



# Federation of European Film Directors

Fédération Européenne des Réalistes de l'Audiovisuel

Newsletter March 2013

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Alan Parker has been elected as FERA President

© Alan Parker

## New FERA President: ALAN PARKER

FERA is delighted to announce that Alan Parker has been elected as the new President of FERA. We are honoured to have such a respected colleague take on an active role defending culture and directors' rights in Europe.

Director, writer and producer Alan Parker was born in London in 1944. He began his career in advertising as a copywriter for advertising agencies in the 1960s and 1970s and later began to write his own television commercial scripts. In 1970 he received the D&AD Gold President's Award. 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. His feature films have won nineteen BAFTA awards, ten Golden Globes and ten Oscars.

Parker is also a novelist, the author of the best-selling book written from his own screenplay of *Bugsy Malone* and an accomplished cartoonist.

He was founding chairman of the UK Film Council, a position he held for five years, and prior to that was chairman of the British Film Institute. Sir Alan received the CBE in 1995 and a knighthood in 2002. He is also an Officier Des Arts et Lettres (France).

**"It's a great privilege and pleasure to be asked to become President of FERA. The rights of directors must be constantly protected and fought for because they are at the very heart of a healthy, creative and prosperous European cinema."**

In February this year Alan Parker was presented with the British Academy's highest honour, the BAFTA Fellowship in recognition of his outstanding career.

Watch it on Youtube [HERE](#)

We hope that Sir Alan will be free to meet members at the General Assembly in London in September.

For more on Alan Parker see [www.alanparker.com/](http://www.alanparker.com/)



Commissioners Vassiliou, Barnier and Kroes were all present for the launch event

## Licenses for Europe

On February the 4th the European Commission launched “Licenses for Europe”, a stakeholder dialogue aimed at the delivering of practical solutions within the current European copyright legislative framework and to facilitate the obtainment of licenses on protected material before the end of 2013.

The participants in the stakeholder dialogue – representatives of right holders, licensing bodies, users of protected content and Internet end-users – will discuss four main themes: 1. To promote the cross-border access to content, by identifying the current restrictions users usually run into, facilitating licenses and simplifying users’ access to digital content; 2. To simplify users’ access to protected material, to foster transparency in the use of that material in user-generated content and to improve awareness about legal and illicit uses of protected materials;

3. To foster online discoverability and the availability of audiovisual works, especially of those which are out of distribution, in order to promote access to cultural heritage; 4. To identify in which extent access to Text and Data Mining is needed in the EU for scientific purposes and to make technology platforms adequate for this aim.

During the launch of “Licenses for Europe”, in his speech Commissioner Barnier (Internal Market and Services) underlined that, though Internet is a very important resource to promote cultural knowledge and exchange by making content available at any time and in any place, “it also presents a challenge for those who create such content in their work, or who make it possible and accessible by means of their investments. The challenge is to establish new models of use and distribution which allow the creativity, efforts made and risks taken to be appropriately rewarded”. [HERE](#)

Commissioner Kroes (Digital Agenda) said that “the Digital Economy is [...] growing seven times faster than GDP. Plus it has a huge job potential. We can't ignore this in times of crisis and high youth unemployment. I want Europe, and every European, to benefit fully from this growth”. In the final speech by Commissioner Vassiliou (Education, Culture, Multilingualism and Youth) she stressed the importance of copyright in promoting high quality cultural content and assuring fair remuneration to contents’ creators, and said that the expectations for “Licenses for Europe” are “workable solutions to address the most immediate concerns and unlock the innovative potential of the new digital environment”.

FERA members and staff are participating in 3 of the 4 working groups that are meeting once a month until November, when a report will be presented.

Read more about this initiative

## MEDIA Programme: 3 projects selected for pilot scheme on release windows

The Preparatory Action on "Circulation of audiovisual works in the digital era" was adopted by the European Parliament on 26 October 2011, with a 2 million € budget. The purpose of the preparatory action is to test new strategies for the distribution of European films. In particular, "Circulation of audiovisual works in the digital era" aims at experimenting with the possibility to release films simultaneously or quasi-simultaneously in different Member States and using several distribution platforms.

