

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

SAFEGUARDING AND PRESERVATION OF MOVING IMAGES

Preliminary report prepared in accordance with Article 10.1 of Unesco's Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution

SUMMARY

By resolution 4/7.6/1 adopted at its twentieth session, the General Conference, considering it desirable that an international instrument concerning the safeguarding and preservation of moving images be prepared, decided that the instrument should take the form of a recommendation to Member States.

In pursuance of Article 10, paragraph 1, of the Rules of Procedure concerning the Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, the Director-General has prepared the present preliminary report setting forth the position with regard to the safeguarding and preservation of moving images and to the possible scope of the proposed recommendation. The first draft of a recommendation is annexed hereto.

This preliminary report and the first draft of the recommendation are submitted to Member States for their comments and observations. On the basis of these, the Director-General will prepare a final report containing a revised draft recommendation for submission to a special committee consisting of technical and legal experts appointed by Member States. This special committee, which will be convened in conformity with the above-mentioned resolution adopted by the General Conference at its twentieth session, will meet in March 1980. The draft recommendation, as approved by the special committee, will then be submitted to the General Conference at its twenty-first session for examination and possible adoption.

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ANNEX: First draft of a recommendation

INTRODUCTION

1. In pursuance of resolution 3.422 and of resolution 4.121 adopted by the General Conference at its eighteenth and nineteenth sessions respectively and in accordance with the provisions of Articles 2 and 3 of the "Rules of Procedure concerning the Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution", the Director-General prepared a preliminary study of the technical and legal aspects of the possible regulation on an international basis of the safeguarding and preservation of moving images.
2. In conformity with Article 3(b) of the above-mentioned Rules of Procedure, this study was submitted to the Executive Board at its 104th session (April-June 1978). After examining this preliminary study (document 104 EX/21), the Executive Board took on 8 June 1978 the following decision:

"The Executive Board,

1. Considering Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Having examined the preliminary study contained in document 104 EX/21,
3. Decides to include the following item in the provisional agenda of the twentieth session of the General Conference:

'Desirability of adopting an international instrument on the safeguarding and preservation of moving images'".

(104 EX/Decision 5.5.2)

3. Under the terms of Article 6 of the above-mentioned Rules of Procedure, it was for the General Conference to decide whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question could be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States.
4. At its twentieth session, (October-November 1978), the General Conference adopted the following resolution:

"The General Conference

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II

Mindful of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the preliminary study by the Director-General of the technical and legal aspects of the problems involved in the safeguarding and preservation of moving images (20 C/41),

4. Considers that the preparation of an international instrument concerning the question is desirable,
5. Decides that the international instrument shall take the form of a recommendation to Member States within the meaning of Article IV, paragraph 4, of the Constitution,
6. Authorizes the Director-General to convene the Special Committee provided for in Article 10, paragraph 4, of the aforesaid Rules of Procedure, which shall be instructed to prepare a draft recommendation for examination by the General Conference at its twenty-first session."

(20 C/4/7.6/1)

5. In pursuance of this resolution and in conformity with the provisions of Article 10.1 of the aforesaid Rules of Procedure, the Director-General has prepared the present preliminary report setting forth the position with regard to the problem to be regulated in a recommendation and to the possible scope of this proposed international instrument.
6. This report is based to a large extent on the preliminary study submitted to the General Conference at its twentieth session and on the conclusions of a panel of experts composed of V. Blanco Labra (Legal Advisor, Mexican Chamber of Radio and Television), F. Buache (Director, Cinémathèque suisse), S.F. Gronich (Vice-President, Motion Picture Export Association of America), R. Hamini (Head of Department, Algerian Radio and Television Broadcasting Organization), W. Klaue (Director, Film Archive of the German Democratic Republic), F. Klaver (Professor of Law, University of Amsterdam), M. Musembi (Kenya National Archives), P.K. Nair (Curator, National Film Archive of India), and S. Norrlander (Head of Film Library, Swedish Broadcasting Corporation). This panel of experts met at Unesco Headquarters from 2 to 4 May 1979 together with representatives of the following international intergovernmental and non-governmental organizations competent in the field in question: the International Centre for Conservation, the World Intellectual Property Organization, the European Broadcasting Union, the International Confederation of Societies of Authors and Composers, the International Copyright Society, the International Council of Archives, the International Council of Museums, the International Federation of Actors, the International Federation of Film Archives, the International Federation of Film Distributors Associations, the International Federation of Film Producers Associations, the International Federation of Musicians, the International Federations of Producers of Phonograms and Videograms, the International Federation of Television Archives, the International Film and Television Council and the International Writers Guild. The above-mentioned experts and representatives of organizations assisted the Secretariat in preparing the first draft of a recommendation.
7. Member States are invited to present their comments and observations on the present report and on the first draft of a recommendation annexed hereto. According to Article 10.2 of the above-mentioned Rules of Procedure, the Director-General's preliminary report is to reach Member States at least 14 months before the opening of the next session of the General Conference which is scheduled to meet on 23 September 1980 and the comments and observations of Member States are to reach the Director-General at least 10 months before the opening of this session, that is, by 23 November 1979.
8. On the basis of the comments and observations received by the date indicated, the Director-General will prepare a final report containing a revised draft recommendation which, in accordance with the provisions of Part II of resolution 20 C/4/7.6/1,

will be submitted to a special committee of technical and legal experts appointed by Member States. This special committee will meet in March 1980 and, in conformity with Article 10.5 of the aforesaid Rules of Procedure, will be given the task of submitting to Member States, at least seventy days before the opening of the session of the General Conference, a draft recommendation which it has approved, with a view to its discussion and possible adoption by the General Conference.

