



Paris, 18-27 March 1980

Special Committee of Governmental Experts  
to prepare a Draft Recommendation  
concerning the safeguarding and preservation  
of moving images

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Report of the Rapporteur  
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DRAFT FINAL REPORT

REPORT OF THE RAPPORTEUR

## I. REPORT OF THE RAPPORTEUR

A. Introduction

1. A Special Committee of Governmental Experts convened in pursuance of resolution 4/7.6/1 adopted by the General Conference of Unesco at its twentieth session (October-November 1978) met at Unesco Headquarters in Paris from 18 to 27 March 1980. This Committee was entrusted with the task of preparing a draft Recommendation concerning the safeguarding and preservation of moving images for examination by the General Conference at its twenty-first session.
2. Representatives of 40 Member States of Unesco took part in the meeting as chief participants with the right to vote. One non-Member State was represented by an observer. Representatives of 3 intergovernmental organizations and 10 international non-governmental organizations also participated in the work of the Committee as observers.
3. The Secretariat of the meeting was provided by the Secretariat of Unesco.
4. After the meeting had been opened on behalf of the Director-General of Unesco by Mr. Makaminan Makagiansar, Assistant Director-General for Culture and Communication, the Committee elected Mr. Sam Kula (Canada) as its Chairman. It then adopted without discussion or amendment the provisional Rules of Procedure as its definitive Rules of Procedure. It also adopted its agenda without discussion or amendment. The Committee elected five Vice-Chairmen, namely Mr. Salah Abada (Algeria), Mr. Wolfgang Klaue (German Democratic Republic), Mr. H.T. Djohardin (Indonesia), Mr. Maurice S. Oulla (Ivory Coast) and Mrs. Olga Arreaza (Venezuela) and a Rapporteur, Mr. Anthony O. Olukoya (Nigeria).
5. Nine plenary meetings were devoted to the examination of the draft Recommendation. Thirty-three written amendments to the draft Recommendation were submitted to the Committee. A Drafting Committee composed of the representatives of Algeria, Finland, France, Gabon, German Democratic Republic, India, Iraq, Japan, Mexico, Spain, Switzerland, United States of America, Union of Socialist Soviet Republics and Yugoslavia, was established to finalize the draft Recommendation. The text of the draft Recommendation as adopted by the Committee constitutes Part II of this document.

B. General debate

6. Following the presentation by the representative of the Director-General of the final report concerning the safeguarding and preservation of moving images (document CC-80/WS/12), a wide-ranging general discussion took place on the content and scope of the draft Recommendation.
7. There was general agreement among delegates that an international recommendation on the safeguarding and preservation of moving images would be useful in that it would draw attention to the need for comprehensive efforts and adequate national support to ensure the proper preservation of that part of the cultural heritage of nations. The importance of moving images not only as expressions of cultural identity and human creativity but also as testimonies to world history and as a means of communication was constantly underlined throughout the debate.
8. In the opinion of many speakers, any standard-setting instrument adopted on this question should be sufficiently flexible to take account of the different situations prevailing in Member States. Factors such as the volume of moving images produced which differed greatly from country to country, the existence in

certain countries of private or semi-private as well as public institutions for the preservation of moving images, and the differing socio-economic conditions, should be kept in mind in this connection.

9. The hope was expressed that the final text of the draft Recommendation adopted by the Committee would also reflect a compromise position, acceptable to the majority, if not to all Member States, between public interest on the one hand and the legitimate rights of the authors and the producers, etc. on the other hand. The draft text before the Committee raised in this respect several crucial issues which called for careful examination.
10. The provisions in the draft text prepared by the Secretariat relating to the introduction of a mandatory deposit system for moving images gave rise to a full discussion. In particular the origin of the material to be subject to such a system was of concern to all delegates. Several speakers held that only those moving images made by a "national" producer should be subject to mandatory deposit, whereas others sought to include other works. The precise definition of "national production" was also an issue on which viewpoints differed. For several delegates, moving images of foreign production which had been dubbed or subtitled in a given country should also be considered as forming part of the national production of that country.
11. The reproduction and use of moving images acquired by archives under a mandatory deposit system were also questions referred to by many delegates during the general debate. There was particular concern on the part of many delegates that the rights of all those involved in the making and exploitation of moving images should in no way be infringed by any of the provisions of the draft instrument. Reference was made to the risk of facilitating the unauthorized use of material. It was for this reason that several delegates considered that access should be strictly limited to research workers. Other delegates felt that access should be made available for educational purposes and one delegate expressed the opinion that copyright should not constitute an obstacle to cultural dissemination.
12. The particular needs of developing countries should, many delegates felt, be reflected in the draft Recommendation. Moving images were of especial importance for these countries on the one hand because they permitted the recording and preservation of oral traditions which formed an important part of their culture and on the other hand in view of their value for educational and training purposes. The technical and financial support of the international community was required to ensure that the necessary infrastructure was established and the necessary personnel trained to ensure the proper preservation of their moving image heritage. Several delegates referred to another issue of particular concern to the developing countries, namely the question of access to moving images relating to their history or culture that are held in archives abroad. The importance of the provision in the draft text which called on Member States to facilitate such access was emphasized during the debate.
13. At the conclusion of the general discussion, the Committee proceeded to examine the draft text prepared by the Secretariat contained in Annex I of document CC-80/WS/12. A brief summary of the discussion on each paragraph is given below.