Among the Groups/Companies that applied, the three projects that have been selected are **SPEED BUNCH**, coordinated by Wild Bunch and in partnership with Wild Bunch Distribution (FR), Wild Side (FR), Filmonline (FR), Elle Driver (FR), Wild Bunch Germany (DE), BIM (IT) and Vertigo (SP); **TIDE**, coordinated by ARP and in partnership with Europa Distribution (25 distributors from 17 European countries), Fandango (IT), Urban Distribution (FR), WIDE (FR), Goldcrest (UK) and Under the Milky Way (FR); **EDAD**, coordinated by Artificial Eye and in partnership with Gutek Films (PL), REZO Films (FR), Match Factory (DE), Golem (SP), Cinéart (BENELUX).

The selection was based on several criteria: number, diversity and complementary nature of the films and territories covered; suitability of the marketing strategy; quality of the applicant consortium; quality of the project and consortium management plan; quality of the methodology proposed for assembling, analysing and assessing the findings; cost/benefit ratio of the proposed action; innovativeness of the project.

## Letter from EFADs on taxation of Internet Service Providers (ISPs)

A new initiative has been launched by France's CNC and the French Community's Centre du Cinéma et de l'Audiovisuel in Belgium with the support of a further 18 national film agencies collected within the EFADs (European Film Agency Directors) to demand that Internet service providers (ISPs) be liable to parafiscal taxes aimed at financing European audiovisual works.

In the letter addressed to EC Commissioners Vassiliou, Kroes and Almunia and President Barroso, the agencies observe that "an increasing number of audiovisual players do not contribute to financing audiovisual creation, even though they derive substantial added-value and revenues from the publishing or distribution of audiovisual works."

"Indeed, these new market players [such as ISPs] are not submitted to parafiscal taxation and hardly submitted to - if not exempt from - legal obligation pertaining to promotion of and investment in European creation."

The letter suggested that, "by potentially opposing a proportionate taxation of ISPs to support European audiovisual creation, the European Commission would hamper the adaptation of audiovisual public support systems to the reality of the digital world."

The European Commission (EC) has previously blocked an attempt to bring telecommunications companies into the circle of contributors to the FFA, the German Federal Film Board, but is now under pressure to review its position.

## FERA publishes position paper on CMO Directive

On February 25 and 26, FERA Chief Executive Elisabeth Sjaastad presented the FERA position paper on the Collective Rights Management Directive to MEPs Marielle Gallo, the Rapporteur, and Helga Trüpel, shadow Rapporteur for the Greens.

FERA has always taken a close interest in the way its members are represented by their CMOs, often speaking up for directors when they feel badly treated, either directly with the society or via SAA. We were appalled by the corruption revealed at SGAE in Spain, and strongly support legislation for greater transparency, accountability and a clear division of responsibilities between CEO and Board. FERA is against official monopolies, and also against voting being based solely on income. And we have proposed a measure which might make it easier for members to take their data with them if, as a last resort, they decide to leave their CMO.

Download the FERA Position Paper [HERE](#)

## Cinema Communication: A third consultation

Screen Daily reports that the European Commission is planning a 3<sup>rd</sup> consultation on the Cinema Communication on film state aid rules, which has been delayed.

The consultation is supposed to start at the end of March and last for two months. It now looks as if the new Communication will be adopted in the 3<sup>rd</sup> quarter of this year. Until then the current rules still apply.

### German film directors start negotiations with broadcasters

In 2002 the German Copyright Law was amended with the purpose of strengthening the contractual position of authors and performers by providing that copyright “serves to secure an equitable remuneration for utilization of his work”. Basically, the amendment consisted in giving creators the right to negotiate their remuneration.

The amendment was considered necessary because of the increasing awareness of the fact that simple granting more protection rights to creators was not enough to suit their actual needs. However, the amendment doesn't specify whom authors and performers have the right to negotiate with.