A. PURPOSE OF A RECOMMENDATION CONCERNING THE  
SAFEGUARDING AND PRESERVATION OF MOVING IMAGES

(a) Legal status of a recommendation and obligations deriving from its adoption by the General Conference

9. The Rules of Procedure concerning Recommendations to Member States and International Conventions, adopted by the General Conference at its fifth session, and modified at its seventh and seventeenth sessions, specify that a recommendation is an instrument by means of which "the General Conference formulates principles and norms for the international regulation of any particular question and invites Member States to take whatever legislative or other steps may be required - in conformity with the constitutional practice of each State and the nature of the question under consideration - to apply the principles and norms aforesaid within their respective territories". States accordingly remain completely free to apply this instrument in the manner best suited to their particular situation. Nevertheless, the adoption of a recommendation by the General Conference entails the following obligations for Member States:
- (1) In accordance with Article IV, paragraph 4, of the Constitution, each Member State must submit the recommendation to its competent national authorities within a period of one year from the close of the session of the General Conference at which it was adopted.
  - (2) As laid down by Article VIII of the Constitution, each Member State must submit to the Organization, at such times and in such a manner as shall be determined by the General Conference, reports on, among other things, the action taken upon the recommendation.
10. The General Conference supplemented the latter provision with Article 16 of the Rules of Procedure mentioned above. This article provides that:
- "(1) Member States shall submit to the General Conference special reports on the action they have taken to give effect to conventions or recommendations adopted by the General Conference.
  - (2) Initial reports relating to any convention or recommendation adopted shall be transmitted not less than two months prior to the first ordinary session of the General Conference following that at which such recommendation or convention was adopted.
  - (3) The General Conference may further request Member States to submit, by prescribed dates, additional reports giving such further information as may be necessary".
11. In Articles 17, 18 and 19 respectively of the same Rules of Procedure, it is also stipulated that "the General Conference shall consider the special reports submitted by Member States in connection with the convention or recommendation in question", that it "shall embody its comments on the action taken by Member States

in pursuance of a convention or recommendation in one or more general reports, which the Conference shall prepare at such times as it may deem appropriate", and that these reports "shall be transmitted to Member States, to the United Nations, to National Commissions, and to any other authorities specified by the General Conference".

12. The obligation imposed on Member States by Article IV, paragraph 4, of the Constitution, to submit the recommendation to the competent national authorities is intended to ensure that suitable steps are taken to apply it. Furthermore, with the aid of the reports it will receive in accordance with Article VIII of the Constitution and the relevant provisions of the aforesaid Rules of Procedure, the General Conference is in a position to judge to what extent the recommendation has been put into effect, the means employed for that purpose, the difficulties encountered, the results obtained, etc. From the information thus received, the General Conference is able to derive valuable guidance on the direction to be given to future activities of the Organization in a given area.

(b) The problem

13. It is evident that films and other forms of motion pictures, whether projected on the cinema or television screen or by other means, have today a far-reaching influence on the daily life of vast numbers of people. It is through these audio-visual media that members of present-day society are informed, entertained and, what is of particular importance, acquainted with manifestations of their own culture and of that of other peoples.

14. Moving images are not only a unique means of recording events in motion and other aspects of contemporary life that cannot be fixed in any other way with the same degree of accuracy. They also constitute forms of expression and communication increasingly employed throughout the world. Their significance is especially evident for those countries with prevalently oral traditions where moving images, together with sound recordings, constitute a particularly valuable means of recording different aspects of their culture - their folklore and customs which are the very foundations of their cultural identity. Moving images constitute an important medium whereby nations may come to know and appreciate the culture, history, achievements and way of life of other peoples and they contribute in this way to the promotion of mutual understanding among nations.

15. Furthermore, the recent development of new technology and of television in particular has permitted the introduction of new educational techniques which are increasingly used to complement the printed word in storing and transmitting knowledge. The contribution made by moving images to education and to the quality of life of each individual is indeed vast.

16. These audio-visual recordings may thus be considered as constituting a new type of cultural property and therefore as forming part of the cultural heritage of nations. However, despite their recognized cultural, educational, scientific and historical value, many items of the moving image heritage of States have been irretrievably lost. Due to the physical properties of the material in which moving images are embodied and as a result of the method used in fixing them, their safeguarding and preservation give rise to a number of problems of a technical nature. For instance, film is subject to a continuous deterioration process which may be accelerated and may even result in its total disappearance if it is not maintained under adequate technical conditions. Many elements have in fact been lost either due to deterioration or through accident (fire, floods, etc.) or because they have been eliminated. In this connection, it should be recalled that, in the case of cinematographic works, contracts concluded between producers and distributors often

specify that after the contractual exploitation period the prints are to be destroyed. It is also current practice in television broadcasting organizations to erase recordings which are not considered of value so that the tapes may be re-used.

