

## **EU XXL Resolution 2014**

*Final version*

21 February 2014

Without creators there would be no works to enrich the lives of people in Europe; without creators there would be no art to license and to help drive the growth of the internet. Creators call for efficient business models that ensure an equitable and appropriate return for the exploitation of their works, in order to guarantee future creation.

EU XXL FILM, founded in 2003, is a Vienna-based initiative for the advancement of European integration and for cultural exchange. It recognises the special role of audiovisual media and the cultural, social and economic value of audiovisual productions. The EU XXL FORUM is an independent platform bringing together representatives of the European creative sector to formulate concrete demands to policymakers in Europe.

We met at the invitation of the Austrian representation of the European Commission at the House of the European Union in Vienna on 20 and 21 February 2014 and passed a resolution comprising the following elements:

### **1. Authors' rights and related rights**

*NB: The working group in charge of drafting chapter 1 was dealing mainly with the special requests of the Audiovisual sector*

- 1) Respect of triple dimension of authors' and related rights: exclusive economic exploitation rights, rights for economic remuneration, moral rights.
  
- 2) Unwaivable remuneration right for online exploitation with compulsory collective management.



- 3) The current term of legal protection should be maintained.
- 4) Market fragmentation of online services is not driven by authors' and related rights. There are sector-specific, linguistic and economic factors. For example, in the European audiovisual sector, territoriality enables the financing of many productions that would otherwise not be made.
- 5) There should be no compulsory registration to benefit from authors' rights and related rights. However, broadly adopted, internationally recognised identifiers (e.g. ISAN) are necessary; their use should be made mandatory.
- 6) Any process of digitisation and exploitation of Europe's film and audiovisual heritage must involve the authors and performers.
- 7) Limitations and exceptions
  - a. Private copying has to evolve with technological change. Legislators need to engage in an open, honest and transparent dialogue with all stakeholders to determine who pays for what, so as to guarantee legal security for consumers and a remuneration base for authors and performers.
  - b. For the private copy exception, a degree of harmonisation would be helpful.
  - c. Moral rights must always be respected.
  - d. US "fair-use" doctrine would not bring added value to the open norm of the EU legal framework.

## 8) Contracts

- a. Scope of transfer of rights must be clearly stated in all contracts (specification of which rights for which uses).
- b. Contracts should not be of excessively long duration and should include use-it or lose-it provisions.
- c. Contracts should determine fair remuneration for each and every mode of exploitation.
- d. Transparency obligations on exploitation revenues, etc.
- e. Prohibition of contractual waiving of rights managed collectively.
- f. Prohibition of buy-out contracts.
- g. Right to review based on success (“bestseller paragraph”).
- h. Unfair contractual provisions - EU action to ban these. Public support should be on the basis of the exclusion of such provisions.
- i. Support for collective agreements through EU copyright contract law.

## 2. Working Conditions

The particular conditions under which European artists increasingly have to operate represent a major challenge. This grey area with regard to employment law takes on grotesque forms, and poses a threat to many creators. Atypical contracts are on the agenda - a clever way of abusively circumventing formal employment.



Compliance with labour law regulations is little more than a farce. Terms such as "flexicurity" are overused and are often no more than a euphemism for legal and economic uncertainty. Artists are pushed into self-employment and find themselves outside the social security system.

How can such violations of the European social model be reconciled with the basic values of the European Union? Is the answer to this problem to be found at the European level?

The European Union has to face the fact that the working environment has changed dramatically, in a process that is still ongoing. In the near future, employment as we know it will dwindle, and work will be done more and more on a self-employed basis. This calls for a radical shift in our thinking, since there is no system of mandatory regulation to safeguard the livelihood and dignity of workers in this category.

Self-employed workers are not entrepreneurs but agents who are highly dependent on their respective principal and are therefore in an extremely weak position to negotiate on their working conditions.

We therefore request the following:

1. Freelancers and self-employed workers must be eligible for normal membership of professional associations and trade unions and be protected by the relevant labour legislation and by the courts.
2. These bodies must propose, as soon as possible, clear terms for the representation of their non-salaried members.
3. Introduction of a compulsory minimum income.
4. Introduction of a model contract for freelancers provided by the social partners.



5. The compensation under the employment contract must be increased by a clearly stated percentage of the total to cover taxes and insurance of the individual.
6. Arrangements must be put in place for self-employed workers to make provisional tax and insurance contributions immediately.
7. Creators' associations should be legally authorised to engage in collective bargaining for their members' working conditions, even where this falls within the responsibility of trade unions.

