

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (86) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON PRINCIPLES RELATING TO COPYRIGHT LAW QUESTIONS
IN THE FIELD OF TELEVISION BY SATELLITE AND CABLE

*(Adopted by the Committee of Ministers on 14 February 1986
at the 393rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

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;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms;

Recalling its commitment to the freedom of expression and the free flow of information and ideas as embodied in its declaration on the freedom of expression and information of 29 April 1982;

Bearing in mind the need to safeguard the rights and interests of authors, composers and other creators of works of the mind as well as of performers, producers of cinematographic works and of phonograms and broadcasting organisations faced with the new media technology, in particular the technology related to transmissions by means of satellite and cable;

Bearing in mind at the same time the need not to hamper the development of this new technology and the interest of the general public in having access to the new media;

Taking note of the results of the work on the protection of authors, performers, producers of cinematographic works and of phonograms and broadcasting organisations in connection with the distribution of programmes by cable, conducted within the framework of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organisation and the World Intellectual Property Organisation;

Taking note also of the work in this field being undertaken within the framework of the European Communities;

Recalling its Recommendation No. R (84) 22 on the use of satellite capacity for television and sound radio of 7 December 1984;

Concerned to promote the broadest possible harmonisation of the law of member states on copyright and neighbouring rights in relation to television by satellite and cable;

Considering that the Council of Europe is particularly well suited to elaborate and recommend principles in this field at European level,

Recommends that the governments of the member states should, under the present state of international telecommunications law, be guided by the following principles when considering questions concerning copyright and neighbouring rights in relation to television by satellite and cable:

Principles

1. States shall, as regards transmission via satellite of protected works and other contributions, distinguish between programme-carrying signals transmitted by direct broadcasting satellites and such signals transmitted by satellites in a fixed-satellite service.
2. States shall, as regards distribution by cable of protected works and other contributions, distinguish between cable-originated programmes and distribution by cable of broadcasts.
3. The transmission of protected works and other contributions by means of a direct broadcasting satellite shall be governed by the provisions relating to the broadcasting or communication to the public of such contributions.
4. States shall, as regards transmissions by means of fixed-satellite services, take into account the following aspects when determining copyright liability:
 - a. the need not to hamper unnecessarily the possibilities for broadcasting organisations to transmit programmes between themselves by means of fixed-satellite services;
 - b. the need to ensure that right owners can exercise an efficient control over the use made of their works and contributions, in particular in the case of large-scale reception of signals from fixed-satellite services.
5. Distribution by cable of protected works and other contributions transmitted by means of a direct broadcasting satellite shall be treated:
 - a. as distribution by cable of a broadcast, if it is simultaneous, complete and unchanged;
 - b. as a cable-originated programme, if any of these criteria are not met.
6. Distribution by cable of protected works and other contributions transmitted by means of a fixed-satellite service shall in principle be treated:
 - a. as a cable-originated programme, where the national law considers the transmission via satellite as merely a transport, without copyright liability;
 - b. as distribution by cable of a broadcast, in other cases, provided that the distribution is simultaneous, complete and unchanged.
7. States shall take appropriate steps to promote, in relation to satellite transmissions, the most uniform possible interpretation at European level of relevant concepts in international instruments on copyright and neighbouring rights.
8. States shall give special consideration to the adverse economic consequences which the new media technology could have on the market for protected works and contributions, on the situation of producers of cinematographic works and of phonograms and that of broadcasting organisations, and on employment possibilities for authors and performers.

In particular, as regards the protection of the producers mentioned above, broadcasting organisations and performers, states shall consider the possibility of granting protection over and above that accorded by the relevant international instruments.
9. States shall, as regards the acquisition of relevant rights for the cable distribution of satellite signals, introduce non-voluntary licence schemes, insofar as such schemes are permissible under international copyright conventions, only when satisfactory contractual solutions cannot be achieved and the public interest requires such licences.