C. Consideration of the draft Recommendation paragraph by paragraph

Preamble

14. On the proposal of the Federal Republic of Germany, Japan, the United Kingdom and the United States of America, a new paragraph was added to the Preamble, indicating that measures taken for the preservation of moving images should take

account of freedom of opinion, expression and information, and all the rights in the moving images; on the basis of oral amendments, a reference was added to this paragraph to the effect that measures should be taken with due regard also to the need to strengthen peace and international understanding. A new paragraph was inserted immediately after the above-mentioned paragraph, on the proposal of Sweden, recognizing the rights of States to take appropriate measures for the preservation of moving images, taking into account their obligations under international law.

15. The Committee had before it two further amendments proposing additional paragraphs to the Preamble: on the one hand, from Finland concerning the important role of imported moving images in the cultural life of most countries and, on the other hand, from Sweden relating to the feasibility of limiting the scope of the recommendation to national production. Since there was general agreement among delegates that moving images which had been dubbed or subtitled in the language or languages of a country could be of particular importance from the standpoint of the culture or history of a State and given the provisions finally adopted in the draft Recommendation with respect to foreign productions (see paragraphs 11 and 12 of the draft Recommendation), the Committee decided to retain only the proposal of Finland.

16. With the above additions and with several minor amendments, including the deletion of the words "and art" in the first preambular paragraph and a change in the order of the first five preambular paragraphs, the Preamble was adopted by the Committee.

#### I. Definitions

17. Sweden proposed that the definition of "moving images" should refer only to cinematographic, videographic and television productions that had been communicated or distributed to the public. The majority of delegates felt that this definition was unduly restrictive and it was therefore decided to retain the wording of the draft text ("intended for communication or distribution to the public"). It was understood, on the other hand, that mandatory deposit would not necessarily be applied to all the moving images covered by this definition.

18. Amendments were made to the definition of "moving images" on the one hand to provide further indications on the different types of cinematographic productions and on the other hand to take account of advances in technology. Other amendments were made for reasons of greater clarity. There was general agreement that "moving images" as defined in the draft Recommendation was to be taken to include moving images fixed on a material support, regardless of whether the means of dissemination was by projection or transmission.

19. On the proposal of France, definitions were added of the terms "preprint material" and "projection copy". These terms were used in several paragraphs of the text and could be subject to misinterpretation if not precisely defined.

20. As mentioned in the previous section of this report, opinions differed among the members of the Committee with respect to the definition of the term "national production". The Committee had before it amendments from Finland and the German Democratic Republic proposing that moving images dubbed or subtitled by a maker having his headquarters or habitual residence within the territory of the State concerned should be considered as forming part of the "national production" and an amendment by the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics proposing that "moving images that are translated into the language" of a given country should also be considered as part of the national production of that country.

21. Those delegates who supported these amendments referred to the creative input constituted by the dubbing or subtitling of a film, and to the fact that a new work was produced which was protected under copyright legislation. Furthermore, the dubbing or subtitling of a film could only be undertaken with the authorization of the author of the original work and there was no intention to prejudice his interests with respect to that work. The mandatory deposit system described in paragraph 8 of the draft text (paragraph 9 of the revised text) should cover adaptations of moving images made by a maker having his headquarters or habitual residence in the country concerned, but not the original productions.
22. Other delegates supported the wording of the draft text and feared that it would run counter to the cause of the preservation of moving images if foreign works were included in the definition of national production. In the opinion of these delegates, it was only in a secondary sense that dubbed or subtitled films could be considered as being of artistic value and the inclusion of these adaptations in the definitions of national production would be unacceptable to many film-producing countries.
23. One delegate was of the opinion that archives preferred to preserve original works and not their adapted versions.
24. Another delegate drew attention to the importance of the subject of moving images which could also be considered important when defining national production.
25. After lengthy consideration of this question it was decided to retain the definition of "national production" as set out in the draft text, with an amendment proposed by France with respect to co-productions. It was furthermore decided to make specific reference in the paragraphs of the draft Recommendation concerning foreign productions (paragraphs 11 and 12 of the revised text), to the particular issues concerning dubbed and subtitled moving images.