17. Since moving images of value are recognized as forming an integral part of a nation's cultural heritage, it would seem appropriate that each State should take the necessary measures to ensure that this part of its heritage is safeguarded and preserved for the benefit of present and future generations. Of prime importance is the need to establish closer co-operation between those involved in the making and distribution of moving images (namely, the authors, producers, performers and distributors) and those institutions which are primarily concerned with the safeguarding and preservation of moving images. However, in the face of the current propagation of piracy (that is, the unauthorized reproduction and use of recordings) and the growing disrespect for copyright on many fronts, true co-operation between those bodies can only be achieved if an atmosphere of mutual trust prevails.

18. There is equally a need for closer co-operation among States. For instance, information on new techniques and the results of research should be more widely circulated and co-ordinated action is required for the establishment of cataloguing standards. Furthermore, the safeguarding of these audio-visual recordings calls for investment and maintenance costs that are beyond the means of many countries which do not therefore possess the necessary facilities and specialized personnel. Co-operation therefore needs to be strengthened with the developing countries to enable them to preserve their moving image heritage.

19. It is with these problems and objectives in mind that the attached draft text of a recommendation to Member States on the safeguarding and preservation of moving images has been prepared.

#### B. SCOPE OF THE PROPOSED INTERNATIONAL INSTRUMENT

##### (a) Contents of the first draft

20. The first draft of the recommendation set out in the Annex to this report contains the following chapters and sections:

Preamble

I. Definitions

II. General principles

III. Measures recommended

A. Legal and administrative measures

B. Technical measures

C. Supplementary measures

IV. International co-operation

##### (b) Commentary chapter by chapter and section by section

Preamble

21. In the preamble which contains the philosophy and "raison d'être" of the draft recommendation, it would seem appropriate to emphasize the lasting cultural value of moving images and to encourage the recognition of moving images as forming

an integral part of a nation's cultural heritage. From this stems the desirability of recommending that States take the necessary action in order to safeguard their moving image heritage from the different dangers to which it is exposed. Furthermore, the preamble recalls the existing international legislative framework which is relevant to the question under consideration. Reference is thus made not only to the various conventions and recommendations adopted by the General Conference of Unesco concerning the protection of movable cultural property but also to the different international agreements concerning copyright and the so-called neighbouring rights.

## I. Definitions

22. A very broad definition of the term "moving images" is proposed, covering all films produced for cinema and television, recordings made by television broadcasting organizations and other recordings of motion pictures, including works conceived as videograms and recordings made by fixed cameras. The categories listed are not to be considered as exhaustive. The definition would apply to moving images which have been communicated or distributed to the public, either by means of projection on screens, or by television or made available on sale or hire or by other means to the public. Also included in the proposed definition would be moving images made by official bodies for documentation purposes and those recordings which were made for communication or distribution to the public but which were finally not communicated or distributed. Moving images made by a private person or body for his/its own use would not be covered by this definition, nor would the material produced in the preparation of a production but not included in the final product.

23. The definition proposed for "national production" is based on the terms used to determine the "national" authors of cinematographic works in the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the "Berne Convention").

## II. General principles

24. In this section are formulated principles for the safeguarding and preservation of the "moving image heritage" of States. This term refers to those nationally produced moving images which the State concerned considers to form part of its cultural heritage. Several members of the panel of experts convened to assist the Secretariat in the preparation of a first draft of a recommendation felt that this concept of the moving image heritage was unduly restrictive, since other moving images could be important for the culture of a given country. For instance, films made by a national no longer resident in the country, films made in the country concerned by foreign producers and even foreign films having influenced the culture of the country, could be of great significance for that country. However, there was general agreement that each State has prime responsibility for its own national production and that emphasis should therefore be on the need for each State to preserve as many items as possible of that production.

25. Since it is deemed difficult to determine which moving images will be of value to future generations, it would appear advisable to recommend that each State preserve its entire national production or, should that not prove possible, as many elements thereof as feasible. There has been a tendency in the past to give priority to the preservation of the film as art. Furthermore, selections have sometimes been made too hastily, with the result that material of a type that is later considered to be of value has disappeared.

26. Special mention has been made of ephemeral recordings which are made by television broadcasting organizations for technical reasons and exclusively for their own broadcasts. Such recordings must normally be destroyed within 6 months of their

making. However, the Berne Convention foresees that where an ephemeral recording has an exceptional documentary character, one copy may be preserved in official archives.

27. In view of the fact that moving images are recognized as forming part of the cultural heritage of a State, it would seem desirable to lay emphasis on the need for a coherent policy and co-ordinated action to ensure that the moving image heritage of a State is assembled and preserved under good technical conditions. In most countries, a deposit system has been introduced with respect to printed material published in the country. It would appear that one effective way of ensuring that the moving image heritage is adequately preserved would be if such a system were applied to the national production. By this means, it should be possible to prevent the loss of any important element of that heritage.

28. The preservation of moving images under good conditions cannot be an end in itself. It is understandable that for example students of history, research workers, actors, writers and producers and special groups such as film clubs, wish to have access to films and similar documents that are of particular interest to them. It is, however, equally understandable that the owners of rights and notably the authors and the producers, who have invested considerable resources in the production of moving images, seek to restrict as far as possible any access made available free of charge. This attitude is not merely dictated by commercial interests. It must be recalled that moving images are produced on the basis of contracts concluded between the producers and the authors. These contracts may limit the use and fix the duration and geographical limits of the commercial exploitation of the works. It would moreover seem unlikely that countries would wish to reduce the contractual freedom of authors and to provide, for instance, that on expiry of the exploitation period, moving images could not only be placed in archives but, in addition, be used for further public showings or for exchange purposes with other archives. It is for these reasons that any provisions relating to the use of deposited recordings should take account of the terms of international conventions and national legislation concerning copyrights and neighbouring rights in moving images.

