

European Communities

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EUROPEAN PARLIAMENT

# Working Documents

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MOTION FOR A RESOLUTION

tabled by Mr FAJARDIE

pursuant to Rule 47 of the Rules of Procedure  
on the cinema versus the small screen

PE 87.187



The European Parliament,

- A. whereas the considerable development in new audio-visual media (television by ground-to-ground and satellite transmission, cable television, video recordings for private viewers, public video projection) has led to a boom in the demand for audio-visual programmes and whereas this situation is likely to develop even further,
- B. whereas the cinema film is by far the most popular audio-visual work for these new media,
- C. whereas the expansion of television over the last twenty years has completely overturned the situation regarding audiences for cinematographic works, increasing home-viewing to the detriment of public showings, and whereas cinema audiences have shown a considerable decline, varying between 50 and 90% in the different countries of EUROPE, although the audience for films has increased tenfold thanks to broadcasting,
- D. whereas, as a result, box office takings no longer suffice to recoup the substantial capital investment made by film producers in EUROPE,
- E. whereas in most countries of EUROPE, a public service holds the legal monopoly for the showing of films on television, and whereas these broadcasting services tend to abuse their dominant position vis-à-vis the many people who hold rights in these works, most of whom are in a difficult financial situation owing to the reduction in box-office takings; whereas these broadcasting companies generally pay minimum amounts, out of all proportion to the audience reached by the televised films, for the right to broadcast such films,
- F. whereas the contributions made by broadcasting companies towards the cost of films fall far short of compensating for box office losses due specifically to competition from television,
- G. whereas this situation is jeopardizing the continuation of film-making in EUROPE,

- H. whereas, nevertheless, the cinema film acquires recognition when it is shown in public and whereas, as a consequence, in the interests not only of the cinema but also of the other media, this traditional showing should be given priority over other kinds of dissemination; whereas this implies instituting a period during which films may only be shown in the cinema before they are released for television broadcasting,
- I. whereas the showing of films in cinemas should also be protected against competition from television by prohibiting the latter from showing cinema films on days when the public tends to go to the cinema, and particularly at weekends,
- J. whereas programme schedules for the showing of cinema films should include a certain proportion of the cinematographic productions of the countries of EUROPE in order to foster their development,
- K. whereas cable television companies are already using aerials located at national frontiers to pick up the programmes of broadcasting companies in other countries and to transmit them simultaneously to their customers, thereby giving these national broadcasts a transnational character,
- L. whereas this practice is likely to become more widespread with the launching of satellites for direct broadcasting,
- M. whereas, as a result, national rules to harmonize relations between the cinema and television will become increasingly ineffective if they are not standardized at European level,
- N. whereas it is also in the general interest that the dissemination of cinema films by the sale or hiring out of video recordings (for private showing) should succeed the showing of films in cinemas so that it does not give rise to competition; whereas it should, however, precede the televising of films, since the latter opens the way for large-scale copying and would considerably reduce the possibility of recouping the costs of films from revenue from the video sector,
- O. whereas it is, therefore, desirable in the interests of the proper exploitation of cinema films for the following chronological schedule to be established for the different modes of viewing:

- 1 - cinema
- 2 - video
- 3 - television,

- P. whereas, for the reasons given above, this schedule should be introduced at European level,
- Q. whereas the business of selling and hiring out video recordings is seriously impaired by the increasingly widespread practice of issuing and distributing works in violation of copyright, and whereas such piracy is organized by international networks; whereas, in consequence, European or even international cooperation should be organized to combat this illegal practice,
- R. whereas this implies a comparative study of the penal provisions under which such offences can be prosecuted in order to ascertain the measures required to strengthen coercive action in countries where the penalties provided for appear inadequate,
- S. whereas this also implies close collaboration at European if not international level between police and judicial authorities in order to improve the investigation, detection and penalization of offences,
- T. whereas piracy must be distinguished from private copying (which is tolerated by the Berne Convention provided that it is not detrimental to the proper exploitation of the work and that it does not adversely affect the author to an undue extent),
- U. whereas the increase in the number of video recorders in use has made private copying possible on such a scale that the two conditions laid down by the Berne Convention as regards the need to compensate holders of copyright in respect of the works in question are fulfilled,
- V. whereas the solution recommended by the international copyright committees consists of introducing a tax either on blank tapes or on video recorders, or on both, the proceeds from this tax to be divided among the copyright holders,
- W. whereas such legislation already exists in certain countries (for example, the Federal Republic of Germany and AUSTRIA), and whereas draft legislation is in

preparation in other countries; whereas it would be of benefit if such provisions were to be applied in all countries,

