

COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

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DECLARATION

**on the exploitation of protected radio and television productions  
held in the archives of broadcasting organisations**

*(Adopted by the Committee of Ministers on 9 September 1999  
at the 678<sup>th</sup> meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Recalling that copyright and neighbouring rights are at the basis of the creation, production and circulation of radio and television productions in Europe and that it is necessary to guarantee adequate protection of rights holders, while facilitating the possibilities of offering radio and television productions to the public through the new opportunities offered by technical developments,

Noting,

that many broadcasters keep in their archives a number, often substantial, of radio and television productions which are part of the national and European cultural heritage and that there are productions amongst them which are of an important cultural, educational or informative value;

the need for European programme material for the new modes of distribution to the public made possible by digitisation and new electronic media;

that such programmes may be of great interest for exploitation via the above-mentioned new modes of distribution and that, while stressing the desirability to produce new European radio and television productions, it should be possible to make use of Europe's audio-visual heritage;

that in the past, at the time of production and because of the circumstances prevailing at that time, broadcasters may have acquired rights from the various programme contributors only for radio and/or television broadcasting over the air (wireless) or via cable/wire/optical fibre (cable origination);

that such rights have been limited in time and/or for a certain number of transmissions and/or a certain geographical area;

that, as a consequence, these broadcasters do not hold all the relevant rights of individual programme contributors to their own past radio and television archive productions, which would enable use in new formats;

that collecting societies or other representative bodies do not necessarily hold or represent the above-mentioned rights to such past archive production, or not for each category of right owners in question;

that, given the number of potential rights holders involved, it is often actually or practically, under conditions which are still economically worthwhile, impossible in many countries for the broadcasters in question to identify, find and negotiate with every single individual programme contributor or their successors-in-title;

that, as a result, an important number of productions of cultural, educational or informative value made by European broadcasters risk remaining in their archives, until the expiry of the term of protection of the copyright and neighbouring rights involved in these productions;

and that consequently, these productions or relevant parts thereof may not be offered to the public in the new digital environment;

Recognising that this situation, in general, is undesirable and therefore needs to be addressed and, if necessary, resolved whenever possible;

Appreciating, however,

that these productions may have considerable value;

that copyright and neighbouring rights are essential ownership rights providing the owners with the exclusive right to decide upon the use of their property and/or a right to remuneration;

that therefore, as a matter of principle, broadcasters, together with the organisations representing rights holders interests, should be urged to make all possible efforts to identify the potential rights holders and to reach contractual solutions;

Realising, however, that under certain circumstances, despite such efforts, it may prove to be impossible to obtain the necessary authorisations and to clear the necessary rights, inter alia, because not all rights holders involved can be identified;

Bearing in mind the different legal and other situations in the member States of the Council of Europe;

Underlining the obligations which the member States of the Council of Europe have under international treaties, conventions and other international instruments in the field of copyright and neighbouring rights;

Calls on member States to monitor the issue from their own perspective and their own legal traditions and practices;

Encourages rights holders and/or their representatives organisations, on the one hand, and broadcasters and/or their representative organisations, on the other hand, to enter into negotiations so as to find a satisfactory and workable contractual solution;

Invites those member States where the above-mentioned problems arise and for which no contractual solutions have proved to be possible, to examine and, if appropriate, develop initiatives to remedy the situation in accordance with their obligations under international treaties, conventions and other international instruments in the field of copyright and neighbouring rights, bearing in mind the respective rights of the rights holders and the legitimate interests of the public;

Decides that in due time, it will evaluate the situation and decide whether any action should be taken at the level of the Council of Europe, following appropriate consultations with all interested parties.

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