

The 6th IMAGO/FNN - Oslo Digital Cinema Conference Sept 8-10 2017

Cinematographer's Author rights: Case study direct injection Norway – A presentation of F©R (Filmforbundets Organisasjon for Rettighetsforvaltning)



I. Cinematographer's Author rights

a. Setting the scene: The DOP/Cinematographer as an audiovisual author

- An **audiovisual work** is the product of the collaboration and creative input of a number of individuals such as authors, performers, technicians and producers.
- Based on the originality of their contribution, some of these individuals are recognized under national legislations as being authors, with intellectual property rights in either the completed work or their contribution to it.
- The DOP/Cinematographer is not necessarily recognized as an audiovisual author in all countries in the world, but in Norway and in the Nordic countries we have a long and consistent tradition (court cases, traditions etc.) which supports their status as a creative author in an audiovisual works (film,s tv-productions etc.)

b. How do we best protect the DOP/Cinematographer's rights and the right to remuneration from the exploitation of audiovisual works?

- Individual contracts between the DOP/Cinematographer and the producer? –Normally: No remuneration for rights, all rights included in the working salary
- Collective rights agreement through collecting society: Proportionate remuneration as an addition to the working salary
- Important: Audiovisual authors have to main incomes:
 - 1)The working salary from the producer
 - 2)The remuneration for authors rights from a collecting society/association (This is normally the only source of income for rights!)

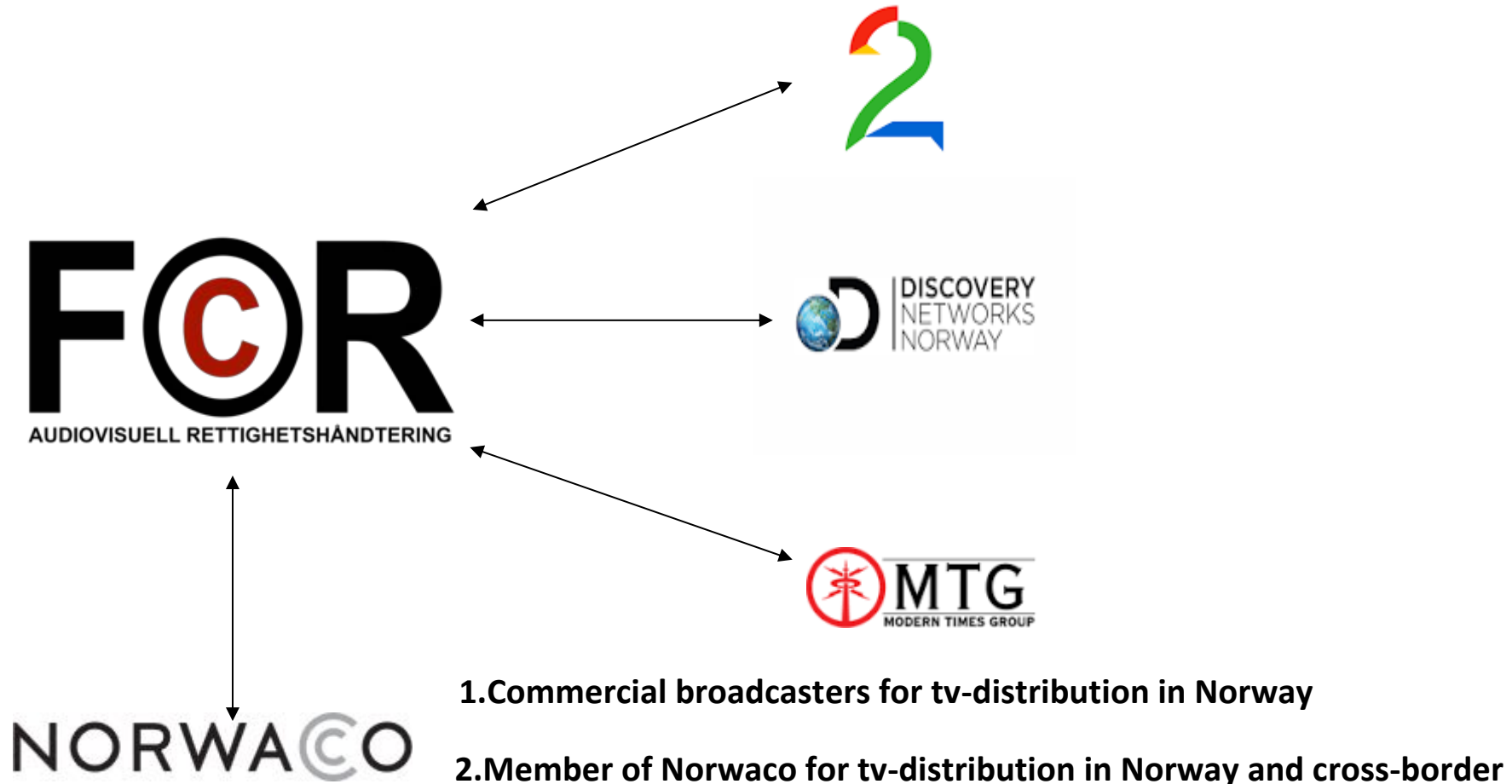
F©R & The Norwegian Film Makers Association (NFF)