- X. whereas the cable television companies which relay broadcasters' programmes are making a communication to the public which differs from the original communication, and whereas they must therefore request authorization from the relevant copyright holders,
- Y. whereas the relaying of works by cable is simultaneous with their original broadcasting, according to current practice in Europe, and whereas the cable television companies cannot, therefore, individually contact copyright holders prior to broadcasting; whereas it is necessary for copyright holders to form collective management bodies which could give the cable TV companies a general authorization for a specific period,
- Z. whereas in such a culturally fragmented continent as EUROPE, the showing of films in cinemas cannot be systematically simultaneous in the different countries, and whereas, therefore, a film transmitted by a broadcaster may have completed the cinema circuit in the country where the broadcaster transmits but not in the country where the cable TV company is operating; whereas, therefore, the collective management body of the copyright holders must be entitled to request the cable TV company not to relay simultaneously the broadcast of a film which has not completed the cinema circuit in the cable TV company's country,
- AA. whereas for the same reasons, the distribution of video recordings for private viewing is acceptable only on the basis of a mandate or exclusive transfer of copyright from producer to distributor in respect of a given territory, generally that of one country and whereas the free movement of video recordings between countries could be harmful to the showing of a film in the cinema; whereas, moreover, producers of video-recorded films are being increasingly required to contribute to the financing of film production and can recoup the amounts thus invested only by distributing the film on the market exclusively allocated to them, and whereas the simultaneous distribution on that market of video recordings of the same film from other countries would seriously jeopardize their chances of recouping the finance committed; whereas otherwise, film producers would inevitably be deprived of a source of financing needed to top up the finance supplied by the cinema distributor; whereas according to the case law of the Court of

Justice of the European Communities, the cinema distributor may enjoy the right of exclusive national distribution without the Treaty of Rome being thereby violated, and whereas the solution thus recommended by the Court of Justice of the European Communities in respect of the showing of films in cinemas is equally valid for the distribution of films in the form of video recordings,

1. Calls on the countries of EUROPE to reach agreement on the following common rules for the harmonization of cinema/TV relations:
  - . no cinema film to be televised between Friday evening and Sunday evening (the most popular period of the week for cinema-going) or before the expiry of a period of three years from the first public showing of the film in the cinema in EUROPE, except where derogation is granted in the light of box office receipts;
  - . a certain fixed percentage (around 60%) of films broadcast must originate in the Member States of the European Community (or of the Council of Europe) in order to protect and promote the film industry in these countries;
  - . the purchase price of the broadcasting rights of a cinema film should take into account the audience figures achieved by the film when broadcast in order to ensure that TV contributes to the recovery of the cost of producing and distributing the film, in accordance with the laws of the market economy;
2. Advocates that the countries of EUROPE should reach agreement on certain common rules for the harmonization of the showing of films in cinemas and the distribution of video recordings for private viewing and, in particular, that arrangements should be made so that films are not distributed in the form of video recordings in a given country before the expiry of a certain period of time from the first public cinema showing of the films in that country. Subject to possible derogations, this period could be between six and eighteen months;
3. Believes, further, that it is highly desirable for cooperation to be organized between the police and judicial authorities of the various countries of EUROPE in order to combat the illegal reproduction and distribution of works (piracy) and for penal sanctions to be made more punitive in countries where they are not sufficiently dissuasive;

4. Considers that it is urgently necessary for the countries of EUROPE to enforce Article 11a of the BERNE Convention in cases where signals emitted by a broadcasting company are simultaneously transmitted by a cable TV company and to ensure in particular that cable TV companies request authorization from copyright holders' collective management companies, pay a suitable fee for such authorization and agree not to relay the broadcasting of a film which has not completed the cinema circuit in the cable TV company's country;
  
5. Recommends that countries which have not yet adopted such provisions should introduce a tax on the sale of blank tapes, or of video recorders, or on both; the revenue from this tax would be divided among copyright holders who are being adversely affected to an undue extent by private copying which is undermining the proper exploitation of the works.