## II. General principles

### Paragraph 3 of the revised text

26. The concept of the "moving image heritage" of a State as given in paragraph 2 of the draft text was considered unduly restrictive by the majority of delegates. Moving images made by a national no longer resident in the country, films made in the country concerned by foreign producers and foreign films having an impact on the social and cultural life of the country, could be of great significance for that country. The Committee therefore decided, on the basis of an amendment proposed by Algeria, to extend the notion of the moving image heritage to cover those foreign productions which were of particular national significance from the point of view of the culture or history of the country concerned.
27. On the proposal of France, this paragraph was also amended to include in the concept of the moving image heritage all moving images of national production and to provide for the possibility of selecting material for long-term preservation when it was impossible for technical or financial reasons to preserve the entire heritage.

Paragraph 4 of the revised text

28. The reference to the need for research was amended on the proposal of the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to indicate that it should be specifically directed towards the development of high quality and lasting support media for the proper preservation of moving images. With this amendment and other drafting changes made for reasons of consistency, this paragraph was adopted.

Paragraph 5 of the revised text

29. With amendments made for the sake of greater clarity, paragraph 4, of the draft text was adopted.

Paragraph 6 of the revised text

30. On the proposal of France, Israel, Italy, the United Kingdom and the United States of America, the word "unreasonably" was deleted and following proposals from France and the United States of America reference was made not only to the legitimate interests but also to the rights of those involved in the making and exploitation of moving images. With these amendments and a further amendment proposed by the United States of America for reasons of greater clarity, paragraph 5 of the draft text was adopted.

Paragraph 7 of the revised text

31. This paragraph was adopted without discussion.

III. Measures recommendedParagraph 8 of the revised text

32. Paragraphs 7 and 10 of the draft text were amalgamated on the proposal of the United Kingdom and adopted as paragraph 8 of the revised text.

Paragraph 9 of the revised text

33. The United States of America tabled an amendment to call attention to the different means by which archives could acquire moving images for preservation purposes. On the basis of this proposal, paragraph 8 of the draft text was amended to refer not only to mandatory deposit systems but also to acquisition through voluntary deposit arrangements with holders of rights, and by purchase and donation. A reference was added to provide that measures taken by Member States in adopting procedures for the acquisition of material by archives should be consistent with international agreements concerning human rights as well as copyright and the so-called neighbouring rights, to reflect amendments proposed by several delegates to the Preamble.

34. In subparagraph (a) of paragraph 8 of the draft text, it had been foreseen that exceptions to mandatory deposit could be made in the case of sequences made by a private individual for his own use. On the proposal of the Federal Republic of Germany and France, this provision was deleted.

35. France proposed that a subparagraph should be added indicating that the maker would be responsible for the deposit of material. This proposal was accepted by the Committee and a new subparagraph was inserted between subparagraphs (a) and (b) of the draft text and the following subparagraphs were renumbered accordingly.

36. With respect to the place in which material deposited would be preserved (subparagraph (c) of the revised text), the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics proposed that where officially recognized archives did not exist, interim arrangements for the preservation of the material could be made in appropriately equipped premises; the text was amended in the light of this proposal. Japan feared that, in view of the cost involved, many Member States would not be in a position to establish immediately adequate film and television archives; the draft text was amended to take account of this reservation.
37. Several amendments were considered to the subparagraph concerning the timing of the deposit. After careful examination of the different proposals, the Committee decided to simplify the text and to call for the deposit of material as soon as possible within a maximum time-limit fixed by national regulations.
38. On the proposal of the German Democratic Republic, a reserve was added to the subparagraph on access by the depositor to the effect that such access should not cause any deterioration to the material.
39. France proposed that the introductory section of the subparagraph dealing with the use by archives of deposited material (subparagraph (f) of the revised text) should make specific reference to copyright and the so-called neighbouring rights. This proposal was accepted by the Committee. Subsection (i) of the same subparagraph was amended to take account of proposals of Japan (deletion of "at their own expense") and the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (reference added to the entitlement of archives to enhance the technical quality of material deposited). With respect to subsection (ii), the Committee had before it an amendment by the United States of America proposing that officially recognized archives should be entitled to "permit the viewing of the work by a limited number of viewers" on the premises of the archives "for the purposes of scholarship or research". Many delegates were of the opinion that the terms "scholarship and research" were restrictive and preferred the words "teaching and research" used in the draft text. It was also considered useful to retain on the one hand the reference in the draft text to the requirement that such use should not conflict with the commercial exploitation (amended to "normal" exploitation at the suggestion of the representative of the World Intellectual Property Organization) of the work and on the other hand the words "on a non profit-making basis". The text adopted by the Committee combines elements included in the amendment of the United States of America and in the draft text and, on the basis of an oral amendment by the Federal Republic of Germany, includes a reserve to the effect that no damage should be caused to the material by any viewing.
40. On the proposal of France subparagraph (f) of the draft text (subparagraph (g) of the revised text) was amended to stipulate that the material deposited and any copies made therefrom should not be used for any other purposes and that their content should not be modified.

