

European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite

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Strasbourg, 11.V.1994

Preamble ➡

The member States of the Council of Europe and the other States Party to the European Cultural Convention, signatory hereto,

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;

Recalling their commitment to freedom of expression and information and the free flow of information and ideas as expressed, in particular, in the Declaration of 29 April 1982 of the Committee of Ministers of the Council of Europe on the freedom of expression and information;

Bearing in mind the concerns which inspired the adoption, by the Committee of Ministers, of Recommendation No. R (86) 2 on principles relating to copyright law questions in the field of television by satellite and cable, notably the need to safeguard the rights and interests of authors and other contributors when protected works and other contributions are broadcast by satellite;

Having regard to technical developments, in particular in the field of broadcasting by satellite, which have resulted in the blurring of the technical differences between direct broadcasting satellites and fixed service satellites, making it necessary to consider further legal aspects of broadcasting by satellite from the viewpoint of copyright law and neighbouring rights;

Bearing in mind, at the same time, the need not to hamper these new technical developments as well as the interest of the general public in having access to the media;

Concerned to promote the broadest possible harmonisation of the law of the member States, and the other States Party to the European Cultural Convention, on copyright and neighbouring rights with regard to new technical developments in the field of broadcasting

by satellite,

Have agreed as follows:

For the purposes of copyright and neighbouring rights:

Chapter I – The notion and act of broadcasting ➡

Article 1 – The notion of broadcasting

The transmission of works and other contributions by direct broadcasting satellite is broadcasting.

The transmission of works and other contributions by fixed service satellite under conditions which, as far as individual direct reception by the general public is concerned, are comparable to those prevailing in the case of direct broadcasting satellites, shall be treated as broadcasting.

The transmission of programme-carrying signals in encrypted form is considered to be broadcasting, in cases where the means for decoding the broadcast are made available to the general public by the broadcasting organisation, or with its consent.

Article 2 – The act of broadcasting

An act of broadcasting by satellite shall be considered to comprise both the up-link to the satellite and the down-link to the earth.

Chapter II – The applicable law ➡

Article 3 – The applicable law

A transmission of works and other contributions covered by Article 1 occurs in the State party in the territory of which the transmission originates and, therefore, shall be governed exclusively by the law of that State.

The State party in the territory of which the transmission originates means the State party in which the programme-carrying signals transmitted by satellite are introduced, under the control and responsibility of the broadcasting organisation, into an uninterrupted chain of communication via the up-link and down to the earth.

When the transmission originates in a State which is not a party to this Convention, the law of which does not provide the level of protection of right holders foreseen in Articles 4 and 5 of this Convention, and when the programme-carrying signals are transmitted by satellite from an up-link station situated in a State party to this Convention, the transmission shall be deemed to originate in the State party concerned. Such shall also be deemed to be the case when a broadcasting organisation established in a State party to this Convention is responsible for the transmission.

Article 4 – Copyright

Authors of works mentioned in Article 2 of the Berne Convention for the Protection of Literary and Artistic Works shall, as far as transfrontier broadcasting by satellite is concerned, be protected in conformity with the provisions of that Convention (Paris Act, 1971). In particular, rights for transfrontier broadcasting by satellite concerning such works shall be acquired contractually.

Subject to the provisions of paragraph 3 and where the relevant applicable law according to Article 3 of this Convention has already provided so on the date of opening for signature of this Convention, a collective agreement concluded with a broadcasting organisation for a given category of works may be extended to right-holders of the same category who are not represented, on the following conditions:

a non-represented right-holder, at any time, shall have the possibility of excluding, in his respect, the effect of an extended collective agreement and of exercising his rights on an individual basis. He may do so himself or through a collective organisation entitled to manage his rights;

the transmission by satellite shall simulcast a terrestrial broadcast by the same broadcasting organisation.

The preceding paragraph shall not apply to cinematographic works, including works created by a process analogous to cinematography.

Where a State party's legislation provides for the extension of a collective agreement in accordance with the provisions of paragraph 2, that State party shall determine the broadcasting organisations entitled to avail themselves of such legislation.

Article 5 – Neighbouring rights

As far as transfrontier broadcasting by satellite is concerned, performers, producers of phonograms and broadcasting organisations from States parties to this Convention shall be protected, as a minimum, in accordance with the provisions of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).

However, for the purposes of the present Convention, the rights of performers regarding the fixation and the reproduction of their performance shall be exclusive rights to authorise or prohibit. The same applies to the rights of performers concerning the broadcasting and the communication to the public of their performance, except where the performance is itself already a broadcast performance or made from a fixation.

A State party shall not avail itself of the faculty provided for under Article 19 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).

Without prejudice to the provisions of the preceding paragraph, a State party may provide that the signing of a contract concluded between a performer and a film producer concerning the production of a film has the effect of authorising the acts mentioned in the preceding paragraph provided that such contract provides for an equitable remuneration which cannot be waived by the performer.

For the purposes of this Convention, when phonograms published for commercial purposes, or reproductions thereof, are used for transfrontier broadcasting by satellite, States parties shall provide a right under their national legislation in order to ensure that a

single equitable remuneration is paid by the broadcasting organisation concerned and that this remuneration is shared between the relevant performers and producers of such phonograms.

