

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Committee of Experts on Preservation of
Moving Images of Cultural Value

Proposal for a Recommendation on Legal Matters

Considering that the discussion by the Committee of Experts and the representatives of non-governmental Organizations has clearly indicated, that the preservation of moving images ~~has~~ of cultural value depends not only on the solution of technical, organizational, educational and financial question but also largely on the national and international solution of legal questions

and given the fact, that so far very valuable suggestions have been made as to what legal problems would have to be studied or to be solved, but no concrete solutions have been offered

the Committee of Experts recommends on the basis also of the opinion expressed by the representatives of the non-governmental organizations, that the General Conference implements her Resolution Nr. 3.422 under point 2 in the way, that the Recommendation to the Member States to proceed forthwith to take legal measures to salvage and conserve moving images of value is enlarged to include the following concrete steps:

1. To create national legislation to the effect, that all producers of moving images are obliged to a general legal deposit in the form, that the negative material of all moving images produced whether for the cinema, the television or other public usage has to be turned over inside six months after the termination of the production to a State Archive, a Cinethèque or any other institution the respective government may indicate for that purpose always under the condition that this institution has the technical possibilities for preservation of these moving images.

This point is necessary because of the fact, that the producers not or not always have the necessary technical possibilities to preserve the negative material in a way that would insure permanent preservation or preservation for a long duration.

2. In this legislation it should be clearly stated, that the complying with the obligation of legal deposit under point 1 does in no way change the legal position of all concerned as far as the Copyright is concerned and that therefore the institution generally has only the right to use the negative material without consent of the Copyright Owner only to the extent specially allowed by the national legislation on Copyright while on the other hand the Copyright Owner must be given at any moment he desires the possibility of exercising his Copyright among other things by drawing copies or otherwise.

It is necessary to state very clearly that the prescription of the Legal Deposit does in no way affect the legal position of the Proprietor of the Copyright.

3. Furthermore this legislation will have to include a provision, that the Copyright Owner is under obligation to finance at least partly the preservation of the material, which sets him free of own costs for such purposes; as long as the duration of Copyright Protection is running or as long as he wants to keep the Copyright Ownership. The State Archive or other institution taking over the legal deposit cannot be requested to bear the costs of preservation the Copyright Owner has normally to bear as long as he needs the negative material for his purposes.
4. In the legislation to be started the Copyright Owner should be given the possibility to renounce his Copyright at any desired moment in favor of the institution taking over the legal deposit with the effect, that the institution becomes the Copyright Owner and the original Copyright Owner is free of the financial obligation under point 3.

This point would give the institution the possibility to use the moving ~~film~~ freely from this moment on and not only after the termination of copyright protection.

5. The national legislation could -if a necessity is seen as unavoidable- give the institution called upon to take over the legal deposit the possibility of rejecting part of the moving images, the negative material of which is turned over under the obligation for a legal deposit. In such a case the Copyright Owner would be free to deal with the negative material as he wants to.

This possibility in the national legislation although not desired by the committee and the international non-governmental organizations must be allowed to countries which desire to formulate their national legislation in this form.

6. Generally and independant from the legal deposit national legislation should be created to the effect, that all producers of moving images are under obligation to some institution indicated by the government in such legislation knowledge immediately upon termination of each production of same with all necessary data as to title, length, character, director, ^{scenar} ~~author~~, other people usually mentioned in connection with such films etc.

Thus the general possibility should be given for a national catalogue of production, which could form the basis for an international exchange of information possibly under an UNESCO program.

Apart from these special recommendations for national legislation concerning the legal deposit and the national catalogues the Committee of Experts also on the basis of opinions expressed by the representatives of international non-governmental organizations recommends to UNESCO the examination by a group of legal experts of the following ideas concerning possible recommendations to the Member States for amendments to their national Copyright Legislation or to the competent international bodies for amendments to the International Copyright Conventions; thus also promoting the aim of preservation of moving images of cultural value:

1. To prohibit in the national Copyright legislation the destruction of negative material of moving images or the handling of same in a manner that leads to destruction or makes it unusable unless the owner of such material has offered to turn it over to some institution prescribed by such legislation free of all charges and renouncing to all eventual Copyright Ownership in favor of said institution. If the Copyright owner is not the proprietor of the negative material the obligation may go in the direction of having to turn the negative material over to the Copyright

Owner who in turn has eventually to turn it over to the institution prescribed.

This would mean a regulation resembling the one of the German Democratic Republic, where according to Copyright Law the owner of a work of art has to sell it back to the artist in case he intends the destruction; in case of films etc. there are several authors and thus a turning over to such an institution would be the best way.

- 2. To take the point 1 up as an amendment in the Universal Copyright Convention as to oblige all Member States to such a form of protection of moving images.

This would be the only way for a protection of moving images on an international scale.

[Handwritten Signature]
 (Dr. Glücksmann)
 Representative of IWG