41. Several States (Federal Republic of Germany, Italy, Japan and the United Kingdom) proposed that the subparagraph which recommended the introduction of sanctions in the case of non-compliance with the requirement of deposit be deleted. This proposal was accepted by the Committee. On the basis of a proposal put forward by Denmark, a new subparagraph was added, entitling officially recognized archives to request users to make a reasonable contribution to their operating expenses.

42. It was understood that voluntary arrangements for the deposit of material should as far as possible meet the conditions set out in the various subparagraphs of paragraph 9 of the revised text, in order to ensure that all items of the moving image heritage that are acquired by officially recognized archives, by whatever means, are properly safeguarded and preserved. With the above amendments, paragraph 8 of the draft text was adopted as paragraph 9 of the revised text.

Paragraph 10 of the revised text

43. Paragraph 9 of the draft text was revised on the basis of amendments proposed by France, Japan and the United Kingdom. It was considered by delegates that the preservation of the entire national production was highly desirable but it was recognized that some countries would not be able, because of the volume involved (particularly in the case of television recordings) and due to the cost, to attain this ideal objective. Provision was therefore added to foresee the possibility of selecting material for long-term preservation. The Committee felt that it should be left to each State to determine its own selection criteria. The paragraph was accordingly redrafted along these lines and, with some further minor amendments, was adopted by the Committee.

Paragraph 11 of the revised text

44. As mentioned in paragraph 20 above, several proposals had been put forward seeking to extend the definition of "national production" to include certain dubbed and subtitled moving images and thus to extend mandatory deposit thereto. In the light of the divergent views expressed on this question, which are set out in paragraphs 20 to 25 above, the Committee decided to restrict mandatory deposit to original national productions, that is, not to foresee the mandatory deposit of copies of foreign moving images, adapted or not, which are distributed in the country. It was considered more appropriate to foresee the voluntary deposit of foreign productions and to include a provision in this paragraph calling on producers and distributors to work constructively with officially recognized archives towards the systematic preservation of copies of foreign productions distributed in a given country and, in particular, dubbed or subtitled moving images. This paragraph was revised along these lines and, with the addition of a provision foreseeing that the use of such material should be governed by the provisions of paragraph 9 (e) (f) (g) and (h), was adopted by the Committee.

Paragraph 12 of the revised text

45. The Committee had before it an amendment from Finland providing that, if the suggested form of voluntary deposit for foreign productions failed to guarantee the preservation of "translated imported moving images that are of great cultural value to the importing country" Member States may consider expanding mandatory deposit to such moving images, on condition that the rights of copyright owners were in no way limited. Many delegates shared the concern of Finland concerning the destruction of copies of adapted moving images (an

obligation to destroy such copies was frequently stipulated under contractual arrangements). The majority of delegates were in favour of including a new paragraph on this question. It was considered, however, that it should be left to each State to define the measures that should be taken to prevent the destruction of copies of adapted moving images since the extension of mandatory deposit to cover such material was not the only means that could be taken by States to this end.

46. Italy proposed orally that a phrase should be added, providing that it would only be those States which were parties to one of the conventions concerning copyright or the so-called neighbouring rights, which could define in their national legislation measures to prevent the destruction of copies of adapted moving images. This proposal was not accepted.

47. Japan held that there was a contradiction between the terms of paragraph 11 which foresaw the voluntary deposit of foreign productions and of paragraph 12 which contained an implicit reference to the compulsory deposit of foreign productions. For this reason, Japan reserved its position on this paragraph.

48. The Secretary-General of the International Federation of Film Producers Associations, who was a member of the delegation of the International Film and Television Council, attending the meeting in an observer capacity, expressed his concern with the terms of this paragraph which, in his view, implied the compulsory deposit of foreign productions. He affirmed that the producers were ready to co-operate with a view to preserving the moving image heritage of countries and stated that the terms of this paragraph risked to lead to a confrontation between the archives and the producers. The observer from the International Confederation of Societies of Authors and Composers shared these concerns.

