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(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT AND COUNCIL

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 November 2005

on film heritage and the competitiveness of related industrial activities

(2005/865/CE)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾, After consulting the Committee of the Regions,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Article 151(4) of the Treaty stipulates that the Community is to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.
- (2) Cinematography is an art form contained on a fragile medium, which therefore requires positive action from the public authorities to ensure its preservation. Cinematographic works are an essential component of our cultural heritage and therefore merit full protection.

(3) In addition to their cultural value, cinematographic works are a source of historical information about European society. They are a comprehensive witness to the history of the richness of Europe's cultural identities and the diversity of its people. Cinematographic images are a crucial element for learning about the past and for civic reflection upon our civilisation.

(4) This Recommendation aims to foster better exploitation of the industrial and cultural potential of European film heritage by encouraging policies of innovation, research and technological development in the field of conservation and restoration of cinematographic works. The actions recommended below aim to ensure that the conditions necessary for the competitiveness of the Community's film industry exist and accelerate the development of its competitiveness.

(5) Film heritage is an important component of the film industry and encouraging its conservation, restoration and exploitation can contribute to improving the competitiveness of that industry.

(6) The development of the European film industry is of vital importance for Europe in view of its significant potential in the fields of access to culture, economic development and job creation. This refers not only to the production and showing of films, but also to the collection, cataloguing, preservation and restoration of cinematographic works. The conditions for the competitiveness of these industrial activities related to film heritage need to be improved, especially as regards better use of technological developments such as digitisation.

⁽¹⁾ OJ C 123, 30.4.2004, p. 4.

⁽²⁾ OJ C 74, 23.3.2005, p. 18.

⁽³⁾ Opinion of the European Parliament of 10 May 2005 (not yet published in the Official Journal) and Council Decision of 24 October 2005.

- (7) Full achievement of this potential requires the existence of a successful and innovative film industry in the Community. This can be facilitated by improving the conditions of conservation, restoration and exploitation of film heritage and by removing obstacles to the development and full competitiveness of the industry, in particular by the collection, cataloguing, preservation and restoration of the film heritage and by making it accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights.
- (8) The general competitiveness of the film industry will improve through the development of an environment that favours cooperation between designated bodies, which could be European, national or regional archives, film institutes or similar institutions, on matters concerning the conservation and protection of film heritage.
- (9) Council Resolution of 26 June 2000 on the conservation and enhancement of European cinema heritage ⁽¹⁾ called on Member States to cooperate in the restoration and conservation of cinema heritage, including through recourse to digital technologies, to exchange good practice in this sector, to encourage progressive networking of European archival data and to consider the possible use of these collections for educational purposes.
- (10) The European Convention for the Protection of the Audiovisual Heritage provides that each Party has to introduce, by legislative or other appropriate means, the obligation to deposit moving-image material forming part of its audiovisual heritage and having been produced or co-produced in the territory of the Party concerned.
- (11) The Commission Communication of 26 September 2001 on certain legal aspects relating to cinematographic and other audiovisual works ⁽²⁾ examined the legal deposit of audiovisual works at national or regional level as one of the possible ways of conserving and safeguarding the European audiovisual heritage and launched a stock-taking exercise of the situation regarding the deposit of cinematographic works in the Member States.
- (12) At the Council (Cultural/Audiovisual Affairs) of 5 November 2001, the President of the Council noted that the content of the Commission Communication had been favourably received by the Council.
- (13) In its Resolution of 2 July 2002 ⁽³⁾ on the Commission Communication, the European Parliament underlined the importance of safeguarding the cinematographic heritage and supported the approach of the European Convention for the Protection of the Audiovisual Heritage, which is an important reference in times of intensive technological changes. The gradual switchover to digital technologies will allow for greater competitiveness of the European film industry and contribute in the longer term to a reduction in costs in cataloguing, depositing, conserving and restoring audiovisual works. At the same time, it will create new opportunities for innovation in the field of protection of film heritage.
- (14) Council Resolution of 24 November 2003 on the deposit of cinematographic works in the European Union ⁽⁴⁾ invited Member States to put in place an efficient system of deposit and preservation of the cinematographic works forming part of their audiovisual heritage in their national archives, film institutes or similar institutions, if such systems do not yet exist.
- (15) All Member States already have systems in place for collecting and preserving cinematographic works forming part of their audiovisual heritage. Four-fifths of these systems are based on a legal or contractual obligation to deposit all films, or at least those films that have received public funding.
- (16) 'Moving-image material' means any set of moving images recorded by whatever means and on whatever medium, whether or not accompanied by sound, capable of conveying an impression of movement.
- (17) 'Cinematographic work' means moving-image material of any length, in particular cinematographic works of fiction, cartoons and documentaries, which is intended to be shown in cinemas.
- (18) 'Cinematographic works forming part of their audiovisual heritage' means film productions including co-productions with other Member States and/or third countries, qualified as such by Member States or bodies designated by them, on the basis of objective, transparent and non-discriminatory criteria. The audiovisual heritages of the Member States taken together constitute the European audiovisual heritage.

