms than the one we know as Google.

Elisabeth O. Sjaastad

ALAN PARKER CARTOON



"OK, guys this is the one. It's affordable, it's castable, it's commercial and the only slight downside is that it's total crap."

AGENDA



FERA

November 10 - 12

Culture Watch Europe Thinktank
Bled, Slovenia

November 18

Deadline for replying to EC Green
Paper on Online Distribution of
Audiovisual Works

November 25

Meeting FERA member LARS in
Luxembourg

November 29

SAA Conference on Audiovisual
Authors' Remuneration

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