

LETTER FROM THE PRESIDENT

Dear FIA colleagues,

I am pleased and proud to be able to launch the new FIA Focus newsletter, which we hope will boost the information flow between us, raise our visibility and increase our awareness of the common challenges we face. Thank you all so much for hard work to help support actors, dancers and performers all over the world! As a result of our debates at the wonderful Congress in Morocco, we have established a common vision and a new direction for FIA. Our Secretariat is already working at full steam on the many motions adopted. We resolved in Marrakesh to improve our communication and I trust that our quarterly newsletter will help us reach that goal.

Sharing experience among us and supporting each another is of outmost importance. What we do for performers is now more vital than ever, due to the fast developments in our sector that are having a huge impact on their work. We must all fight to prevent the establishment of business models relying upon non-union and residual-free productions, and continue to exchange on creative ways to ensure tangible benefits for performers from the exploitation of their work in both traditional and new media, or else they may hardly be able to make a living in the near future.

Gender equality and equal opportunities for performers is also an issue that is close to my heart. Gender portrayal and stereotypes and the influence that they exert on the working lives of performers are a problem that we must continue to address in our work. The launch of the European gender survey created stir and great publicity in many European countries and we must build on that. It was shocking to many that gender stereotypes are still



prevalent in film, television, theatre and radio in Europe. As the Norwegian actress Liv Ullmann put it in our press release:

"While for male performers ageing is often an advantage, female performers are dismayed to see the quantity and quality of the roles they are offered diminish the older they get. And it is appalling that when they work they earn less than their male colleagues".

Another important issue was recently brought to my attention by the experience of my union when we became involved in a very public court case on the issue of moral rights. Norsk Skuespillerforbund recently sued our national broadcaster for showing a sex scene from a film in order to illustrate and contextualize a parody in another film. The parody was shorter than the sex scene in the original film and, importantly, did not contain frontal nudity. Yet the broadcaster decided to show on television and make available on the Internet the footage of the original sex scene that included frontal nudity. The court decided in favour of the actress and her union. The broadcaster had violated moral rights by using more of the original scene than necessary, without asking the actress' permission. The broadcaster was sentenced to pay compensation, including for the loss of income due to the stress the actress had experienced. It is clear that these cases must be fought to draw the line between what is acceptable and what is not. It is tough enough to have to undress for an artistic purpose, without having to endure an unfair, out of context and degrading exploitation of one's work and image.

Food for thought.

Yours in solidarity,

Agnete Haaland

IN THE SPOTLIGHT

Performers unite for a new audiovisual treaty at WIPO

With the spread of broadband, the digitalisation of works, new technologies and changing consumer patterns, the demand for audiovisual content – old and new – has soared to unprecedented levels. Performances are made available on demand to a worldwide audience and new business models are emerging to sustain this trend and offer greater flexibility and choice to final users. These developments offer new exciting opportunities for performers, whose work can be enjoyed by a much wider audience and exploited in a variety of innovative ways.

New technologies and live performances also generate creative ways of reaching out to much broader audiences, with shows that can be broadcast simultaneously in theatres thousands of miles from the original act.

These developments also pose a real challenge for performers, in terms of deriving an income from these new revenue streams and also protecting the integrity of their work. Digital works can be easily copied and distributed illegally. Performances can be tampered with, altered and further exploited without permission, and their image be associated with services and products against their will, with potential negative consequences on their careers.

Few countries have granted intellectual property protection also to audiovisual performances. Many of them still do not, as there is no international obligation to do so. The lack of harmonisation at international level and the absence of national treatment provisions have a direct impact on the revenue that performers can expect to receive when their work is exploited nationally and abroad.

Since the early '90s, FIA has been campaigning at WIPO for an international treaty granting minimum IP protection to audiovisual performances. Such agreement would complete the protection that performers already enjoy in the music industry and put an end to an unfair discrimination. The main stumbling block here has been the demand by producers to include in the treaty a mandatory presumption of transfer of the rights of performers at point of contract. FIA has always fought against this presumption, as it would undermine the very protection that is at the core of this

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IN THE SPOTLIGHT

exercise.

An international audiovisual treaty for performers is now more than necessary and we continue to believe that it can be achieved.

A WIPO diplomatic conference in 2000 delivered a provisional agreement on 19 landmark articles, granting audiovisual performers moral and economic rights that could greatly improve their livelihoods. Those articles are an acceptable compromise and we would favour a treaty with those provisions.

Producers argue that presumptions of transfer are necessary for them to secure funding and to distribute audiovisual works successfully. However, experience shows that this is not true and that the business can well prosper through dialogue and bargaining.

