



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.05.1995  
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**PROPOSAL FOR A COUNCIL DECISION APPROVING THE EUROPEAN  
CONVENTION RELATING TO QUESTIONS ON COPYRIGHT LAW AND  
NEIGHBOURING RIGHTS IN THE FRAMEWORK OF TRANSFRONTIER  
BROADCASTING BY SATELLITE**

**(presented by the Commission)**

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

In the Community the legal framework for creating a single audiovisual area, as laid down in Council Directive 89/552/EEC,<sup>1</sup> was supplemented, as regards copyright and neighbouring rights, by Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.<sup>2</sup>

Similarly, in the course of its deliberations in 1987 on the European Convention on Transfrontier Television,<sup>3</sup> the Council of Europe had decided not to include specific provisions on copyright and neighbouring rights and embarked on separate work in that field. That work led to the adoption, on 16 February 1994, of the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite.

It will be clear from what follows that the subject-matter of the last-mentioned Convention falls largely within the scope of the Community Directive, and it is this which, in the light of the case-law of the Court of Justice, justifies the proposal for a Council Decision approving the Convention.

### **2. SECONDARY LEGISLATION ADOPTED WITHIN THE COMMUNITY FRAMEWORK**

On 3 October 1989 the Council adopted Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, which makes provision for the promotion of the distribution and production of European television programmes and for advertising and sponsorship, the protection of minors and the right of reply.

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<sup>1</sup> Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ No L 298 of 17 October 1989, p. 23.

<sup>2</sup> OJ No L 248 of 6 October 1993, p. 15.

<sup>3</sup> Convention of 5 May 1989.

However, achievement of those objectives in respect of cross-border satellite broadcasting and cable retransmission of programmes from other Member States was still obstructed by differences between national copyright rules and by some degree of legal uncertainty regarding the rights to be acquired.

The Council, therefore, decided to supplement the legal framework established by Directive 89/552/EEC with measures concerning copyright and neighbouring rights that were set out in Directive 93/83/EEC of 27 September 1993.

In the satellite broadcasting field, that Directive, which is based on Articles 57(2) and 66 of the Treaty, is designed to promote freedom to broadcast programmes in the Community by reducing the disparities between national rules relating to copyright and neighbouring rights and by removing the legal uncertainty regarding the rights to be acquired through the inclusion of definitions of the concepts of communication to the public by satellite at Community level and the place of the act of communication.

Directive 93/83/EEC abolishes the differences in legal treatment in the copyright field between communication to the public by direct satellite and communication to the public by communications satellite. Furthermore, where programme-carrying signals are encrypted and the means for decoding them are made available to the general public by the broadcasting organisation or with its consent, the Directive deems this to be communication to the public by satellite.

As already mentioned, the Directive defines communication to the public by satellite and the place of the act so as to prevent cumulative application of the laws of a number of countries to a single act of broadcasting; the contractual acquisition of exclusive broadcasting rights should comply with the legislation on copyright and related rights in force in the Member State in which communication to the public by satellite occurs.

By deeming them to have occurred in the Community if certain conditions are met, the Directive also takes account of communications to the public by satellite from a third country which does not guarantee the same level of protection.

Under the Directive, Member States are to provide for the author to have the exclusive right to authorise the communication to the public by satellite of works protected by copyright; such authorisation may be acquired only by agreement, and arrangements are laid down regarding collective agreements concluded between collecting societies and broadcasting organisations.

For the purposes of communication to the public by satellite, the rights of performers, phonogram producers and broadcasting organizations are protected in accordance with Articles 6, 7, 8 and 10 of Directive 92/100/EEC.<sup>4</sup>

On one issue only - the rights of performers and phonogram producers regarding communication to the public by satellite - Directive 93/83/EEC provides for minimum protection, stipulating that Member States may provide for more far-reaching protection for holders of rights related to copyright than that required by Article 8 of Directive 92/100/EEC (Article 6 of Directive 93/83/EEC).

Finally, Directive 93/83/EEC contains transitional provisions applicable to agreements in force.

### **3. WORK CARRIED OUT BY THE COUNCIL OF EUROPE**

#### **(a) Negotiating directives given by the Council to the Commission**

In 1987 a committee of legal experts on the media was entrusted with the task of compiling information on matters relating to copyright and neighbouring rights in the satellite broadcasting field; in 1991 it was decided to draw up a specific convention on this subject.

The Commission participated in this work on behalf of the Community and in consultation with Member States on the basis of negotiating directives given it by the Council. Those directives called for the conclusion of a convention that was consistent with the principles contained in Directive 93/83/EEC regarding rights of authors, performers, phonogram producers and broadcasting organisations and for the inclusion in that convention of clauses permitting the European Community's accession and guaranteeing the application of Community rules between the members of the Community.