- a CMO and a professional association – combined – we protect your authors rights and the right to remuneration from audiovisual works

II. Who are we, and what do we do?

- The Norwegian Film Makers Association (NFF) is Norway`s largest association and trade union (fagforening) for film and tv-workers
- We have a specific focus on authors like directors, screenwriters, DOP`s (directors of photography/cinematographers), production designers, costume designers, editors, animators, sound designers and many more. Handle all collective agreements and the economy
- F©R is a newly developed CMO within NFF. F©R has exclusive mandates from all right holders, it`s own separate board and a yearly held general assembly. Handle the distribution of the remuneration to the right holders. The right holders make the final descisions!
- Bjørn Alexander Brem – Chairman of the Board, F©R and head of legal for NFF. Leader of the authors rights negotiations for F©R and NFF

III. Collective agreements in Norway for audiovisual works

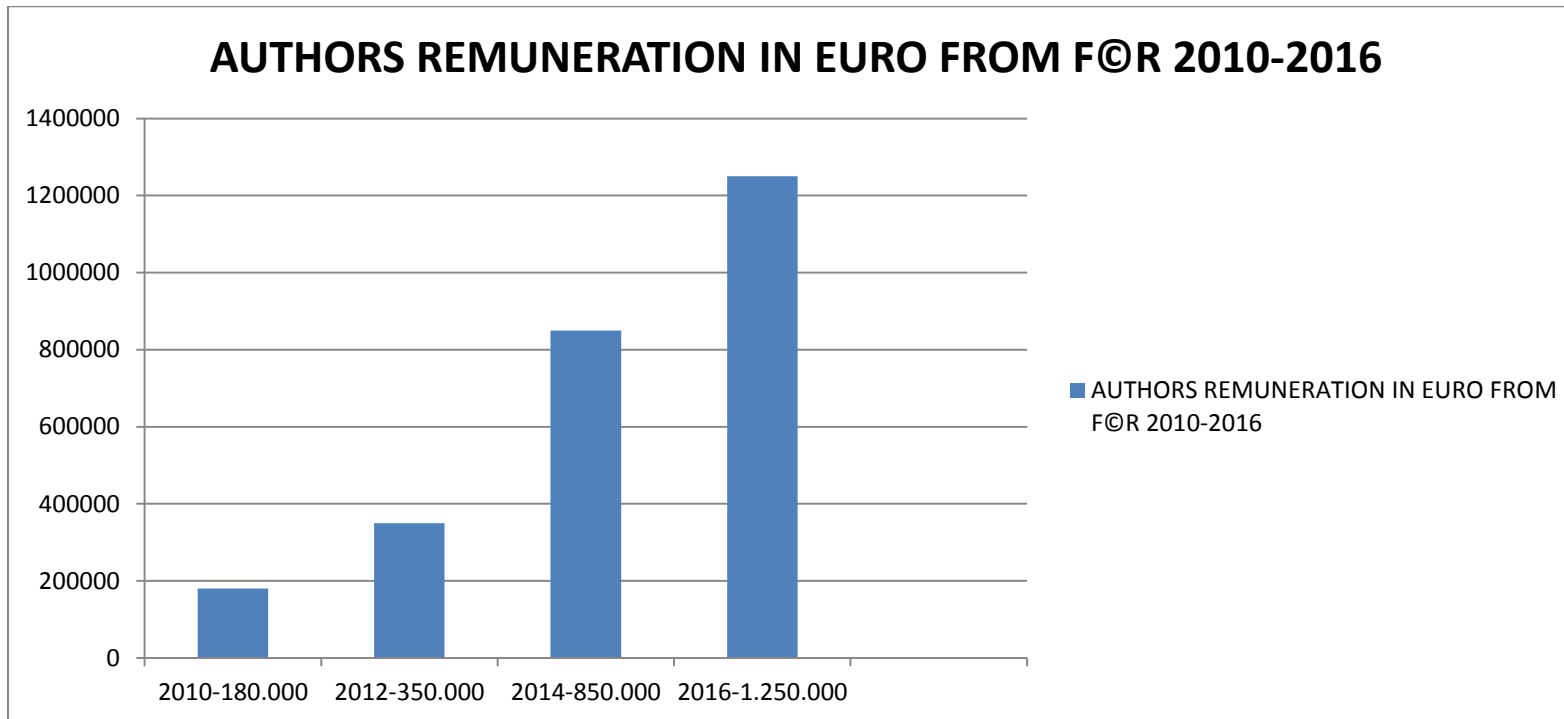


Our collective agreements with the commercial broadcasters covers:

- Linear (“live”) exploitation of programs
- Time shift and non-linear (“on demand”) exploitation of programs (**new technology**)
- Both broadcaster`s own and third party platforms
- Lump sum payments every 6 months
- Rights are not transferred for collective rights management systems outside of Norway

A very positive trend: We register

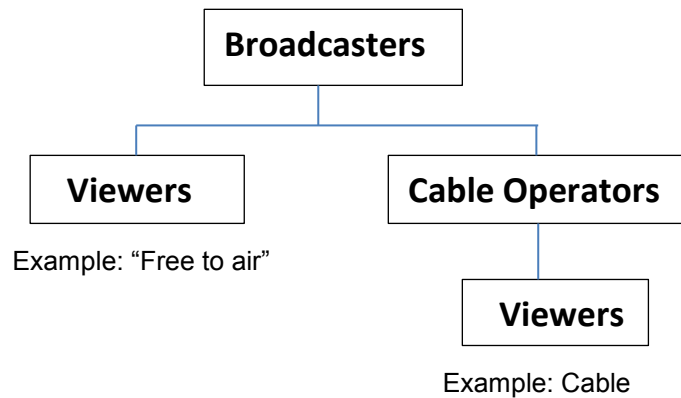
- Significantly increased remuneration for members of F©R with exclusive management contracts



- The number of right holders has doubled
- The total remuneration is close to 7 times as high
- Each author receives more than 3 times as much for the tv-distribution year 2016 compared to the year of 2010

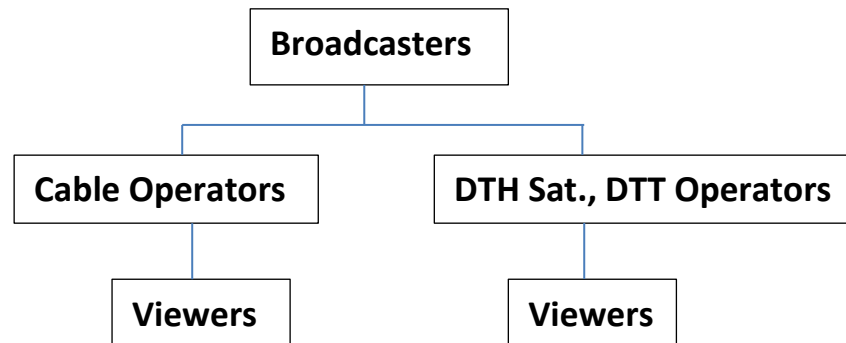
IV. The “monster” of direct injection

Traditional model



- Clearly a primary transmission and a retransmission

New model – “direct injection”



- What now???