Clearly, a presumption of transfer has no other reason to be in an international treaty than to take away with one hand what is granted with the other.

The time has now come for this deadlock to end. FIA is grateful for the unconditional support it has received from FIM - the International Federation of Musicians - and a growing number of collecting societies in Europe that administer performers' rights.

Performers are all equally concerned by the international vacuum that is preventing some of them to benefit from the exploitation of their work. What weakens the ones equally affects the others. After all, any sound performance can be associated with images and be considered an "audiovisual work".

Together we can change things for the better. We can persuade WIPO and its member states that the time is ripe enough to move on. We can also convince producers that there are more urgent battles that we can fight together, rather than spending time and energies arguing with one another. Performers want the industry to be successful, although they also have a legitimate wish to be fairly remunerated for the exploitation of their work.

We also need to engage with consumers and help them understand that this is about treating performers fairly. It is about creating better opportunities for them to envisage a lifelong professional career and deliver quality content to the audience. It is about sustaining cultural diversity and human rights.

As WIPO is looking for a new agenda, it is time to tackle this unfinished business. The articles are all there already. There is no need to reinvent the wheel.

NEWS IN BRIEF

The extension of the term of protection of the intellectual property rights of performers

The European Commission suggested extending the term of protection of the intellectual property rights of performers and producers from 50 to 95 years. An impact assessment study acknowledged that, while the average life expectancy of performers has grown, the commercial lifespan of their recordings has also expanded considerably in recent years. It has therefore become essential for performers to derive a longer benefit from such diversified and extended use of their work in order to make a decent living. Intellectual property rights are an invaluable asset for performers to sustain their livelihoods but the current 50-year term has clearly become inadequate.

FIA warmly supported the principle of an extension of the term for performers. However, we were astonished to discover that performers in the audiovisual sector would not be concerned by this measure. The Commission's draft directive, in fact, deliberately carved them out. For the first time at European level, a legislative measure would therefore openly discriminate between sound and audiovisual performances, creating a dangerous precedent.

"I do not understand why, when my voice is recorded I get a 95-year protection and when my image is also recorded I only get 50 years. Why would my appearance be less important than my voice?" said Agnete Haaland, actress and FIA President at a EU Parliament press conference

The timing of this negotiation, with European elections this June, is particularly inconvenient. Clear signals indicate that, if the Council and the Parliament cannot agree on the text before the summer, the directive might simply be sidelined and never see the light. Despite our frustration, and in light of the fact that some of FIA's members also represent audio performers, we resolved to encourage the extension of their term of protection, calling for a mandatory mechanism and precise deadlines to produce a similar outcome also for audiovisual performers.

The draft directive also incorporated a number of temporary accompanying measures to ensure that existing

performances would derive real benefits from the extended term after the original 50 years. These included the setting up of a 20% fund for non-royalty artists financed by the label's gross revenue, a "use it or lose it" provision – enabling performers to get their rights back after 50 years if their label refuse to further exploit their recordings – and a "clean slate clause" aiming to grant performers the full payment of their agreed royalties after 50 years, free from advance payments and other contractually agreed reductions.

FIA lobbied to introduce the principle of the extension also to audiovisual performers but was weakened by the lack of political will at the Council and, ultimately also, at the European Parliament, despite the commitment of a few MEPs. The Council's presidency is however now in favour of a new article requesting the Commission to finalise an impact assessment study on the audiovisual sector by January 2010 with a view to a possible extension of the term of protection also to performers and producers there. In the absence of better alternatives, FIA has decided to support this principle, together with a compromise text by the Parliament that is likely to be voted end of April. This text, which must be accepted by the Council for the directive to be approved, also makes accompanying measures permanent, although it reduces the extension of the term of protection from 45 to 20 years.

FIA trade union development work

Our last Congress expressed a clear commitment to capacity building work in developing countries and countries with transitional economies. FIA has successfully applied for funding to support these activities and three regional workshops will take place this year in Latin America (Brazil), Africa (Ghana) and the CIS (Ukraine). The aim of these meetings will be to elaborate a detailed three-year action plan consisting in a number of national workshops addressing the main priorities flagged by our members. Further information on these initiatives will be delivered in future issues of our newsletter.

IP rights in the knowledge economy

The European Commission published a Green paper on IP rights in the knowledge economy in January 2009.

NEWS IN BRIEF

Green papers are public documents allowing the Commission to consult with stakeholders on specific subject matters, in view of possible future regulation.

This consultation raised a number of important issues, with a profound impact on the way intellectual property is administered in the EU member States and benefits the right holders, including performers.

The Commission paper focused on new forms of exploitation and access to knowledge within the framework of new media.