#### **(b) Progress of work and adoption of the Convention**

Each meeting of the Council of Europe's group of experts was preceded by coordination meetings at Community level. On 24 September 1993 the Commission sent the Council of Europe a letter containing the Community's requests for amendments to the draft convention.

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<sup>4</sup>

Council Directive of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ No L 346 of 27 November 1992, p. 61.

Following acceptance of those amendments, a final coordination meeting at Community level took place on 9 February 1994. At that meeting, the Member States' representatives agreed that the draft convention should be adopted and opened for signing at the meeting of the Council of Europe's Committee of Ministers scheduled for 16 February; in addition, they undertook not to proceed with the signing of the Convention before the Council of the European Union had adopted a position based on a Commission communication concerning the results of the negotiations and the action to be taken by Member States and the Community.

The representatives of the Ministers of the Council of Europe adopted the Convention at their meeting on 16 February 1994, and the Convention was opened for signing by the member countries of the Council of Europe, the other countries party to the European Cultural Convention and the European Community on 11 May 1994.

**(c) Content of the Convention**

For the purposes of copyright and neighbouring rights, the Convention treats as direct broadcasting by satellite signals transmitted by fixed service satellite under conditions permitting direct reception by the general public. Furthermore, where programme-carrying signals are transmitted in encrypted form and the means for decoding the broadcast are made available to the general public by, or with the consent of, the broadcasting organisation, such transmissions are also deemed to be an act of broadcasting.

The Convention defines an act of broadcasting and designates the law applicable to transmissions of works and other contributions it covers by reference to the place of origin of communication to the public, which is defined in the Convention.

The Convention also takes account of transmissions originating in a country which is not party to it and whose law does not provide the same level of protection for right-holders, by stipulating that such transmissions are to be deemed, subject to certain conditions, to originate in a country which is party to the Convention.

The Convention further stipulates that authors have the exclusive right to authorise the broadcasting of their protected works in accordance with the provisions of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971). Rights for the cross-frontier broadcasting of such works by satellite are acquired contractually; rules are laid down regarding collective agreements concluded between collecting societies and broadcasting organisations.

The Convention also provides for minimum protection for holders of neighbouring rights in accordance with the provisions of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). That minimum protection is supplemented by a number of rules designed to achieve a more harmonised level of protection for holders of neighbouring rights in the specific field of cross-frontier broadcasting by satellite. None of those provisions prevents countries that are party to the Convention from providing more favourable protection for the right-holders concerned.

In addition to the provisions traditionally found in this type of convention (multilateral consultations, amendments, other international agreements or arrangements, and final clauses), the Convention provides for a transitional period to enable existing contracts to be adapted to the new rules, particularly in the case of international co-productions.

It is further stipulated that, in their mutual relations, parties to the Convention who are members of the European Community will apply Community rules and will not apply those arising from the Convention unless there is no Community rule governing the particular subject concerned.

The Convention is open for signing by the member countries of the Council of Europe, the other countries party to the European Cultural Convention and the European Community. It will come into force on the first day of the month following the expiry of a period of three months after the date on which seven countries, including at least five member countries of the Council of Europe, have expressed their consent to be bound by the Convention.

Application of the Convention by the parties to it is not of such a kind as to alter the protection of copyright and neighbouring rights in the field of cross-frontier broadcasting by satellite afforded by those parties, under the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), to the other signatories to the Agreement establishing the World Trade Organization. The Community must, in any event, ensure that application of the Convention is fully consistent with the provisions of the TRIPs Agreement, and in particular the national-treatment and most-favoured-nation clauses.

#### 4. CONCLUSION OF THE CONVENTION

It will be seen from the above that the Convention seeks to extend to European level the pursuit of the objectives set regarding satellite broadcasting in the context of intellectual property by Directive 93/83/EEC on the basis of Articles 57(2) and 66 of the Treaty. The subject-matter of the Convention falls largely within the scope of Directive 93/83/EEC.

In its Opinion 1/94, delivered on 15 November 1994, on the division of competence between the Community and the Member States regarding the conclusion of the WTO Agreement and its annexes, the Court of Justice confirmed<sup>5</sup> the application, in the intellectual property sphere, of the AETR judgment, delivered on 31 March 1971 in Case 22/70.<sup>6</sup>

In that judgment,<sup>7</sup> the Court stressed that the Community's authority to enter into international agreements arose not only from an express conferment by the Treaty but could equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions; "In particular, each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules. As and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the Community legal system."