49. The delegate of the United States of America stressed the need for the co-operation of those involved in the production and distribution of moving images in order to ensure that effective preservation programmes could be carried out. He held that the text should not be interpreted as implying that the voluntary deposit of foreign productions was to be replaced by compulsory deposit for such material. On the contrary, mandatory deposit was limited to national production and foreign productions were subject to voluntary arrangements.

50. After consideration of all the views expressed, the Committee decided to add a new paragraph as paragraph 12 of the revised text, in which it was stipulated, as proposed by Finland, that if the suggested form of voluntary deposit failed to ensure the preservation of adapted moving images of particular importance for the State concerned, that State could define measures to prevent the destruction of copies of adapted moving images, subject to the rights in those moving images.

#### Paragraph 13 of the revised text

51. On the basis of a proposal made orally by several delegates, the words "on a wider basis" were deleted from paragraph 12 of the draft text. With this amendment this paragraph was adopted.

#### B. Technical Measures

#### Paragraph 14 of the revised text

52. Japan did not consider it appropriate to require States to comply fully with standards established by non-governmental bodies. This paragraph was amended to take account of this reservation and subsequently adopted by the Committee.

Paragraph 15 of the revised text

53. Italy felt that it was not sufficient for archives to prepare filmographies (referred to in subparagraph (a)) which did not cover all categories of moving images. This paragraph was accordingly amended to provide for the establishment of "national filmographies and catalogues of all categories of moving images". Two subparagraphs were added, following proposals put forward by the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics providing that archives should ensure that preservation standards are rigorously applied and that the technical quality of moving images should, as far as possible, be improved. With the above-mentioned amendments the Committee approved this paragraph.

Paragraph 16 of the revised text

54. On the question of the preservation of material held privately, it was specified, on the proposal of France, that the bodies and individuals concerned should be encouraged to entrust officially recognized archives with preprint material, if available, and otherwise with copies, of moving images made before the introduction of a deposit-system. With this amendment, paragraph 15 of the draft text was adopted as paragraph 16 of the revised text.

Paragraph 17 of the revised text

55. This paragraph was adopted with the addition in its introductory part, of the phrase "and other bodies concerned with the preservation of moving images" as proposed by Japan.

Paragraphs 18 and 19 of the revised text

56. Paragraphs 17 and 18 of the draft text (renumbered 18 and 19 respectively in the revised text) were adopted without discussion.

IV. International Co-operationParagraph 20 of the revised text

57. The German Democratic Republic had proposed the addition of a provision to paragraph 8 (e) of the draft text (paragraph 9 (f) of the revised draft) permitting archives to lend a positive print to officially recognized archives abroad for teaching and research purposes. Delegates considered that such a provision should more appropriately be examined in the context of international co-operation. During the discussion on this question several delegates referred to the dangers of circulating prints outside normal channels. The Committee decided to add a provision concerning the lending of copies of moving images to other officially recognized archives (to be interpreted as referring to such archives both within the country concerned and abroad), subject to the relevant provisions of international conventions and national legislation concerning copyright and other rights and provided that the consent of the holders of rights and of the archives concerned is obtained. With the addition of a subparagraph on this question, this paragraph was adopted by the Committee.

Paragraph 21 of the revised text

58. Nigeria had tabled an amendment calling on Unesco to provide developing countries with assistance and co-operation to enable them to preserve adequately their moving image heritage. The Committee accepted this proposal and a new paragraph was added to this effect.

Paragraph 22 of the revised text

59. After some discussion on the provisions set out in this paragraph with which all delegates concurred, the draft text was adopted with several minor amendments.

Paragraph 23 of the revised text

60. On the proposal of France, the scope of this paragraph which deals with the restitution of official archival material which had been lost by countries as a consequence of colonial or foreign occupation, was extended to cover all moving images forming part of the cultural or historical heritage of a country which had been lost under whatever circumstances. With this amendment, the paragraph was adopted by the Committee.

Conclusion

61. The text which the Committee of experts adopted, in some cases after amendments, deletions or additions had been made, will be submitted to the General Conference of Unesco at its twenty-first session to be held in Belgrade, Yugoslavia, in September/October 1980. Many paragraphs which needed redrafting from the point of view of form, especially that of linguistic harmonization between the different language versions were entrusted for rewording to the Drafting Committee which, under the chairmanship of Mr. Wolfgang Klaue performed a valuable task. In all cases, the Drafting Committee tried to render in the different languages the meaning rather than a literal translation.