### **3. Fair Remuneration**

The creative industries are a job engine, especially for Europe's youth. It must be ensured that these jobs fit the needs of the creators. Fair remuneration is crucial. Measures are needed:

1. to ensure that creators in the artistic field and their work are held in the high esteem they deserve;
2. to raise awareness that fair payment for art is an investment and not just an added cost.
3. Action is required on the following principles:
  - I. All creators must receive fair and equitable remuneration for each use of their work, throughout the term of their authors' rights.
  - II. Additional use of their work must be subject to fair payment and negotiation between the creator and the publisher/producer.
  - III. The offer of a commission must not depend on an assignment of rights to the publisher/producer. It is recognised that the grant of publishing rights is the prerogative of authors and that authors are free to choose to whom to assign or

license their rights.

- IV. All creators, whether freelance or employed, must have the right to negotiate collectively with publishers, producers, broadcasters or other contracting parties.
- V. Statutory transfer of authors' rights (work-for-hire clauses) should be deemed unenforceable.
- VI. Any right not specifically transferred by name should be retained by the creator.
- VII. Any right that is not used, such as the failure of the publisher, producer, broadcaster or other commissioning party to release or exploit a work within a reasonable period of time, must revert to the creator.
- VIII. Full respect of moral rights as set out in Article 6bis of the Berne Convention.

= Joint statement April 23th 2012 (Annex)

4. We call for a discussion on the definition of "fair remuneration":
  - I. Corresponding to the amount of preparation needed
  - II. Reflecting the real value of the work
  - III. Enabling creators to live with dignity.
5. Access to the social security system must be affordable for creators.
6. Subsidies and grants must reach the pockets of the creators.
7. The principle of transparency must be observed: for example, all those involved in a project should be informed of the budget; all public funding should be transparent and published.



8. Public funding should only be given to projects where those involved receive a fair payment based on the relevant levels of education, experience and bankability.
9. The setting of minimum remuneration levels should be supported.
10. Funding bodies should foster a climate of respect and solidarity; Minorities should be protected, with measures to prevent bullying, sexual harassment or exploitation.



IMAGO - European Federation of Cinematographers

European Council of Artists (ECA)

UNI MEI Global Union

EWC - European Writers' Council

Gewerkschaft der Gemeindebediensteten - Kunst, Medien, Sport, freie Berufe (GdG-KMSfB)

AAC (Austrian Association Of Cinematographers)

SAA - Society of Audiovisual Authors

Initiative art but fair Austria

AGRFT-University of Ljubljana, Slovenia

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**For immediate release:**

## **Joint Statement Against Coercive Contractual Practices**

**Brussels, 23<sup>th</sup> of April 2012**

The undersigned organisations represent the interests of over thousands of journalists, songwriters, composers, film and television directors, screenwriters, illustrators and visual authors across Europe. Together, we call for immediate actions against coercive contractual practices facing creators in Europe.

EFJ, FERA, FSE, EVA, EIF and Pyramide Europe support the complaint brought by the European Composers and Songwriters Alliance (ECSA) on January 17<sup>th</sup> against a group of European broadcasters and their alleged anti-competitive practices through coercive commissioning and unfair contractual agreements signed under duress.

The ECSA case illustrates a wider problem facing not only Europe's composers and songwriters, but also journalists, musicians, directors, screenwriters, illustrators and photographers all of whom have been facing coercive contractual practices for too long. These practices seriously affect the livelihood of creators.

We support the [joint statement](#) of Society of Audio-visual Authors (SAA), Federation of European Film Directors (FERA) and Federation of Screenwriters Europe (FSE) released on April 10<sup>th</sup>, entitled an "End to buy outs in Europe".

Today authors are frequently coerced to waive, or assign parts of our statutory authors' rights in the name of freedom of contract and flexibility. "Flexibility", which merely allows producers and financiers to impose one sided contracts on individual authors with impunity. Individual creators are often forced to accept manifestly unfair contract terms and conditions which are drafted in advance and presented to them as a take-it-or-leave-it proposition: creators are regularly told that if they do not sign a particular contract, unamended, they will never work again for the company "offering" it.

This problem is compounded by concentration of ownership: in some cases there is a monopsony – a single buyer for one class of creative work. These unfair contracts are (in the great majority of EU Member States) irreversible once signed.

We see this as a distortion of the market and unfair competition. If authors are chosen not because of their professional qualifications, but on the basis of their willingness to assign more rights, or in worst case, waive all their rights, this will ultimately have a negative effect also for consumers.

