



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS



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**Half Years Conference in GIRONA
2017**

Remuneration and Participation in German Cinematographic Work

Entitlement by law

- Authors of the filmwork and of works used in the film, as well as actors, further named „the covenantee“,
 - are entitled to an adequate license fee according to the extensiveness of rights granted in a contract. If the license fee agreed in the contract is not adequate, covenantee are entitled to an adjustment of the contract - **to achieve due fair remuneration**

and

- are entitled to get a licence fee adequate to the receipts and benefits from the use of the production. If the license fee agreed in the contract is not adequate, covenantee are entitled to an adjustment of the contract – **to achive fair participation**.

If contracting partner has licenced rights to another party and receipts and benefits are with this licensee, this licensee is due to grant the adequate licence fee to the covenantee.

How to distinguish

- **Remuneration, sec. 32 UrhG is**

- for transference of rights,
- due by contract partner,
- usually paid in one step, sec.
- rarely causes problems in film-industry

- **Participation, sec. 32a UrhG**

- in profits out of the use of the production
- due by contracting partner or, by profit-owner (if owner is subject to German Copyright Act)
- paid in a lump-sum in advance, called buy-out, or continuously
- rarely causes problems with script-writers, directors, but with cinematographers and „new covenantees“

A Long History

Sec. 36 UrhG

A long history from 1965 until 2002

If the author has granted a license to another party on conditions the effect of which is to cause the agreed consideration to be grossly disproportionated to the income from the use of the work, having regard to the whole of the relationship between the author and the other party, the latter shall, when so asked by the author, be required to consent to such a variation of the agreement as will secure for the author an equitable share of the income, having regard to the circumstances.

Short Money

Before the Revision of German Copyright Act in 2002,
claims for money according sec. 36 UrhG old version

were to be time-barred two years from knowledge,
knowledge has been assumed ten years after,
The Defendant: Contracting Partner only,
and, only profits and benefits of the contracting partner had to be considered, and

Covenantee only: author of novel, scenario and music used in the audiovisual work

Not entitled: authors of works created in connection with the production, authors of the cinematographic work as, for example directors, stage designers and, on the other hand, actors.

Who knows when

- Following the revised German Copyright Act since 2002, one should consider
 - the adequate individual share of each covenantee in
 - future profits and benefits
 - out of the future use
 - of the future production
 - *while signing a contract before start of production ??*

Help comes from Union Rates and Guild-Rules

- Individually agreed Remunarations and participations matching with remuneration and participation agreed in union-rates, guild-rules etc. are presumed to be adequate.
- Collective Labor Agreement on Participation in cinematografic works, effective 1st of January 2014.
- Directors-Guild-Agreement on Remuneration and participation, effective 2016, notice of cancellation, effective 31st of January 2018.

How to practice profit-participation

- Each cinematographic production is a combination/fusion of many individual works and performances, relevant to copyright protection.
- As well as there are collective rules to interpret the license fee agreed in the contract to be adequate or not, the claim is an individual one between the contracting partners or the covenantees and the owner of revenues and benefits.
- The Union and the Guilds had to find rules, how to distribute an adequate part of the profit and benefit between the sections of copyright and related rights owner.

Everything good in the end ?

- Now we have rules to execute
- We have some (few) profitable productions
- We have a cassa built for and by actors to distribute the actors share
- We have not yet an institution to distribute shares of authors of the filmwork
- and still participation is due individually, based on the contract.

As not absolutly everything is well yet..

This is not the END !

(Oskar Wilde)



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Thank you !

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