This lack of specification had been an excuse for public German broadcaster ZDF not to implement the Authors Contract Law. ZDF does not consider itself the “primary user” of broadcasted films and programs, and therefore not responsible for authors' equitable remuneration.

In 2010, BVR members decided to take ZDF to court. The litigation work was conducted by their legal advisor Florian Prugger.

According to a decision of the district court of Munich from November 2012 the German public broadcaster ZDF was compelled to negotiate rules for a reasonable remuneration (fair payment) of film directors with the German Director's Guild (BVR) under the German Copyright Act.

After having a lodged appeal while the German Director's Guild filed a complaint against several newly implemented rules in ZDF's General Conditions, ZDF finally agreed to negotiate with the German Director's Guild rules for adequate remuneration (fair payment) and agreed to a “cease and desist” of certain elements in ZDF's General Rules.

A first round of negotiations started during the Berlinale last month. If the parties do not finalize an agreement by the end of October 2013, an automatic arbitration process is implemented.

Due to several recent German court decisions compelling private broadcasters to pay adequate remuneration to authors, the private broadcasters Sat.1 and Pro7 also agreed to negotiate rules for adequate remuneration under the German Copyright Act of 2002 with the German Director's Guild.

### FERA and FIAPF talks on fair remuneration

During the Berlinale delegations of members from FIAPF (the International Federation of Film Producer Associations) and FERA met to discuss issues of common interest at the European level, as well as future collaboration on setting up a joint working party for mapping best practices in contractual matters and different modes of fair remuneration of directors.

### Changes to German VOD regulations

Germany is now ready to change its VOD regulations. The window for VoD release will be reduced from nine months to six - in line with the release of films on DVD.

In addition, the obligation to pay a film levy to the German Federal Film Board (FFA) will be extended from VoD services in Germany to include those operating outside of the country. The levy anticipated from the video and VoD sectors would total around €15m per year.

Speaking to ScreenDaily, Patrick Knippel, managing director of German VoD service Nowtilus, said that his company supported the proposed change, which would be the only case for the time being of how VoD exploitation can be a source of finance for theatrical movies.

“At the same time, he argued that the new Film Law “should make sure that Google, iTunes, Netflix and the like will also pay this levy, and not only German providers such as Videoload, Maxdome and Media Markt”.

Knippel added that “it should not be a deal breaker for further innovation”, meaning that payment of the film levy should only kick in after a certain revenue threshold has been reached.

Moreover, payment of this levy should in return mean that VoD exploitation can be supported by the FFA.



### Italy passes decree on film financing and promotion

The decree setting investment and screening shares of Italian and European films, has finally been agreed between Government, Parliament and the social partners. The decree will be fully operational in 2015, with an adjustment of 15% for the end of this year, and 30% for the next, with a share of 3.2 % of revenues from television networks and 75% of domestic films.

All the forces of Italian cinema have mobilized for years to get this decree, which will bring significant investments, and will also for the first time require a contribution towards production from Sky TV. Italian television producers decided not to be a part of the agreement, and complain that the focus is "too much cinema".

Other developments in Italy: The arbitration between SIAE and Rai for the definition of fair compensation is getting closer to a solution. It will be an important achievement for the authors seeking a remuneration adjustment and the introduction of adequate shares for digital channels.

In connection with the election for the New Parliament, FERA member 100autori, ANICA, (producers association), Agis (cinema operators), Association of Film Commissions presented a common document about new legislation in the audiovisual sector. This is the first time the Italian film sector comes together in such a way.

### Luxembourg Film Academy established

On December 12<sup>th</sup>, the Luxembourg associations of producers (Ulpa), technicians (Alta), actors (Actors.lu) and filmmakers and scriptwriters (LARS) founded "D'Filmakademie", the Luxembourg Film Academy.

As the Luxembourg equivalent of the French *Académie des Césars*, the main task of the newborn film academy will concern the organization of the Luxembourg film prize, which will be awarded every two years (the next edition will be in 2014). Not only its members, but also other people associated with cinema will be involved in the choice of the best films in several categories.