⁽¹⁾ OJ C 193, 11.7.2000, p. 1.

⁽²⁾ OJ C 43, 16.2.2002, p. 6.

⁽³⁾ OJ C 271 E, 12.11.2003, p. 176.

⁽⁴⁾ OJ C 295, 5.12.2003, p. 5.

- (19) In order to ensure that the European film heritage is passed down to future generations, it has to be systematically collected, catalogued, preserved and restored in all cases in compliance with copyright and related rights.
- (20) European film heritage should be made more accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights.
- (21) Transferring the possession of cinematographic works to archiving bodies does not imply transferring copyright and related rights to them.
- (22) Article 5(2)(c) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society⁽¹⁾ stipulates that Member States may provide for an exception or limitation in respect of specific acts of reproduction made by publicly accessible libraries or by archives which are not for direct or indirect economic or commercial advantage,

TAKE NOTE OF THE COMMISSION'S INTENTION:

1. to consider making it compulsory for the beneficiaries of EU funding to deposit a copy of European films that have obtained EU funding in at least one national archive;
2. to support cooperation between designated bodies;
3. to consider the funding of research projects in the fields of long-term preservation and restoration of films;
4. to promote European standardisation on film cataloguing, with the purpose of improving the interoperability of databases, including by co-financing standardisation projects and by enhancing the exchange of best practices, while respecting linguistic diversity;
5. to facilitate the negotiation of a standard contract at European level between designated bodies and rights-holders stipulating the conditions under which designated bodies may make deposited cinematographic works accessible to the public;
6. to monitor and assess the extent to which the measures set out in this Recommendation are working effectively, and to consider the need for further action.

HEREBY RECOMMEND THAT MEMBER STATES improve conditions of conservation, restoration and exploitation of film heritage and remove obstacles to the development and full competitiveness of the European film industry by:

1. fostering an enhanced exploitation of the industrial and cultural potential of the European film heritage through systematic conservation and restoration measures by encouraging policies of innovation, research and technological development in the field of conservation and restoration of cinematographic works;
2. adopting, by 16 November 2007^{16 November 2007}, legislative, administrative or other appropriate measures to ensure that cinematographic works forming part of their audiovisual heritage are systematically collected, catalogued, preserved, restored and made accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights;
3. designating the appropriate bodies to carry out the tasks of public interest described in point 2 with independence and professionalism, ensuring that they are provided with the best available financial and technical resources;
4. encouraging the designated bodies to specify, in agreement or by contract with rights-holders, the conditions under which deposited cinematographic works may be made available to the public;
5. considering, notably with a view to promoting film heritage, establishing or supporting national film academies or similar bodies;
6. adopting appropriate measures to increase the use of digital and new technologies in the collection, cataloguing, preservation and restoration of cinematographic works;