### III. Measures recommended

#### A. Legal and administrative measures

29. The principal recommendation formulated in this section relates to the introduction of a formal deposit system for moving images, similar to that instituted in many countries for books. Very few States have so far adopted such a system for moving images. However, discussions held with experts from Member States and with the professional bodies concerned, namely the authors, producers, distributors and archivists, indicate that such a recommendation would be acceptable to all provided that the institution of a deposit system does not prejudice the rights (copyrights and neighbouring rights) in such material.

30. The deposit system would refer exclusively to nationally produced moving images and those made in co-production with a foreign maker. The viewpoint of the authors and producers of films who are adamantly in opposition to the compulsory deposit of films produced abroad is understandable: many cinematographic works are distributed on a world-wide basis and it would not be possible, in view of the cost involved and because of the risk of losing control over their rights, to deposit a copy of such works in each country in which they are distributed. It is recognized, however, that archives in countries whose national production is limited would wish to collect copies of important foreign productions. It is therefore recommended (see paragraph 11 of the attached draft text) that archives should seek the voluntary deposit of such foreign films; this could take place under contractual arrangements between the archives and the producers.

31. It is evident that moving images should be preserved in the best possible form. It is for this reason that film archives prefer to receive negative material rather than a used print on which there has been a loss in quality. However, this material, extremely valuable in itself, is necessary for the manufacture of projection prints and the producer is therefore reluctant to entrust this material to an outside body. The proposed text therefore leaves it to each State to determine the nature of the copy to be deposited, while drawing attention to the fact that the copy should be of very good quality and foreseeing the possibility of accompanying the copy with pre-print material. In cases where negative material is deposited, a provision has been included in order to enable access by the producer for printing purposes (paragraph 8.e).
32. The introduction of a formal deposit system for moving images would necessarily call for the designation of institutions where the deposited recordings could be stored and handled under appropriate conditions. There already exist in many countries governmental, semi-governmental or private bodies, the main function of which is the systematic acquisition and permanent preservation of moving images and which have accumulated over the years a vast wealth of material. It is desirable that, whenever possible, these institutions be entrusted with the moving images deposited under a formal deposit system and be considered as the "official archives" for the moving image heritage of the country concerned. Where such institutions do not already exist, it would appear appropriate to invite Member States to establish bodies for that purpose.
33. Another important factor to be considered with respect to the introduction of a deposit system is the timing of the deposit. Although it is not possible to provide precise indications on this question which is closely linked with the nature of the copy to be deposited, it is suggested that the deposit should be made as soon as possible. The reference to the deposit after completion of the standard copy in the case of cinematographic films and after its broadcast for a television production indicates that the deposit refers exclusively to the finished product. It is to be recalled in this connection that a television production may be actually broadcast several months after its recording and it would therefore be inappropriate to propose deposit before it is broadcast.
34. It will be noted that no reference has been made to the bearer of the cost of the copy to be deposited. Opinions vary among the experts and the representatives of organizations consulted on this question. In view of the expense of making a copy - it is estimated that the cost of a positive print of a feature film would be of the order of \$2,500 - many consider that the State should meet the cost involved. Others feel that the cost could be met by the producer who could include this expense in his production budget which, in many cases, is subventioned by the State. Since there would appear to be no consensus on this subject, it is proposed that it should be left to each State to decide on this matter, particularly since the questions concerning the nature of the material to be deposited and the timing of the deposit which are clearly related to the question of cost have also been left to the discretion of each State.
35. The essential question raised by the proposal to institute a formal deposit system for moving images is, for all the professional bodies concerned, the nature of the use of the material deposited by the official archives. On this question, the Organization, although it is committed by virtue of its Constitution to promote "the free flow of ideas by word and by image" (Article I.2a), has at the same time responsibilities in the copyright field, in that it assures the Secretariat of the Universal Copyright Convention and is especially concerned with the stimulation of artistic and intellectual creativity. Therefore, whereas the important role played

by archives in disseminating culture is fully recognized, it would seem unlikely that the General Conference of Unesco would wish to adopt a recommendation on the safeguarding and preservation of moving images that would in any way be in conflict with the provisions of international agreements in the copyright field. It would furthermore seem more appropriate that any debate on the limitation of the exclusive rights of authors as stipulated in those international agreements should rather take place in the context of discussions relating to the implementation of those conventions (for instance, within the framework of the Intergovernmental Copyright Committee and of the Executive Committee of the International Union for the Protection of Literary and Artistic Works). It is for these reasons that the proposed text remains within the provisions of those international conventions and expressly refers thereto.