According to the Court,<sup>8</sup> to the extent to which Community rules are promulgated for the attainment of the objectives of the Treaty, the Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope.

In transposing the principles laid down by the Court to the European Convention, it can be concluded that, since the subject-matter of that Convention falls to a large extent within the scope of Directive 93/83/EEC, the Community has been empowered to the same extent to negotiate and conclude it since the date on which that Directive came into force; those Community powers exclude the possibility of concurrent powers on the part of Member States, since any steps taken outside the framework of the Community institutions would be incompatible with the unity of the common market and the uniform application of Community law.<sup>9</sup>

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5 Paragraph 102 of Opinion 1/94.

6 [1971] ECR 263.

7 Paragraphs 16, 17 and 18 of the AETR judgment.

8 Paragraph 22 of the AETR judgment.

9 Paragraphs 30 and 31 of the AETR judgment.

However, this conclusion must be qualified in the light of Opinion 2/91, delivered by the Court on 19 March 1993, on Convention No 170 of the International Labour Organization (ILO) concerning safety in the use of chemicals at work.<sup>10</sup> That qualification relates to the protection of the rights of performers and phonogram producers in connection with communication to the public by satellite. As pointed out above, Directive 93/83/EEC provides in this context for minimum protection and gives Member States the option of providing more far-reaching protection for those right-holders.

In the Opinion 2/91, the Court, having noted that Convention No 170 of the ILO fell within the Community's area of competence, took the view that that competence could not be exclusive since the Community rules adopted in that connection laid down minimum requirements.<sup>11</sup> On the basis of that conclusion, the Court pointed out that the provisions of Convention No 170 are not of such a kind as to affect rules adopted pursuant to Article 118a. If, on the one hand, the Community decides to adopt rules which are less stringent than those set out in an ILO convention, Member States may, in accordance with Article 118a(3), adopt more stringent protective measures in accordance with the ILO convention. If, on the other hand, the Community decides to adopt more stringent measures than those provided for under an ILO convention, there is nothing to prevent full application of Community law by the Member States under Article 19(8) of the ILO Constitution, which allows members to adopt more stringent measures than those provided for in conventions or recommendations adopted by that organisation.

In transposing the Court's line of argument in Opinion 2/91 to the situation under examination, it should be noted that the conclusion of an international convention of the type in question cannot be of such a kind as to affect rules adopted at Community level as regards the particular aspect - mentioned above - of protecting the rights of performers and phonogram producers in connection with communication to the public by satellite. If the Convention provides for more far-reaching protection than the Community Directive, Member States may apply the Convention without infringing the Directive since that Directive provides for minimum protection. If, on the other hand, the Convention provides for less far-reaching protection, there is nothing to prevent full application of Community law by Member States because Article 1 of the Statute of the Council of Europe stipulates that the participation of members in the Council's work should not affect their contribution to the work of international unions to which they are party.

It is clear from the above that the powers to conclude the Council of Europe Convention described above belong jointly to the Community and its Member States.

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[1993] ECR I061.

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Paragraphs 18 and 21 of Opinion 2/91.

## **5. PROPOSAL**

Accordingly, it is proposed that the Council adopt, on the basis of Articles 57(2) and 66, the first sentence of Article 228(2) and the first subparagraph of Article 228(3) of the Treaty and having due regard to the AETR case-law of the Court of Justice, a decision approving the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite for matters falling within the scope of Community law.

**Proposal for a Council Decision approving the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite**

95/0100 (CNS)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2) and 66, the first sentence of Article 228(2) and the first subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission,<sup>1</sup> which is based on Articles 57(2) and 66 of the Treaty, is designed to promote freedom to broadcast programmes in the Community; whereas, to that end, it reduces the disparities between national rules relating to copyright and neighbouring rights and removes the legal uncertainty regarding the rights to be acquired by defining communication to the public by satellite at Community level and the place of the act of communication;

Whereas the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite, which was adopted by the Council of Europe on 16 February 1994, is designed to extend to European level the pursuit of the objectives set by Directive 93/83/EC regarding satellite broadcasting in the intellectual property sphere;

Whereas, according to the AETR case-law of the Court of Justice,<sup>2</sup> each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, whether acting individually or collectively, to undertake obligations with third countries which affect those rules; whereas, as and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the Community legal system;<sup>3</sup>

Whereas the subject-matter of the European Convention falls largely within the scope of Directive 93/83/EEC;

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<sup>1</sup> OJ No L 248, p. 15.

<sup>2</sup> Judgment delivered on 31 March 1971 in Case 22/70 ([1971] ECR 263) and confirmed by the Court of Justice in its Opinions 2/91 of 19 March 1993 ([1993] ECR 1061) and 1/94 of 15 November 1994, not yet published.