The eight administrators elected Samsa Film producer Claude Waringo as the president, actor Jules Werner as secretary and editor Thierry Faber as treasurer of the "Filmakademie".

The film academy will also actively promote Luxembourg's film industry, both by improving its diffusion and popularity and by working as the consultative body of all the representatives involved in filmmaking.

### Former FERA President Liv Ullmann to direct Strindberg's *Miss Julie*

Liv Ullmann will shortly start principal photography for her adaption of Swedish playwright August Strindberg's *Miss Julie*, with a US - UK cast of Jessica Chastain, Colin Farrell and Samantha Morton.

### No Hungarian Film Week

The Film Week, the most meaningful celebration of the Hungarian cinema established in 1965 that usually takes place during the first week of February, didn't take place this year. The great enthusiasm that all the representatives of Hungarian cinema feel for their jobs had to face the fact that the deep crisis has led to the total block of film production, a block that has not only a deep cultural meaning, but also a great impact on Hungarian economy, as it has caused a serious problem of unemployment and tough living conditions for film workers.

This is the reason why the Hungarian Filmmakers' Association decided to convert the traditional Film Week into an extraordinary and public General Assembly Meeting this year.

The meeting, which was held on February 2<sup>nd</sup>, was a great opportunity for all the representatives of the film sector to discuss the standstill that Hungarian film production has been in for the past two years, and to propose new ideas for the future.

Since then, FERA President Sir Alan Parker paid a flying visit to Budapest on March 1st at the invitation of Hungarian Film Commissioner Andy Vajna, who produced 2 films of his, "Evita" and "Angel Heart". Parker spent two days in discussion with 100 Hungarian filmmakers. Fuller report in the next Newsletter.



Director Michael Caton Jones on the set of "World Without End"

## FERA Campaign Film Competition!

### PROMOTE EUROPEAN CINEMA and WIN A PRIZE

At the Copenhagen Assembly FERA decided to take some direct action on the state of European film instead of merely complaining. A FERA promotional film was proposed, and we have been discussing script ideas for a UK-produced short. Now the EC has decided to change course, and open up the process to members. Film makers should be making films!

We hereby invite every FERA member association to make a short film (90"-180") that will make the case for European cinema, its richness and importance. Films will be screened at the General Assembly in London in late September. They will be judged by delegates, and a small prize will be awarded to the winner.

For more information on the rules of entry, please contact the FERA office.

### Vitorini recommendations Private Copying Levies

On 31<sup>st</sup> January António Vitorino, the EU Mediator in the dialogue on private copying levies, presented his Recommendations to Commissioner Barnier following a mediation process with stakeholders that was launched in May, 2011. Though the debate had been complex because of the different opinions and solutions proposed by the stakeholders, Vitorino's recommendations, which were originally supposed to be presented in autumn 2012, focus on two main action plans aimed at making private copying levies better adapted to the digital age. The economic significance of private copying levies is huge for creators, in 2010 alone the overall amount collected in the EU was above € 600 million.

The first part of the recommendations is related to new business models. We are now living in a transitional phase where we see new services based on access not ownership. Remuneration for the rightholders is shifting towards licensing agreements. But Vitorino does not believe that any of the currently proposed alternatives justifies the "phasing-out" of hardware-based levies. The link between the private copy beneficiaries causing the "harm" and those liable for financing fair compensation "should not be severed".

The second part of the recommendation is focused on the levy systems themselves and is aimed at their harmonization with the Digital Single Market. The Mediator recommends that:

- Levies be collected in the Member state where the final consumer lives in cases of cross-border transactions;
- Levies be paid at the level of retailers, provided that manufacturers and importers inform collecting societies about the transactions of the goods subject to a levy;
- More emphasis be given to the operator levies than on hardware-based levies in the field of reprography;
- Levies be made visible for the end-users;
- More coherence and transparency in the process of setting levies must be ensured.