36. In this connection, it will be recalled that the Berne Convention stipulates that the author has the exclusive right to authorize the reproduction and communication to the public of his works. However, with respect to reproduction, the Berne Convention leaves some latitude to States in that it foresees the possibility that States may "permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." (Article 9). On the question of communication to the public, it is the national legislation which regulates the extent to which material may be used for private purposes and in fact the definition of "private use" varies from legislation to legislation: in some, private use refers exclusively to use by members of the restricted family circle and in others it is extended to cover private clubs. It will thus be seen that it is not only the provisions of international conventions that should be taken into account when referring to the use by the archives of deposited recordings, but that the terms of national legislation are also particularly important. The sub-paragraph in the draft text relating to this question therefore subjects any use made by the archives of moving images deposited to the relevant provisions of both international conventions and national legislation.

37. The archives seek the right to use the moving images deposited in the following ways:

- (a) to reproduce at their own expense the material deposited as and when necessary for the safeguarding of that material; this would entail, inter alia, the following operations: to make, in cases where one copy is deposited, a second copy so that they hold one copy for preservation purposes and one copy for reference and to make intermediate elements where necessary;
- (b) to project the reference copy for study, research or educational purposes, on their own premises to a limited audience on a non-commercial basis; and
- (c) to lend a copy to other official archives in the framework of international cultural co-operation for the sole purposes of study, research or education.

38. Discussions with representatives of the professional bodies concerned and, in particular, of the authors and the producers, indicate that the use by archives of such material should be strictly limited to the extent foreseen in the relevant international conventions and by national legislation. The text proposed reflects therefore a compromise position. On the one hand, it recognizes that archives should be entitled to take all the necessary measures (which include reproduction) to safeguard the moving images deposited and to project a copy for teaching or research purposes to a limited number of viewers on a strictly non-profit-making basis. (The term "teaching" is to be interpreted as referring not only to instructional activities at all levels in tutorial institutions, primary and secondary schools, colleges and

universities, but also to a wide range of organized educational activities intended for participation at any age level and devoted to the study of any subject, in accordance with the interpretation adopted in connection with the implementation of the Universal Copyright Convention and the Berne Convention.) On the other hand, it takes account of those national legislations which are more restrictive by stating that such entitlement should be subject to the relevant provisions of national legislation.

39. It would appear extremely difficult at this stage to foresee the possibility of permitting the archive to exchange copies of the moving images deposited, in view of the fears of the authors and producers that if the works leave the country, it would be impossible to control their utilization. The draft text, however, draws the attention of Member States in paragraph 12 to the desirability of studying the possibility of adopting measures that would favour an extension of the uses permitted to official archives within the limits imposed by the international conventions on copyright and neighbouring rights.

40. As has been stated above, it is considered desirable that the national production of moving images in its entirety be preserved. It is to be hoped that advances in technology will make available in the not too distant future storage systems that will be less costly and require less space than those in current use. It is recognized, however, that for the time being, it is not possible in the majority of countries for reasons of space or cost, to preserve the whole national production. Therefore, where the total volume of moving images produced in the country exceeds the resources available for their preservation, it is evident that some form of selection must be made. The difficulty of selecting material for preservation on a long-term basis is recognized. Any selection criteria would be subjective in nature and might lead to the elimination of material that in later generations would prove to be of great value. The draft text therefore refers to the need to base selection on the broadest possible consensus of informed opinion (and this would necessarily entail consultations with all the professional bodies concerned) and in the light of criteria established by archivists. Furthermore, it is felt that moving images should undergo a "test of time" before any selection is made.

#### B. Technical measures

41. It has been considered appropriate to emphasize the responsibility of the State in ensuring that its moving image heritage is maintained under adequate technical conditions, particularly in view of the high cost involved, not only with respect to the initial investment required for the construction of appropriate premises, but also in terms of staff, equipment and maintenance costs.

42. The preservation qualities of moving images depend on their support media and the method used in fixing them. It is particularly important that each type (nitrate film, black-and-white acetate film, colour film, video-tape, video-disc, etc.) be stored in conditions which correspond to its specific requirements. These conditions have been the subject of study and experiment, carried out, in particular, under the auspices of the International Federation of Film Archives (FIAF) which has established precise standards for the preservation of certain types of moving image material. It would not however be appropriate to include such technical details in a recommendation to Member States. Whereas some recommendations on the storage of certain types of material supports might well remain valid for some time, other recommendations may be quickly outdated in view of the rapid pace of technological development. Such information should rather be made available in the form of technical manuals prepared by the competent international organizations. It would thus seem preferable to call the attention of Member States to those standards and recommend their application.

43. In addition to their responsibility for maintaining the moving image heritage under adequate technical conditions, official archives should fulfil certain complementary functions, such as those referred to in paragraph 14.

44. It is of prime importance that the original material be preserved under the best possible conditions. Such material is usually retained by the producers. It would therefore seem essential that the producers be urged to ensure its preservation by taking the necessary precautions. Where such material is not deposited with archival institutions, it should at least be entrusted to special laboratories with adequate facilities for its maintenance under good technical conditions. Furthermore, since the deposit system would not have a retroactive effect, the producers should be encouraged to deposit on a voluntary basis copies of moving images made before the institution of such a system, together with preprint material if possible. In addition, in cases where production companies are dissolved, all their holdings should be deposited for safeguarding with the official archives.

#### C. Supplementary measures

45. In this section, it is suggested that Member States call on other bodies to contribute to the preservation of moving images. The role of the mass media in instilling in the professional bodies concerned and in the public at large an appreciation of the value and importance of moving images is underlined. Furthermore, the collaboration of research teams is sought in seeking more stable support media which could be used for long-term preservation purposes at relatively low cost.