Case study 1: RiksTV vs Norwaco – Oslo District Court ruling of May 30th 2013

- Regarding TV-distribution in the Norwegian DTT (Digital Terrestrial Television Network)
- RiksTV: The Norwegian DTT operator which offers tv-channel packages
Norwaco: The Norwegian collective managements organisation with approval from the Norwegian Ministry of Culture to clear retransmission rights and collect royalties on behalf of the right holders
- Does Riks TV have to pay remuneration to Norwaco due to the European incorporated mandatory clearance model (based on the SatCab directive 1993) incorporated in the Norwegian Copyright Act § 34 “retransmission”?
- If the court concludes with that there is a retransmission: YES
If the courts rejects that there is a retransmission: NO
- Interpretation of the term “retransmission” in § 34 and Bern Convention Article 11 bis (1) (ii) and 2
 1. There must be a primary transmission (in the court`s opinion: a “broadcasting”)
 2. The primary/initial transmission must be “intended for reception by the public” (for ex by air or by wire etc.)
 3. The signals must be fed into the network by a party other than the primary broadcasting organization (Proposal for SatCab directive 1991 page 16) – the communication must be “made by another organization than the original one” (SatCab directive 1993 Art 11 bis (1) (ii))

- The Court also found the contracts entered between the broadcaster and RiksTV as interesting for whether there is a primary transmission or a retransmission:
 - both broadcaster and tv-distributor regards RiksTV's distribution in DTT as broadcasting
 - the broadcasters take all the responsibility for clearing the rights with the rightholders
- The term "another organization" can not be decisive, because "all" distribution today is done by other organizations than broadcasters/external distributors

The Court's conclusion:

- **RiksTV's encrypted distribution in DTT is NOT retransmission**
- **RiksTV does not have to clear the rights with Norwaco**
- **The broadcasters have to clear the rights with the rightholders**

The Court's decision was not appealed by Norwaco. Norwaco asked us as their member organizations to follow this up on our own. On behalf of The Norwegian Film Makers Association, Directors Guild of Norway and some other organizations I filed a big lawsuit against RiksTV, TV2, Discovery and MTG which later led us into negotiations with the commercial broadcasters. TONO has currently an ongoing case against RiksTV.

Case study 2: Norwaco vs Get – The Norwegian Supreme Court ruling of March 10th 2016

- Regarding TV-distribution in Get`s cabel network
- So far Norwaco had lost every vote from the judges in the lower courts
- This time Norwaco also lost, but now 1-4 - one judge said that this is retransmission
- Our expert group of lawyers used some arguments we got from our colleagues in SACD vs Telenet in Belgium
The retransmission is of “the programmes, not the signal”. This can be found in the different European translations of the SatCab Directive
- The original need for the retransmission clearing model was “cross border”
- Once again they ask: “Where is the primary transmission?”
- Commercial broadcasters aim for the Norwegian TV-audience and they produce for the Norwegian market. The broadcasters are responsible for clearing all rights

The Court`s conclusion:

- **Get`s encrypted distribution in cabel is NOT retransmission**
- **Get does not have to clear the rights with Norwaco**
- **The broadcasters have to clear the rights with the rightholders. If they fail to do so, Get has to clear with rightholders**

V. The practical impact on rights collection and authors remuneration at a national level

- The weakest rightholders get even weaker without a CMO to protect their right to remuneration
- Norwegian law does not have strong enough protection – we are fighting for the new Law to include an unwaivable right to equitable/proportionate remuneration of every exploitation
- Strong coalitions like F©R / NFF / NFR have significantly increased our rightholders income by clearing directly with commercial broadcasters – now also payment include broadcaster`s play tv channels –
- IT IS ALL ABOUT BARGAINING POWER – NEW TECHNOLOGY AND MORE AGGREGATIVE COMMERCIAL AND PUBLIC SERVICE BROADCASTERS IS A REASON WHY ORGANIZING IS EVEN MORE IMPORTANT TODAY THAN EVER BEFORE