The complete text of the Vitorino recommendations can be downloaded [HERE](#)

Read about FERAs view on private copying levies in the editorial "The Trillion Euro Question".

### Questionnaire on Access to Finance

Now, more than ever, Europe intends to invest funds in the cultural sector as a fruitful mean for economic and social growth for all European citizens.

Access to finance has often been a big barrier for many organizations dealing with culture – such as the audiovisual sector, visual arts, music and so on – but there is a lack of data concerning their actual financing needs.

This is the reason why the European Commission has launched a survey targeting all organizations working in cultural and creative sectors in order to have a clear idea of their needs and base next policy steps on concrete data.

We encourage FERA members to circulate this survey to all individual members, so that they can take part in it.

The survey is available in English, French and German on the following website: [www.eu-for-creativity.eu](http://www.eu-for-creativity.eu)

### Public Consultation on Enforcement

The European Commission has launched a public consultation in the form of an online survey about the civil enforcement of property rights (IPR). Both private and public stakeholder affected by IPR are asked to give information about the efficiency of the proceedings concerning the enforcement of property rights through several means, such as contracts or litigation. For those FERA members who wish to submit their views, the questionnaire is available in English, French and German. Responses can be sent in any of the 23 official languages of the EU by **30 March 2013**.

The survey can be found [HERE](#)



# The Trillion Euro Question

In every copyright debate in Brussels, however fierce, there always seems to be a touching consensus that legislation needs to be fair and balanced, and that artists should be paid. But even this basic principle is put to the test when push comes to shove.

One of the most concrete examples is the ongoing battle over private copying levies, which includes several cases pending before the European Court of Justice, as well as a possible review of the legal framework itself.

Private copying levies are hugely important to creators. In 2010 alone, the overall amount collected in the EU was € 648 million. And this money helps fund future creative work - and pay the rent.

The latest development on this issue came only a few weeks ago when mediator António Vitorino finally submitted his recommendations to Internal Market Commissioner Michel Barnier, after a six month delay.

The objective of the mediation process was, according to the European Commission, "to identify ways to tackle the discrepancies characterizing the levy systems as set out at national level, as well as to assess the functioning and the scope of the private copying in today's fast evolving digital environment. The results of the mediation will be used to make recommendations for legislative action at EU level".

It was Directive 29/2001/EC on copyright and related rights in the information society (known in Brussels lingo as simply INFOSOC) that introduced the principle that EU Member States may authorize individuals to make copies of copyrighted audio, visual and audio-visual works, for private use, without the need to request authorization to right holders, subject to the general condition that right holders receive a "fair compensation" for such use of their works.

European blank tape levies date back to the 1960s and 70s. Germany was the first country to also levy hardware in 1965. The INFOSOC Directive simply sought to harmonize the private copy exception with a condition that fair compensation must be paid.

And why is that?

The advent of private copying technology also established a new market for the exploitation of copyrighted works. This equipment is the factual precondition for people to make private copies. The main beneficiaries of this market are the manufacturers of recording equipment and of blank media (although now in sharp decline). Hardware and storage media levies give creators their fair share of this market.

And what a lucrative market it has turned out to be. These manufacturers can boast combined revenues of 1 *trillion* euros.



## EDITORIAL

The question thus arises: What share is a fair compensation to creators? Today it amounts to a meagre 0.06 %.

In a hearing at the European Parliament in June of last year - in the middle of the mediation process - Panasonic's director for European and International Affairs, Chris Finch, explained that the levy system is "burdensome to business" and served up an à la carte menu for alternative sources for that fair compensation: Licensing, several publicly-funded options such as state budgets, broadcast fees, research and development (R&D) investment, dedicated lotteries, or even EU funding. Anyone but Panasonic - a Fortune 500 company with a global turnover of € 63 billion. Now there's an "idea for life".

Out of all of these suggestions, which seem completely out of touch with reality in these times of financial crises, the most ill advised is to move this charge onto state budgets. In the two countries that have done so, this has proved a very bad deal for creators.