#### IV. International co-operation

46. Whereas the principal recommendations set out in the draft text relate to measures to be taken by States at the national level with respect to their own moving image heritage, there are certain aspects of the safeguarding and preservation of moving images which call, in particular, for co-operation among States. Emphasis should be laid, in this connection, on the need to promote technical co-operation in favour of the developing countries. As already mentioned, the cost involved in establishing the necessary facilities, in maintaining adequate conditions for the proper safeguarding of the material and in training personnel to carry out all the necessary tasks is extremely high. The resources available in the developing countries for these purposes are often very limited and the international community should therefore work with these countries for the preservation of their moving image heritage which constitutes part of the cultural heritage of mankind.

47. It would also seem essential that States should co-operate for the purpose of enabling any State to gain access to moving images that directly relate to its history or culture. Some countries have not always possessed - and some may not possess for some time to come - the necessary technology in order to record aspects of their history and culture and they have had to rely on foreign producers for this purpose, with the result that such recordings are for the most part held abroad. Others have lost recordings of great relevance and direct interest to them due to accidents or as a result of armed conflict. This material is either the property of the State or of private bodies or individuals. Whereas in the case of public property, the State concerned could make a copy available of moving images relating to the history or culture of another State, if the moving images in question are private property over which the State has no control, the action of the State would be limited to encouraging those concerned to deposit copies on a voluntary basis. The draft text therefore makes the distinction between publicly- and privately-owned property.

48. The problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin were discussed by the General Conference at its twentieth session (document 20 C/102). In part III of resolution 5/10.1/1 adopted on that occasion, the General Conference inter alia noted the Guidelines and Archival Principles contained in that document, "as an instrument of reference intended to facilitate negotiations leading to the conclusion of bilateral and/or multilateral agreements, with a view to solving conflicting archival claims" and invited Member States "to take into consideration the Guidelines and Archival Principles in matters relating to such archival claims". Since the question of the transfer of archival material has been fully examined in a different context and in view of the fact that the instrument under preparation relates to all moving images and not only to those forming part of public archival material, it would seem advisable not to take up in detail the different problems involved but to refer to the conclusions of the General Conference on the matter.

### C. CONCLUSION

49. A recommendation on the safeguarding and preservation of moving images, if adopted by the General Conference, would be the first international normative action on that question. The draft text attached to this preliminary report attempts to achieve a balance between the concerns of preservation and the interests of the different professional bodies. On some crucial issues where viewpoints are very divergent, it has been necessary to adopt a compromise position. It is hoped that a text reflecting as far as possible public interest and the standpoint of the majority of interested groups, as represented in the Member States, will contribute towards the establishment of an atmosphere of trust that will enable the moving image heritage of States to be properly preserved for the benefit of future generations.

50. In the light of the comments and observations received from Member States, the Director-General will draw up a final report containing a revised draft recommendation. This report will be communicated to Member States and to the special committee of governmental experts to be convened in accordance with resolution 4/7.6/1 adopted by the General Conference at its twentieth session.

ANNEX I

FIRST DRAFT OF A RECOMMENDATION  
CONCERNING THE SAFEGUARDING AND PRESERVATION  
OF MOVING IMAGES

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Belgrade from \_\_\_\_\_ to \_\_\_\_\_ 1980, at its twenty-first session,

Considering that cinematographic, television and videographic productions constitute new forms of expression, particularly characteristic of present-day society, whereby an important and ever-increasing part of contemporary culture is manifested,

Considering that moving images provide a fundamental means of recording the unfolding of events and, as such, constitute important and often unique testimonies to the history, way of life and culture of peoples and to the evolution of the universe,

Noting that these audio-visual media have an increasingly important role to play as a means of communication and mutual understanding among all the peoples of the world,

Noting furthermore that, by disseminating knowledge and culture throughout the world, moving images contribute extensively to the education and to the enrichment of each human being,

Recognizing that moving images are an expression of the cultural identity of peoples and, because of their educational, cultural, scientific and historical value, form an integral part of a nation's cultural heritage,

Considering however that, due to the nature of their material embodiment and the method of their fixation, moving images are extremely vulnerable and should be maintained under specific technical conditions,

Noting furthermore that many elements of the moving image heritage have disappeared due to deterioration, accident or unwarranted disposal, which constitutes an irreversible impoverishment of that heritage,

Recognizing the results yielded by the efforts of specialized institutions to save moving images from the dangers to which they are exposed,

Considering that it is necessary for each State to take the appropriate complementary measures to ensure the preservation for posterity of this particularly fragile part of its cultural heritage, just as other forms of cultural property are safeguarded as a source of enrichment for present and future generations,

Considering that moving images created by the peoples of the world also form part of the heritage of mankind as a whole and consequently that closer international co-operation should be promoted to safeguard these irreplaceable records of human activity and, in particular, for the benefit of those countries with limited resources,

Noting that the General Conference has already adopted international instruments relating to the protection of the movable cultural heritage and, in particular, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Recommendation on the Means of Prohibiting and Preventing the Illicit

Export, Import and Transfer of Ownership of Cultural Property (1964), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the Recommendation on the International Exchange of Cultural Property (1976) and the Recommendation on the Protection of Movable Cultural Property (1978),

Desiring to supplement and extend the application of the standards and principles laid down in these conventions and recommendations,

Bearing in mind the terms of the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works and the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,

Having before it proposals concerning the safeguarding and preservation of moving images,

Having decided, at its twentieth session, that this question should take the form of a recommendation to Member States,

Adopts, this                      day of                      1980, the present recommendation.

