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Working Towards a Draft Convention for the Protection of the Audiovisual Heritage*

At a recent meeting, when a tricky point in this draft Convention was being discussed, Mr Raymond Weber, Director of Education, Culture and Sport, was asked to support a particular position (that of the speaker). He replied that it was not the primary aim of conventions to please, but quickly added that any convention - in particular one dealing with the audiovisual sector - would only be truly effective if all the professionals concerned had been thoroughly consulted at the drafting stage. Since that work is under way, this document will - not surprisingly - set out a number of principles which the Council of Europe intends to propose rather than go into the legal details, which will not be complete until the end of the year.

It should be remembered that a major aim of this future convention is to introduce in each signatory State a system for the legal deposit of its film production, and also of its audiovisual production - since it is audiovisual material as a whole which is a part of the national, and indeed European, heritage.

This deserves to be commented upon, as it was not easy to reach a consensus among the government representatives on the Committee of Experts on the Cinema, the body given the task of preparing this Convention. Some felt that a distinction should be made between image and sound, while others felt the need to take into consideration audiovisual documents in their entirety, especially now that it is realised how much material made for television is lost. There was general agreement on the use of the term "moving images" adopted by UNESCO in 1980, and the explanatory memorandum will make it clear that neither sound nor still images will be covered by the Convention; these could be covered by a protocol or another convention drafted at a later date.

This example illustrates the importance of specifying from the outset the scope, definitions and general objectives, bearing in mind that not only is a European treaty binding on the States which ratify it but also that it will very often serve as a model for States bringing their national legislation into line.

The notion of audiovisual archives covers a whole range of moving images: videos, films, software, etc. This means that various media of "supports" are

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concerned, including some still to be discovered or marketed. Consequently, the rules governing protection (and not just conservation, for which film and general libraries are responsible) must be specific enough to apply to the present situation but open enough not to jeopardise future archives. At the moment, these works are and continue to be fragile, to the point of destructibility. The reason for this is obvious: the very material of which films are made (the support) decays. This fragile image on film is projected at 24 frames per second, through complicated circuits, for days and weeks on end; it is scratched, torn, cut and spliced, until it disintegrates. But that is not all. This natural destruction process is very often "speeded up" by those who have legally inherited or accidentally gained possession of the original works, just to prevent their use by others.

Whereas protection of the materials in improving all the time - or, in other words, there are more and more associations or bodies working on film restoration, which backing from more and more governments - the same is not true of rights. As those drafting the Convention have taken care to do from the outset, a careful distinction must be made between legal deposit, copyright or "author rights" (whose limits are set by the Bern Convention) and distribution. The only aim of the legal deposit system is to ensure the protection of the heritage, and rights owners must be given guarantees that these works will not be distributed. Only on this condition can deposit be contemplated, be it legal deposit (for films on release), deposit for existing films (those produced and distributed before the Convention comes into effect) or voluntary deposit (those films which have not been clearly identified but have been shown or viewed in a country). Collective management on a voluntary basis is envisaged for works whose rights owners are unknown; such collective management must seek to guarantee access to the restored copy and make the necessary arrangements for reasonable compensation to be paid if the rights owners are identified.

Special provisions will certainly be made for the legal deposit of audiovisual material, including clauses authorising broadcasters to conserve archives provided that they meet the conditions and criteria of the archive organisations appointed by States.

How is the term "archive organisation" to be defined? The Convention is intended to be flexible on this and allow each state to designate one or more such organisations, as long as they comply with certain minimum standards. Moreover, co-operation between several organisations may be institutionalised (through agreements between the rights owners), and there is no doubt that the Convention will make these exchanges easier by introducing a system in which the industry has confidence.

The three main functions of the archive organisations will be conservation, restoration and distribution for cultural purposes, but only the last-mentioned requires detailed clarification: archive organisations have nothing to do with

cinematheques whose role is to show every film ever produced and distributed. In particular they not only show home-grown or European films, but set out to obtain and screen the most important works, ie the films which everyone ought to have seen. An archive organisation with which material will be deposited may be compared to a safe: copies of film are deposited with it and their condition monitored. The archive copy will not be shown, but nor does it have to be locked away for good - it is and must remain a reference copy.

Many other aspects, mostly political or economic, are being looked at. An immense market is currently opening up to archives. Every year European television channels have a 300.000 hour programme shortage; cinematheques are beset by the problems of constantly tracking down masterpieces of the past. In any case, an inventory must be drawn up in as wide a Europe as possible. Protecting the audiovisual heritage of the countries of Central and Eastern Europe is every bit as urgent as in other countries whose governments have already realised the need to act. While one of the main difficulties of international action lies in differences of legislation in different countries, it is clearly important to pursue this venture just as these fledgling democracies, all signatories to the Council to Europe's Cultural Convention, are endeavouring to introduce rules which will tie them as closely as possible to the West.