

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec(2001)7
of the Committee of Ministers to member states
on measures to protect copyright and neighbouring rights
and combat piracy, especially in the digital environment**

*(Adopted by the Committee of Ministers
on 5 September 2001
at the 762nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Welcoming the profound improvement in the field of communication and dissemination of data leading towards the information society;

Noting that the development of new information technologies facilitates access to and the exploitation of works, contributions and performances protected by intellectual property rights;

Concerned by the emergence of new forms of piracy as a result of the possibilities offered by information networks, digitisation and data compression;

Noting that this phenomenon seriously affects many sectors within the area of copyright and neighbouring rights;

Aware of the considerable and increasing harm that a lack of protection, on the one hand, and new piracy practices in the digital environment, on the other hand, cause to the interests of authors, publishers, performers, producers and broadcasters, as well as to the cultural professions and related industries as a whole;

Recognising that this situation also has detrimental effects on consumer interests and for the development of the information society, in particular in that it discourages cultural creativity and thereby prejudices both the diversity and quality of products placed on the market;

Reaffirming the significance of the protection of copyright and neighbouring rights as an incentive for literary and artistic creation;

Bearing in mind the losses suffered by national budgets as a result of insufficient protection and of piracy;

Noting the links between trade in pirate material and organised crime;

Bearing in mind the work carried out in other fora towards strengthening the protection of intellectual property rights and towards better enforcement of rights, serving the purpose of fighting piracy, in particular within the framework of the World Intellectual Property Organisation (WIPO), the European Union, Unesco and the World Trade Organisation;

Acknowledging the importance of the standard-setting activity of the World Intellectual Property Organisation in this area at the Diplomatic Conference in 1996, which provides a specific international framework for the systematic protection of works and other material disseminated in digital form;

Recalling its Recommendations:

- No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights;
- No. R (91) 14 on the legal protection of encrypted television services;
- No. R (94) 3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity;
- No. R (95) 1 on measures against sound and audiovisual piracy,

Recommends that governments of member states take account of the provisions in the appendix to this recommendation when developing their anti-piracy policies and adapting their legislation to the technical developments.

Appendix to Recommendation Rec(2001)7

Recognition of rights

1. Member states should ensure that authors, performers, producers and broadcasters possess adequate rights in respect of the new forms of exploitation and use of their works, contributions and performances to defend their interests and to combat piracy in the field of copyright and neighbouring rights. In particular, to the extent that they have not already done so, member states should:

- grant to authors, performers and producers of phonograms the rights contained in the WIPO Copyright Treaty (WCT, Geneva 1996) and in the WIPO Performances and Phonograms Treaty (WPPT, Geneva 1996);

- increase the protection provided to broadcasters, producers of databases and audiovisual performers as regards their fixed performances, notably in the environment of information networks and digitalisation.

Remedies and sanctions

2. Member states should ensure that their national legislation provides remedies which enable prompt and effective action against persons who infringe copyright and neighbouring rights, including those involved in the importation, exportation or distribution of illegal material. Proceedings, respecting Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should not be unnecessarily complicated, lengthy or costly.

- criminal law

3. In cases of piracy, member states should provide for appropriate criminal procedures and sanctions. Over and above action based on complaints by the victims, member states should provide for the possibility of action by public authorities at their own initiative.

4. Provision should be made for powers to search the premises of legal or natural persons reasonably suspected of engaging in piracy activities and for the seizure, confiscation or destruction of pirated copies, their means of production, materials and devices predominantly used in the commission of the offence, as well as devices designed or adapted to circumvent technical measures which protect copyright and neighbouring rights. Consideration should also be given to the possibility of introducing powers for securing and forfeiting financial gains made from pirate activities. These measures should be subject to supervision by the competent authorities.

5. Sanctions should include imprisonment and/or monetary fines sufficient to act as a deterrent, consistent with the level of penalties applied for offences of corresponding gravity.

- civil law

6. In the field of civil law, the possibility should exist for judicial authorities to grant injunctions whereby a party is ordered to stop infringing copyright or neighbouring rights.

7. The judicial authorities should also have the possibility to order provisional measures in order to prevent an infringement or to preserve relevant evidence in regard to an alleged infringement of copyright and neighbouring rights. These measures may be taken *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a risk of evidence being destroyed.

8. In case of trial, judicial authorities should, upon claim by the right holder, be able to order evidence to be produced by the defending party, and member states may consider the possibility of introducing provisions to the effect that conclusions may be drawn from the silence of the defending party.

9. Judicial authorities should have the authority to order the infringing party to pay the right holder adequate damages to compensate for losses suffered.

10. Member states may provide that the courts shall have the authority to order the infringing party to inform the right holder of the identity of third persons involved in the illicit activity, unless this would be out of proportion to the seriousness of the infringement.

- customs involvement

11. Member states should closely involve their customs authorities in the fight against piracy and empower such authorities, *inter alia*, to suspend the release into free circulation of suspect material.

Technological measures and rights management

12. Member states should encourage the development of technological measures which protect copyright and neighbouring rights, and the development of systems of electronic rights management information, in particular by granting them specific protection in national law.

13. Member states should study the possibility of taking measures, with regard to enterprises which have optical media mastering and manufacturing facilities, such as the obligation to use a unique identification code, so that the origin of their masters and finished products may be determined.

Co-operation between public authorities and between such authorities and rights owners

14. Member states should encourage co-operation at national level between police and customs authorities in relation to the fight against piracy in the field of copyright and related rights, as well as between these authorities and rights holders. Co-operation within the private sector between rights holders should also be encouraged.

15. Member states should also, in the appropriate fora, encourage co-operation in the fight against piracy between the police and customs authorities of different countries.

Co-operation between member states

16. Member states should keep each other fully informed of initiatives taken to combat piracy in the field of copyright and neighbouring rights.

17. Member states should offer each other mutual support in relation to such initiatives and envisage, where desirable and through appropriate channels, undertaking joint action.

Ratification of treaties

18. Member states should adhere as soon as possible to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), taking into account that an effective protection of rights holders is increasingly dependent on the harmonisation of such protection at the international level.

19. Furthermore, member states should become parties, where they have not already done so, to:

- the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works (1971);
 - the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);
 - the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms (Geneva, 1971);
 - the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960) and its protocols;
 - the European Convention relating to Questions on Copyright Law and Neighbouring Rights in the framework of Transfrontier Broadcasting by Satellite (Strasbourg, 1994);
 - the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).
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