Collection

7. undertaking the systematic collection of cinematographic works forming part of their audiovisual heritage through a mandatory legal or contractual deposit of at least one high quality copy of such cinematographic works with designated bodies. When setting the conditions for the

⁽¹⁾ OJ L 167, 22.6.2001, p. 10.

deposit, Member States should ensure that:

- (a) during a transitional period they cover those productions or co-productions that have received public funding at national or regional level; after this transitional period has elapsed, they should cover, as far as practicable, all productions, including those which did not receive any public funding,
- (b) the deposited cinematographic works are of good technical quality, so as to facilitate preservation and reproducibility, with accompanying metadata in standardised form, as appropriate,
- (c) deposit takes place when the film is made available to the public, and in any case not more than two years later;

Cataloguing and creation of databases

- 8. adopting appropriate measures (which might eventually lead to an archiving code of film production) to promote the cataloguing and indexing of deposited cinematographic works and to encourage the creation of databases containing information about the films, making use of European and international standards;
- 9. promoting European standardisation and interoperability of databases of filmography and their availability to the public, for instance, through the Internet, especially through the active involvement of designated bodies;
- 10. exploring the possibility of establishing a network of databases encompassing the European audiovisual heritage together with the relevant organisations, in particular the Council of Europe (Eurimages and the European Audiovisual Observatory);
- 11. inviting archiving bodies to give value to stocks by organising them in collections at EU level, for instance, by theme, author and period;

Preservation

- 12. adopting legislation or using other methods in accordance with national practices in order to ensure preservation of deposited cinematographic works. Preservation measures should include, in particular:

- (a) the reproduction of films on new storage mediums,
- (b) the preservation of equipment for showing cinematographic works on different mediums;

Restoration

- 13. introducing all appropriate measures in order to permit, within their legislation, the reproduction of deposited cinematographic works for the purpose of restoration while allowing rights-holders to benefit from the improved industrial potential of their works resulting from that restoration on the basis of an agreement between all interested parties;
- 14. encouraging projects for the restoration of old films or films with high cultural or historical value;

Making deposited cinematographic works accessible for educational, cultural, research or other non-commercial uses of a similar nature

- 15. adopting the necessary legislative or administrative measures to allow designated bodies to make deposited cinematographic works accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights;
- 16. taking appropriate measures to ensure access for people with disabilities to deposited cinematographic works, in all cases in compliance with copyright and related rights;

Professional training and media literacy

- 17. promoting professional training in all fields related to film heritage to foster an enhanced exploitation of the industrial potential of film heritage;
- 18. promoting the use of film heritage as a way of strengthening the European dimension in education and promoting cultural diversity;
- 19. fostering and promoting visual education, film studies and media literacy in education at all levels, professional training programmes and European programmes;

20. promoting close cooperation between producers, distributors, broadcasters and film institutes for educational purposes while respecting copyright and related rights;

Deposit

21. considering the putting in place of a system of voluntary or mandatory deposit of:

- (a) ancillary and publicity material related to cinematographic works forming part of the national audiovisual heritage,
- (b) cinematographic works forming part of national audiovisual heritages from other countries,
- (c) moving-image material other than cinematographic works,
- (d) cinematographic works of the past;

Cooperation between designated bodies

22. encouraging, and supporting designated bodies for the purpose of exchanging information and coordinating their activities at national and European levels in order for example, to:

- (a) ensure the coherence of collection and conservation methods and the interoperability of databases,
- (b) release, for example on DVDs, archival material with subtitles in as many European Union languages as possible, in all cases in compliance with copyright and related rights,
- (c) compile a European filmography,
- (d) develop a common standard for electronic information exchange,
- (e) produce common research and educational projects, while promoting the development of European networks of cinema schools and museums;

Follow-up to this Recommendation

23. informing the Commission every two years of action taken in response to this Recommendation.

Done at Strasbourg, 16 November 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
Bach of LUTTERWORTH