In particular, the Commission questioned whether the current list of exceptions and limitations to IP should be made mandatory at EU level, whether the exception to the right of reproduction of copyright-protected works by libraries, archives and educational establishments should also be extended to the right of making available on demand and whether new exceptions should be introduced for user generated content and orphan works.

FIA strongly reacted against the introduction of such changes, stressing that new forms of exploitation could not justify a weaker level of protection for performers and stressing the need to preserve flexible approaches, emerging business models and a delicate balance between potentially conflicting interests. FIA also called for voluntary schemes and codes of conduct to be encouraged. In relation to user-generated content, FIA categorically rejected the need for an additional exception. Individual users should by no means be considered differently than any one else exploiting copyrighted material. They should either fall under one of the existing exceptions or clear the rights in the content that they seek to exploit to generate their work.

FIA celebrates its 19th world Congress

Delegates from 75 member unions and guilds gathered from all around the world in Marrakech, Morocco, from October 24 to 27, 2008. The FIA Congress is a remarkable event in the life of our organisation, where one can fully appreciate the truly international dimension of our work, as well as the variety and complexity of the challenges



Group picture at the 19th FIA Congress in Marrakech

faced by performers.

It is a privileged time for our members, many of whom are simply not able to stay in touch with their federation on a regular basis, mainly due to geographical distance, language barriers, lack of time and resources. Our Congress offers them a golden opportunity to look back at the work done but also to anticipate change and steer the work of their federation towards new challenges, taking into account regional differences and making sure FIA can continue to be a valuable asset for all of them. New unions can learn from the most experienced ones and benefit from the skills they developed after years and years of staunch commitment to the welfare of performers.

The presence of unions from the developing world is an invaluable reminder to all others of the challenges that led performers around the world to organise collectively, spurring the spirit of solidarity towards the less favoured that has always been FIA's backbone and *raison d'être*.

It is in those days that the Federation really goes back into the guiding hands of its members, all of whom concur in shaping its future course of action. It is a truly democratic spirit and one that is profoundly shaped by the diversity of our membership.

Attendance at our 2008 Congress, hosted by the Syndicat Marocain des Professionnels du Théâtre, was remarkable. With more than 150 delegates and 30 observers from collecting societies and international organisations, it certainly was one of the most successful FIA events in recent years.

The motions that were unanimously approved gave a new inspiring mandate to the federation in many fields, including

new media, intellectual property, trade union development, organising in niche areas, health and safety, gender portrayal and equal opportunities, cultural diversity, communication and solidarity.

The 19th FIA Congress culminated with a touching tribute to Tomas Bolme, outgoing FIA President, after 16 years of loyal and committed service to the cause of performers worldwide. Tomas was offered a very special artistic award for his dedication and was succeeded by Agnete Haaland, professional actress and President of Norsk Skuespillerforbund.

Go to www.fia-actors.com for more information.

Gender Portrayal and Employment Opportunities for Performers

FIA's European group successfully applied to the European Commission for funding in 2007 for a project entitled: "Changing gender portrayal: Promoting employment opportunities for women in the performing arts". The project ran from September '07 to December '08. Its basic premise was that the portrayal of women and men in theatre, television, film and radio has a significant impact not only on gender image and perception by the public, but also on the employment opportunities of performers. The project sought to more closely examine the representation of gender in these media and to gather the views and experience of performers across Europe.

The report "Age, Gender and Performer Employment in Europe" is the key outcome of the project. The principal study method was an online questionnaire. The research was further completed by a number of structured interviews undertaken by member unions of EuroFIA. The final research report aims to establish an overview of how gender and aging impact on the employment conditions of performers: quality and variety of the work available to them; career length; income levels, etc. Surprisingly, despite the variety of cultural traditions, the results were very consistent across the EU. The findings are particularly disquieting in light of the fact that performing is a "gender-integrated" career (i.e. exactly the same task is carried out by men and women and this

has been the case for hundreds of years) – yet inequalities persist.

The Report is available for download from the FIA website in four languages. It is also available on CD Rom on request to the FIA Secretariat.

More details are available in a dedicated project section on the FIA website.

The Secretariat is now at work on a new project application for a follow-up project looking at tools and strategies to combat this kind of discrimination and stereotyped representation. This promises to continue to be an important strand of FIA's work in the future.

FIA-FIM Manifesto on the Status of the Artist

This Manifesto is the outcome of our cooperation with the International Federation of Musicians (FIM). A joint working group drawn from the membership of the two federations has been coming together on this issue over the past two years, in order to share experience and concerns.

The decision was taken to produce a joint document bringing together the main problems in relation to the status of the artist and the chief political demands for action to address some of the most difficult and intractable issues.