My own country Norway, was the first to abandon blank tape levies as of 1 December 2000. A two-pronged compensation scheme was introduced: a collective fund of € 4,34 mill. to support new projects selected by committees of peers, and an individual compensation based on statistically documented use.

Every month 2422 persons are interviewed about their (legal and illegal) copying. The results are proportionally weighted against the population (5 millions) and the figures are representative for the population above 15 years of age.

The total commercial value of the private copying for the year 2010 was € 266 mill.

In the state budget for 2013 the government has allocated a compensation of € 5.84 mill. Only approx. 2,2 % of the actual value of the documented copying in 2010. This represents 1,17 € per capita, lousy compared to 2,99 € from levies in France.

Obviously the Norwegian solution is far from satisfactory, and should not be an example to follow. Sadly Spain did just that in 2012, and the result is even worse: a dramatic drop from €115 mill. collected from ICT industries in 2011 to only € 5 mill. allocated in the state budget for 2012. If Spain was to have the same compensation as Norway in relation to the population (46 millions) the allocation should have been approx. € 53,73 mil. And the sales price of devices that are no longer levied have not gone down – not a cent.

When the Netherlands considered doing away with their levy system in 2011, Commissioner Barnier stated that if a Member State abolishes the private copying levy, alternatives to guarantee that copyright holders receive a fair compensation for their creative work should be developed.

The Dutch government has since done a very laudable flip flop and even introduced new levies on hard disks, smartphones, tablets and MP3 players from 1 January 2013.

Hewlett-Packard, Acer, Dell and Imation have responded by suing the Dutch government, claiming that in 2013 alone they will suffer damages of "tens of millions".

So much for being in favour of fair remuneration for creators... The crooning speeches of the corporate suits who populate Brussels' conference rooms ring very hollow.

In one of his recommendations mediator Vitorino believes that none of the currently proposed alternatives justifies the "phasing out" of hardware-based levies. Second, he argues that the link between the private copying levy beneficiaries causing the "harm" and those liable for financing fair compensation "*should not be severed.*"

Judging by the relentless campaigns to get rid of the levies now mounted by the manufacturers' Brussels lobby, Digital Europe, their honest answer to the question of how much of that trillion euro should befall creators is: Not a cent.

If the European Commission yields to their political pressure the result would be that while copying for personal use - legal and illegal - is on the rise, and corporate profits soar, creators will lose out.

These days being on the side of "disruptive" technologies makes a politician the king of cool. This is nothing new, of course. In 1927 the historian Charles A. Beard noted in "Time, Technology, and the Creative Spirit in Political Science":

"Technology marches in seven-league boots from one ruthless, revolutionary conquest to another, tearing down old factories and industries, flinging up new processes with terrifying rapidity."

But if, as we sincerely hope, the Commission maintains that it is only fair that sharp products also compensate sharp minds\*, it would enable creators to carry out what one of the other tech slogans suggests: Go create!\*

Elisabeth O. Sjaastad



*"...and the award for the Best Speech which didn't mention their kids at home, agents, lovers, mothers, God and Harvey Weinstein goes to..."*

## AGENDA



FERA

### 18 March

European Audiovisual Observatory  
Workshop on Promotion of European Works  
in Amsterdam

### 27 March

IP Forum  
MEP Marielle Gallo holds meeting about  
CMO Directive

## FERA welcomes SACD as new associate member

According to FERAs statutes associate membership may be conferred on organisations who in the view of FERA support its aims and actions. SACD has been a long standing partner of FERA, providing both human and financial resources for a number of years. The General Assembly will formally ratify new members in September.

### FERA President

Sir Alan Parker

### FERA Creative Council

Marco Bellocchio  
Claire Denis  
Agnieszka Holland  
Neil Jordan  
István Szabó

### FERA Executive Committee

Chairman & Vice President  
Piers Haggard (UK)

### Vice Presidents

Gabriel Baur (Switzerland)  
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### Honorary Treasurer

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