The General Conference recommends that Member States apply the following provisions by taking whatever legislative or other steps may be required, in conformity with the constitutional system or practice of each State, to give effect within their respective territories to the principles and norms formulated in this recommendation.

The General Conference recommends that Member States bring this recommendation to the attention of the appropriate authorities and bodies.

The General Conference recommends that Member States submit to it, by the dates and in the form which it shall prescribe, reports concerning the action taken by them in pursuance of this recommendation.

## I. DEFINITIONS

## 1. For the purpose of this Recommendation:

- (a) "moving images" shall be taken to mean series of images (irrespective of the method of recording and of the material support, such as film, tape or disc, used in their initial or subsequent fixation), with or without accompanying sound, which when projected impart an impression of motion and which are intended for communication or distribution to the public or are made for official documentation purposes; they shall be taken to include inter alia items in the following categories:
  - (i) cinematographic productions (such as feature films, short films, films for television, animated films, documentaries and newsreels);
  - (ii) television productions made by broadcasting organizations;
  - (iii) videographic productions (such as are contained in video-cassettes and video-discs) other than those referred to under (i) and (ii) above.
- (b) "national production" shall be taken to mean moving images made by a maker having his headquarters or habitual residence within the territory of the State concerned, irrespective of any co-production arrangement made with a foreign maker.

## II. GENERAL PRINCIPLES

2. All moving images of national production which are of value to the country concerned should be considered as forming the "moving image heritage" of that country. In order to ensure that this heritage is handed down in its entirety to future generations, as much as possible of the national production, including those ephemeral recordings having an exceptional documentary character, should be safeguarded and preserved. The necessary arrangements should be made to ensure that concerted action is taken by all the public and private bodies concerned in order to elaborate and apply an active policy to this end.
3. The appropriate measures should be taken to ensure that the moving image heritage is afforded adequate protection from the deprivations wrought by time. Since poor storage conditions accelerate the deterioration process to which the material supports are continuously subject and may even lead to their total destruction, moving images should be stored in appropriate archival facilities and processed according to the highest archival standards. Furthermore, research should be specifically directed towards the development of more stable support media for moving images.
4. In view of the significance of moving images as part of a country's cultural heritage, measures should be taken to prevent the unwarranted disposal of any item of the national production. Means should therefore be instituted in each country whereby recordings of moving images may be systematically acquired by the public authorities.
5. Access should be made available as far as possible to the works and information sources represented by moving images. Any utilization should be compatible with practices which will not unreasonably prejudice the legitimate interests of those involved in the making thereof, as stipulated in the Universal Copyright Convention,

the Berne Convention for the Protection of Literary and Artistic Works and the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and in national legislation.

6. The co-operation of all those involved in the making, distribution and preservation of moving images should be obtained to ensure that a truly effective preservation programme is successfully undertaken. Public information activities should therefore be organized with a view to instilling in the professional circles concerned a general awareness of the significance of moving images for a country's heritage and the consequent need to preserve them as testimonies to the life of contemporary society.

### III. MEASURES RECOMMENDED

7. In accordance with the principles set out above, Member States should take all the necessary steps, in conformity with their constitutional system, to safeguard and preserve effectively their moving image heritage and, in so doing, they should be guided by the following provisions.

#### A. Legal and administrative measures

8. To ensure that moving images forming part of the cultural heritage of countries are systematically preserved, each Member State should adopt the necessary legislative or regulatory measures to institute a formal deposit system for its national production; such a system should complement any existing archival arrangements relating to publicly-owned moving images. Measures taken to this effect should be consistent with the provisions of national legislation and international conventions concerning copyright and the so-called neighbouring rights in such images, and should take into account the special conditions provided in favour of developing countries in these conventions. The deposit system should provide that:

- (a) moving images, whatever the physical characteristics of their support medium or the purpose for which they were created, should be deposited in one copy of the highest quality together, if possible, with pre-print material;
- (b) the copy should be deposited by its maker having his headquarters or habitual residence within the territory of the State concerned, irrespective of any co-production arrangement made with a foreign maker;
- (c) the copies deposited should be stored in officially recognized film or television archives; where such institutions do not exist, appropriately equipped premises should be established; these institutions would together form the "official archives" for the moving image heritage of the State concerned;
- (d) the deposit should be made as soon as possible; in the case of a cinematographic film, the copy should be deposited after completion of the standard copy and in case of a television production after its broadcast;
- (e) the depositer should have controlled access to the deposited recordings whenever further printing is required;
- (f) the official archives should be entitled, subject to the relevant provisions of international conventions and of national legislation, to:

- (i) take, at their own expense, all the necessary measures in order to safeguard the moving image heritage; where the reproduction of moving images is involved, due regard should be given to all the rights in the works concerned;
- (ii) project a copy for teaching or research purposes within its legal premises to a limited number of viewers on a strictly non-profit-making basis, provided that the projection does not conflict with the commercial exploitation of the deposited sequence or with its showing on television;
- (g) the copy deposited and the copies made therefrom should not be used for any other purposes nor should their content be modified without the consent of the owner(s) of the copyright and the agreement of the authors, producers, performers and broadcasting organizations holding other rights in the works;
- (h) non-compliance with the requirement of deposit should be subject to sanctions.