It was felt that this would be a timely initiative in view of the upcoming 30th anniversary of the 1980 UNESCO Recommendation Concerning the Status of the Artist.

The resulting two-page Manifesto is a brief document, offering a short but comprehensive overview of many of the key problems experienced by artists in the current challenging and rapidly evolving context.

The document is intended to be short but hard-hitting, with the weight and experience of the two federations behind it.

We hope that it will prove a useful advocacy and communication tool at all levels. It is freely available on the website.

Currently there are six language versions. Members are invited to make translations into additional languages, where they believe it would be useful.

Visit www.fia-actors.com for additional information.

MEMBER'S CORNER

Carving our Place in the Digital Space - by *Stephen Waddell, National Executive Director, ACTRA*

ACTRA is actively carving out a place for performers in our increasingly digital world. In everything we do, from public policy to collective bargaining, ensuring space for our stories and rights for our performers in the digital world is one of our union's top priorities.

In the past six months, ACTRA has ratified two major collective bargaining agreements with big wins in digital media. In fact, ACTRA was the first union to negotiate payment – now more than ten years ago – for performers in commercials used in new media.

Our recently re-negotiated National Commercial Agreement (NCA) continues to address the growing demand for online advertising by introducing temporary, experimental rates for ads made for new media. The made-for new media experimental rates will expire 6 months prior to the end of the NCA. Session fees are discounted by 50% for commercials produced for new media, with a shorter, four-hour session call permitted (rather than normal 8 hour minimum call). Use periods for made-for new media commercials range from a minimum of 1 day to a maximum of 1 year. Traditional broadcast commercials 'moved over' to the internet pay one session fee for each site up to a maximum of three session fees for unlimited websites for up to 365 days of use.

ACTRA also negotiated better new media provisions (retroactive to 2000) with our national public broadcaster, the Canadian Broadcasting Corporation (CBC). The new CBC collective agreement builds on gains made in our main collective agreement, the Independent Production Agreement. Up to five Productions (in a series) may be produced in one day for one daily rate, with an additional 25% for each additional Production. Alternatively, the CBC can opt to pay 50% of the daily rate for a single Production of 5 minutes or less. CBC can use the Production on their CBC-branded platforms for 365 days, and there are various payment options for reuse. In the case of revenue-generating sales, performers receive 10% of Distributor's Gross Revenue generated by sales. Productions made for traditional broadcast and then 'moved-over' to new media, require a payment of 15% of the current base fee, for one broadcast window.

In the midst of all this, our national regulator, the CRTC, called hearings – to our knowledge, the first such hearings to take place anywhere by any regulator – on the

issue of regulating broadcasting on the internet. We are calling on the CRTC to regulate this broadcasting medium and to ensure there is shelf space and funding for Canadian content online. We have also proposed a 3% levy on Internet and Wireless Service Providers' gross revenues, which would generate \$100-million for a New Media Production fund.

Digital media is the future, we need to make sure we all get it right for performers, and get it right now. Tomorrow will be too late.

Go to www.actra.ca for more information.

Performers reach landmark agreement in Belgium – by *Laurette Muylaert, General Secretary of ACOD-Cultuur*

After many years, performers and employers in Belgium have finally signed a collective bargaining agreement for film and television production.

The Belgian situation is a complex one. Social dialogue committee n° 227 deals with video and television production, radio and television broadcasting. Social dialogue committee n° 303 deals with feature film production and distribution.

For more than five years, negotiations in the audiovisual sector had focused on scales and job descriptions. CGSP-Culture fought hard to ensure performers were not left behind and was able to include in the agreement a specific description for performers as well as a place for them in the salary scales. It has not been easy, as previous agreements systematically all left performers out. The new deal now includes a monthly salary for performers, who belong to group 5 - among the most qualified. We will now have to negotiate short-term contracts and intellectual property provisions.

As to feature film production and distribution, there had not been any collective agreement for the last 29 years! We are therefore extremely pleased about this achievement. It has not been easy to include performers in the salary scales. 29 years ago, the collecting agreement only included technicians and administrative staff. Despite the fact that it is virtually impossible to shoot a feature film with no actors, our employers were still determined to exclude them. Our determination finally delivered and performers now belong to group 8, on a scale of 10, which is a rather satisfactory score.

The agreement includes weekly salaries, with higher rates for short-term contracts. As obvious as this differential may seem, we have not been able to obtain a similar

distinction in the audiovisual sector.

The agreement does not regulate the assignment of rights, which is only agreed upon individually at point of contract. We hope to be able to include that as well in future revisions of the agreement.