<sup>3</sup> Paragraphs 17 and 18 of the AETR judgment.

Whereas it follows that the powers to conclude the above-mentioned European Convention belong jointly to the Community and its Member States;

Whereas the Convention should, therefore, be approved on behalf of the European Community in respect of those fields falling within the scope of Community law,

HAS DECIDED AS FOLLOWS:

**Article 1**

The European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite is hereby approved on behalf of the European Community.

The text of the Convention is attached to this Decision.

**Article 2**

The President of the Council is hereby authorised to designate the persons empowered to sign the Convention without reservation as to ratification and to deposit this instrument of approval with the Secretary General of the Council of Europe.

Done at Brussels,

**For the Council  
The President**

**COUNCIL OF EUROPE**

**European Convention relating to questions on copyright law and  
neighbouring rights in the framework of transfrontier broadcasting by  
satellite**

**Strasbourg, 11.5.1994**

**European Treaty Series / 153**

## **Preamble**

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

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

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

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

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

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

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

Have agreed as follows:

For the purposes of copyright and neighbouring rights:

## *Chapter I - The notion and act of broadcasting*

### **Article 1 - The notion of broadcasting**

1. The transmission of works and other contributions by direct broadcasting satellite is broadcasting.
2. The transmission of works and other contributions by fixed service satellite under conditions which, as far as individual direct reception by the general public is concerned, are comparable to those prevailing in the case of direct broadcasting satellites, shall be treated as broadcasting.
3. The transmission of programme-carrying signals in encrypted form is considered to be broadcasting, in cases where the means for decoding the broadcast are made available to the general public by the broadcasting organisation, or with its consent.

### **Article 2 - The act of broadcasting**

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

## *Chapter II - The applicable law*

### **Article 3 - The applicable law**

1. A transmission of works and other contributions covered by Article 1 occurs in the State Party in the territory of which the transmission originates and, therefore, shall be governed exclusively by the law of that State.
2. The State Party in the territory of which the transmission originates means the State Party in which the programme-carrying signals transmitted by satellite are introduced, under the control and responsibility of the broadcasting organisation, into an uninterrupted chain of communication via the up-link and down to the earth.
3. When the transmission originates in a State which is not a party to this Convention, the law of which does not provide the level of protection of right holders foreseen in Articles 4 and 5 of this Convention, and when the programme-carrying signals are transmitted by satellite from an up-link station situated in a State Party to this Convention, the transmission shall be deemed to originate in the State Party concerned. Such shall also be deemed to be the case when a broadcasting organisation established in a State Party to this Convention is responsible for the transmission.

### **Article 4 - Copyright**

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

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

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

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

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

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

#### **Article 5 - Neighbouring rights**

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

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

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

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

5. For the purposes of this Convention, when phonograms published for commercial purposes, or reproductions thereof, are used for transfrontier broadcasting by satellite, States Parties shall provide a right under their national legislation in order to ensure that a single equitable remuneration is paid by the broadcasting organisation concerned and that this remuneration is shared between the relevant performers and producers of such phonograms.

### *Chapter III - Field of application*

#### **Article 6 - Retransmission**

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

### *Chapter IV - Multilateral consultations*

#### **Article 7 - Multilateral consultations**

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

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

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

### *Chapter V - Amendments*

#### **Article 8 - Amendments**

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

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

### *Chapter VI - Other international agreements or arrangements*

#### **Article 9 - Other international agreements or arrangements**

1. In their mutual relations, Parties which are members of the European Community shall apply Community rules and shall not therefore apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

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

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

### ***Chapter VII - Final clauses***

#### **Article 10 - Signature and entry Into force**

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

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

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

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

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

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

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

#### **Article 11 - Accession by other States**

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

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

#### **Article 12 - Territorial application**

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

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

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

#### **Article 13 - Transitional arrangements**

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

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

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

#### **Article 14 - Reservations**

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

## **Article 15 - Notification of legislation**

A State, the legislation of which provides for the extension of collective agreements, as foreseen in Article 4 of this Convention, shall, at the time of signature, ratification, acceptance or approval in accordance with Article 10, paragraph 1.a or b, notify to the Secretary General of the Council of Europe the text of the said legislation, together with a list of broadcasters entitled to avail themselves of such extended collective agreements. Thereafter, the State concerned shall notify the Secretary General of the Council of Europe of any subsequent modification of the said legislation and of the list of broadcasters entitled to avail themselves of it.

## **Article 16 - Denunciation**

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

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

## **Article 17- Notifications**

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

a any signature in accordance with Article 10;

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

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

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

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

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

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

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