9. It is considered of the utmost importance that the entire national production of moving images be preserved. However, until such time as developments in technology make this feasible everywhere, in those cases where it is not possible for reasons of cost or space to retain on a long-term basis all the moving images deposited, a system should be instituted by the State concerned for determining which recordings, because of their particular value for that country's heritage, should be preserved for posterity. Any such system should foresee that selection should be based on the broadest possible consensus of informed opinion and with particular reference to the appraisal criteria established by the archival profession and should stipulate that no recordings should be eliminated until sufficient time has elapsed to allow for the necessary perspective. Moving images eliminated in this way should be returned to the depositor.

10. For the purpose of enabling the official archives to fulfil satisfactorily their functions, Member States should provide them with the necessary resources in terms of staff, equipment and funds.

11. Official archives should be encouraged to seek in accordance with the spirit of this Recommendation, the voluntary deposit, subject to all the rights therein, of copies of moving images made by foreign producers and publicly distributed in the country concerned.

12. Member States should furthermore investigate the feasibility of permitting, within the framework of international conventions concerning copyright and the so-called neighbouring rights in such works, official archives to utilize on a wider basis the deposited recordings for research and recognized teaching purposes that such utilization does not conflict with the normal exploitation of the works.

#### B. Technical measures

13. The preservation of moving images calls for special conditions of storage and handling due to the physical properties of the different material supports. Member States should therefore take all the necessary measures to ensure that moving images are preserved in accordance with the archival standards recommended by the international organizations competent in the field.

14. Furthermore, Member States should make the necessary arrangements to ensure that the institutions responsible for preserving the moving image heritage take the following measures:

- (a) establish and make available filmographies of the national production and descriptions of their holdings, using, where possible, standardized systems; these documentary materials would together form an inventory of the country's moving image heritage;
- (b) collect, preserve and make available for research purposes institutional records, personal papers and other material that document the origin, production, distribution and projection of moving images;
- (c) maintain in good condition the instruments, some of which may no longer be in general use but which are necessary for the reproduction and projection of moving images preserved or, should that not prove possible, ensure that the moving images concerned are transferred on to another material support permitting their reproduction and projection.

15. Member States should encourage private bodies and individuals holding moving images to take the necessary steps to ensure the preservation of original material under adequate technical conditions. These bodies and individuals should also be urged to entrust to the official archives copies of moving images made before the introduction of the deposit system, together with the relevant pre-print material, if available.

C. Supplementary measures

16. Member States should encourage the competent authorities to undertake public information activities in order to:

- (a) promote among all those involved in the making and distribution of moving images an appreciation of the lasting value of such material from the educational, cultural, scientific and historical points of view and an awareness of the consequent need to collaborate in the preservation of such documents;
- (b) to draw the attention of the public at large to the cultural and documentary importance of moving images and to the measures necessary for their preservation.

17. A mechanism should be established at the national level in order to co-ordinate research in fields related to the preservation of moving images and to encourage research specifically directed towards their long-term preservation at a reasonable cost. Information on methods and techniques for safeguarding moving images, including the results of relevant research, should be disseminated to all concerned.

18. Adequate training programmes should be provided in the safeguarding and restoration of moving images and should cover as broad a range of methods and techniques as possible so that those trained may adapt themselves without great difficulty to new technology.

IV. INTERNATIONAL CO-OPERATION

19. Member States should associate their efforts in order to promote the safeguarding and preservation of moving images which form part of the cultural heritage of nations. Such co-operation, which should be co-ordinated where appropriate through the competent international organizations, should comprise the following measures:

- (a) participation in international programmes for the establishment of the necessary infrastructure, at the regional or national level, to preserve the moving image heritage of countries which do not possess appropriate facilities or adequate resources;
- (b) exchange of information on methods and techniques for the preservation of moving images and, in particular, on the findings of recent research;
- (c) organization of international or regional training courses in related fields in particular for nationals of developing countries;
- (d) joint action for the establishment of international cataloguing standards specifically intended for archival holdings of moving images.

20. Member States should co-operate for the purpose of enabling any State to gain access to moving images that relate to its history or culture and of which it does not hold copies. To this end, each Member State should:

- (a) facilitate, in the case of moving images which it holds as public property and which relate to the history or culture of another country, the acquisition by the official archives of that country of a copy thereof;
- (b) encourage private bodies or institutions within its territory which hold such material to deposit on a voluntary basis copies thereof with the official archives of the country concerned.

Where necessary, the documents supplied in accordance with (a) and (b) above should be made available against reimbursement by the requesting body. However, in view of the cost involved, copies of moving images held by Member States as public property and which relate to the history and culture of developing countries should be made available to the official archives of those countries under especially favourable conditions. Any copies provided in accordance with the terms of this paragraph should be made available subject to any copyright and so-called neighbouring rights which may exist therein.

21. Where official archival material in the form of moving images has been lost by countries as a consequence of colonial or foreign occupation, Member States should, in connection with claims for such material, co-operate in the spirit of resolution 5/10.1/1.III adopted by the General Conference at its twentieth session.