Go to www.acodcultuur.be for more information.

Danish actors reach new deal on archive use – by Mikael Waldorff, General Secretary of Dansk Skuespillerforbund

Following a 2007 agreement between right holders and the Danish public broadcaster (DR) covering on demand use of archive productions, a new agreement licensing the broadcasting of archive productions on "niche channels" was concluded on march 2009.

As the government decided to digitalize Danish cultural heritage in 2006, DR and the right holders were urged to allow public access to radio and television archives. The 2007 agreement between DR and the right holders organized in COPYDAN – the joint collective management society in Denmark – licensed the making available on demand of all archive productions prior to January 1, 2007, against payment of a fair remuneration to the right holders. The agreement, though, did not include broadcasting or distribution on CD/DVD.

The March 2009 agreement allows DR to broadcast programs and extracts aired prior to January 1st 2007. The license restricts the use of such productions to digital terrestrial television on two new channels: the "Children' Channel" and the "History and Culture Channel". The license will only be valid as long as the share of archive material does not exceed app. 3.5%. Also, niche channels are to be understood as thematic (not general) channels.

The license also includes simulcasting on the DR website. However, transmission on mobile platforms, retransmission etc. will be subject to additional agreements.

While the 2007 agreement included all right holders, the 2009 deal only covers actors, singers, directors, musicians, playwrights, conductors and independent producers. The annual payment will be app. 150% of the usual annual payment for rebroadcasting.

The agreement rests on the condition that present levels of production and rebroadcasting will not be reduced.

This deal was rendered possible by the 2008 amendment of the Danish Copyright Act, introducing a general access to the use of extended collective licensing. The new provision allows groups of right holders

and users to enter into agreement in any specific area, provided the agreement respects a number of conditions, and provides a tool to manage exclusive rights collectively. This model is currently being considered also by Sweden and Norway.

Irish actors take to the streets - by Ryanagh O'Grady of Irish Actors' Equity

Actors, musicians and film technicians joined masses on February 21st 2009 when tens of thousands marched through Dublin to say "enough is enough." The 'Demonstration for Fairness' was called by the Irish Congress of Trade Unions against the government's attempts to place the full burden of this capitalist crisis on to the backs of Irish workers.



The background to this action is that at a January 28th Congress, Government and employers settled on an outline Framework Agreement that was to provide a basis for the detailed discussions on drawing up a National Recovery Plan.

This framework committed all parties to a plan in which "all sectors of society contribute in accordance with their ability to do so, and (...) the most vulnerable, low paid, unemployed and social welfare recipients are insulated against the worst effects of recession."

Already the Government has failed to follow through on its commitment. They have resorted to a narrow focus on the public finances but without seeking a serious contribution from the wealthy. This development has already affected all those in our profession in a very direct way.

Cuts to the Arts and Film Board, etc. will be announced later this year. There are now 354,400 unemployed, with a prediction that if unemployment continues at this rate there will be over 450,000 by the end of the year, affecting more than 10% of the entire population. We will see yet more actors on the unemployment register.

Our hope of solving the issue that actors, musicians and journalists had with the Competition Authority, as agreed, is now at

best on long-term hold.

Irish Equity faces a difficult period and big efforts will have to be made to protect our members.

It is clear that Equity will have to stand with the trade union movement at large in Ireland and indeed internationally. Plans for national stoppages are underway. If there is to be a "Fairer Way" we are going to have to fight for it.

INTRODUCING...

The SFA (Syndicat Français des Artistes Interprètes, France) traces its roots to a cafe-singers' guild established in turn-of-the-century Paris. It has since become the most important performers' union in France, representing every type of performing artist except musicians and conductors. It is a member of the Confédération Générale du Travail. In 1952, the SFA founded FIA together with Equity UK. One year later, the SFA created ADAMI, the collecting society for performers, as the law prevented a union from managing the funds due to artists for the use of their radio and phonographic recordings.

In France, performers are presumed to be employees, although they have the right to work as independent contractors. The SFA is very involved in national social dialogue, and negotiates collective agreements for all of our spheres of activity. These agreements can improve the Labour Code and also include intellectual property subjects. They can receive government approval, which renders them compulsory for every employer and the performers they hire, whether the latter are union members or not.

The SFA is also an essential partner in discussions with authorities and employers concerning performers' social benefits, and participates in joint management of many social welfare and policy analysis bodies.

We are currently involved in serious consideration of the country's cultural policy and on the future of our professions in a digital world.

Our vested rights have to be consolidated and new rights conquered in the social arena and concerning the exercise of our crafts in live and recorded performances. Getting new members is also challenge in the present context of growing individualism and mistrust of established and official structures.