### **CALL FOR ACTION – 8 Unwaivable Principles in Contractual Agreements**

This situation affects the livelihood of millions of creators and, if left unregulated, will put Europe's culture and democratic values at stake.

We demand that authors' contracts be in compliance with the following key principles:

1. All creators shall receive fair pay (i.e. equitable remuneration) for each use of their work, throughout the duration of their authors' rights
2. Additional use of their work must be subject to fair payment and negotiation between the creator and contracting party;
3. The offer of a commission must not depend on any publishing rights being assigned to the contracting party. It is recognised that the granting of publishing is the prerogative of authors and that authors are free to choose to whom to assign or license their rights;
4. All creators, whether freelance or employed, shall have the right to negotiate collectively with publishers, producers, broadcasters or other contracting parties;
5. All statutory transfer of authors' rights (i.e. work-for-hire clauses) shall be deemed unenforceable;
6. Any right not specifically transferred by name shall be retained by the creator;
7. Any right that is not used, such as the failure of the publisher, producer, broadcaster or other commissioning party to release or exploit a work within a reasonable period of time, shall revert to the creator;
8. Full respect of moral rights as set out in Article 6bis of the Berne Convention.

Finally, we would like to emphasise that authors' rights and copyrights provide a safety net without which creators would be critically disadvantaged in any commercial environment. The system of authors' rights allows creators to be free from a climate of patronage that may subvert freedom of expression.

We strongly believe that the above principles are fundamental to ensuring a fair and sustainable environment in which creators can continue to nourish Europe's culture and uphold our democratic values.

Please act now by [signing up to the petition](#) to end coercive contractual practices for creators!

**About the undersigned organisations:**

Founded in 2007, the **European Composer and Songwriter Alliance** (ESCA) comprises 43 composers' associations from 29 countries and speaks for approximately 14.000 composers and songwriters. The main objective of the alliance is to defend and promote the rights of authors of music by any legal means and to strive to improve social and economic development of music creation in Europe.

Contact: ESCA Secretary General Patrick Ager, +32 2 544 0333, [info@composeralliance.org](mailto:info@composeralliance.org), [www.composeralliance.org](http://www.composeralliance.org)

Founded in 1980, the **Federation of European Film Directors** (FERA) contains 39 directors' associations from 29 countries. It speaks for approximately 20,000 European screen directors, representing their cultural, creative and economic interests vis à vis the European institutions and at the national level.

Contact: FERA CEO Elisabeth O. Sjaastad, +32 2 544 0333, [elisabeth.sjaastad@filmdirectors.eu](mailto:elisabeth.sjaastad@filmdirectors.eu), [www.filmdirectors.eu](http://www.filmdirectors.eu)

The **International/European Federation of journalists** (IFJ/EFJ) is a regional Europe of the International Federation of Journalists, which represents over 260,000 journalists across Europe. The EFJ fights for social and professional rights of journalists working in all sectors of the media through strong trade unions. It strives to maintain or create environments in which quality, journalistic independence, pluralism, public service values and decent work in the media exist.

Contact: IFJ/EFJ Campaigns and Projects Officer Yuk Lan Wong, +32 2352 226, [yuklan.wong@ifj.org](mailto:yuklan.wong@ifj.org), [www.ifj.org](http://www.ifj.org)

The **Federation of Screenwriters Europe** is a **network** of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. In 2011, it comprises 25 [members](#) from 19 countries, representing **more than 7,000 writers in Europe**.

Contact: David Kavanagh, +35 386 837 1203 [www.scenaristes.org](http://www.scenaristes.org)

The **European Visual Artists** (EVA) represents collective management organisations in Europe that manage rights of close to 110 000 painters, sculptors, photographers, illustrators, designers and other authors of visual works. EVA's purpose is to defend visual authors' rights within any EU policy and initiative.

Contact: EVA Secretary General, Carola Streul, +32 2 551 08 90, [c.streul@evartists.org](mailto:c.streul@evartists.org), [www.evartists.org](http://www.evartists.org)

The **European Illustrators Forum** (EIF) aims to safeguard of illustrators' rights and the continental promotion of illustration through the co-ordinated action of member associations on a local level and with a series of common initiatives on an international level, beginning with the First Illustrators Transnational Rendezvous held in Valencia in October 2003. Contact: [www.eif.ilustracion.info](http://www.eif.ilustracion.info)

**Pyramide Europe** is the organisation representing groups of photographers, graphic designers, illustrators and other visual artists in the European Union. As a European Economic Interest Group, Pyramide Europe represents most of the 15 member states. Contact: [www.elisanet.fi](http://www.elisanet.fi)