Chapter III – Field of application ➡

Article 6 – Retransmission

The simultaneous, complete and unchanged retransmission by terrestrial means of broadcasts by satellite are not, as such, covered by this Convention.

Chapter IV – Multilateral consultations ➡

Article 7 – Multilateral consultations

The Parties shall, within two years from the entry into force of this Convention and every two years thereafter, and, in any event, whenever a Party so requests, hold multilateral consultations within the Council of Europe to examine the application of this Convention and the advisability of revising it or extending any of its provisions. These consultations shall take place at meetings convened by the Secretary General of the Council of Europe.

Each Party shall have the right to appoint a representative to participate in these consultations. Any State referred to in Article 10 of this Convention, which is not a party to the Convention, and the European Community, shall have the right to be represented by an observer in these consultations.

After each consultation, the Parties shall forward to the Committee of Ministers of the Council of Europe a report on the consultation and on the functioning of the Convention, including, if they consider it necessary, proposals for the amendment of the Convention.

Chapter V – Amendments ➡

Article 8 – Amendments

Any proposal for the amendment of this Convention made in accordance with the provisions of Article 7, paragraph 3, of this Convention, shall be subject to the approval of the Committee of Ministers of the Council of Europe. After its approval, the text shall be forwarded to the Parties for acceptance.

Any amendment shall enter into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.

Chapter VI – Other international agreements or arrangements ➡

Article 9 – Other international agreements or arrangements

In their mutual relations, Parties which are members of the European Community shall

apply Community rules and shall not therefore apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

Parties reserve the right to enter into international agreements among themselves in so far as such agreements grant to authors, performers, producers of phonograms or broadcasting organisations at least as extensive protection of their rights as that granted by this Convention or contain other provisions supplementing this Convention or facilitating the application of its provisions. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Parties which avail themselves of the faculty provided for in the preceding paragraph shall notify the Secretary General of the Council of Europe who shall transmit this notification to the other Parties to this Convention.

Chapter VII – Final clauses ➡

Article 10 – Signature and entry into force

This Convention shall be open for signature by the member States of the Council of Europe and the other States party to the European Cultural Convention, and by the European Community, which may express their consent to be bound by:

signature without reservation as to ratification, acceptance or approval; or

signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

The Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven States, of which at least five member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of this article.

In order to avoid any delay in the implementation of this Convention, a State may, at the time of signature or at any later date prior to the entry into force of the Convention in respect of that State, declare that it shall apply the Convention provisionally.

In respect of any signatory State, or the European Community, which subsequently expresses its consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of the instrument of ratification, acceptance or approval.

Article 11 – Accession by other States

After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State which is not referred to in Article 10, paragraph 1, to accede to the Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 12 – Territorial application

Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

Any declaration made under the two preceding paragraphs may, in respect of any territory mentioned in such declaration, be withdrawn by a notification addressed to the Secretary General. Such withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 13 – Transitional arrangements

A State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify what rules shall apply to existing contracts. These rules should provide in particular that:

agreements concerning the exploitation of works and other protected subject matter which are in force on 1 January 1995 shall be subject to the provisions of Article 3 as from 1 January 2000, if they expire after that date;

where an international co-production agreement concluded before 1 January 1995 between a co-producer from a State party and one or more co-producers from other States parties or a third State expressly provides for a system of division of exploitation rights between the co-producers by geographical areas for all means of communication to the public, without distinguishing the arrangement applicable to communication to the public by satellite from the provisions applicable to the other means of communication, and where communication to the public by satellite of the co-production could prejudice the exclusivity, in particular the language exclusivity of one of the co-producers or his assignees in a given territory, the authorisation by one of the co-producers or his assignees for a communication to the public by satellite shall require the prior consent of the holder of that exclusivity, whether co-producer or assignee.

Article 14 – Reservations

No reservation may be made in respect of the provisions of this Convention.

Article 15 – Notification of legislation

A State, the legislation of which provides for the extension of collective agreements, as foreseen in Article 4 of this Convention, shall, at the time of signature, ratification, acceptance or approval in accordance with Article 10, paragraph 1, a or b, notify to the

Secretary General of the Council of Europe the text of the said legislation, together with a list of broadcasters entitled to avail themselves of such extended collective agreements. Thereafter, the State concerned shall notify the Secretary General of the Council of Europe of any subsequent modification of the said legislation and of the list of broadcasters entitled to avail themselves of it.

Article 16 – Denunciation

Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 17 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the other States Party to the European Cultural Convention, the European Community and any other State which has acceded or has been invited to accede to this Convention of:

any signature in accordance with Article 10;

the deposit of any instrument of ratification, acceptance, approval or accession in accordance with Articles 10 or 11;

any date of entry into force of this Convention in accordance with Articles 10 or 11;

any notification made in accordance with Articles 10, paragraph 4 and 15;

any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 11th day of May 1994, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States party to the European Cultural Convention, to the European Community and to any State invited to accede to this Convention.