

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (88) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON SOUND AND AUDIOVISUAL PRIVATE COPYING

*(Adopted by the Committee of Ministers on 18 January 1988
at the 414th 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 need to safeguard properly the interests of the owners of copyright and neighbouring rights faced with the new media technology, in particular the technology used for sound and audiovisual private copying;

Bearing in mind at the same time the need not to hamper the development of this technology, which is of considerable importance for the dissemination of works of the mind;

Taking note of the fact that the copyright obligations between Council of Europe member states are governed by the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and that many of the member states are also party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention);

Considering that Article 9, paragraph 1, of the Berne Convention (Paris Act, 1971) grants authors an exclusive right of reproduction of their works and that Article 9, paragraph 2, provides that exceptions to that exclusive right are allowed under national law only in certain special cases, and provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;

Considering also that Article 15 of the Rome Convention allows for exceptions under national law to the protection granted under that convention as regards private use, but that, as the protection granted under the convention must not in any way affect the protection of copyright in literary and artistic works, such exceptions would in practice be possible only under the same conditions as those prevailing in respect of protected works;

Bearing in mind Article 3, sub-paragraph 1.c of the European Agreement on the Protection of Television Broadcasts, which allows for exceptions to the protection under the agreement where the fixation, or the reproduction of the fixation, of such a broadcast is made for private use;

Considering that present-day technology for the reproduction of protected works, contributions and performances allows for such reproduction, in particular as regards musical and cinematographic works and related contributions, on a scale which was not possible when the provisions of the above-mentioned instruments were drawn up;

Recalling its Recommendation No. R (86) 9 on copyright and cultural policy of 22 May 1986;

Concerned to promote the broadest possible harmonisation of the legal approaches of member states to copyright and neighbouring rights in relation to sound and audiovisual private copying;

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 member states examine the questions concerning copyright and neighbouring rights which arise in relation to sound and audiovisual private copying and, in so doing, be guided by the following principles:

1. States should, in their legislation on copyright and neighbouring rights, limit exceptions to the exclusive rights of right owners, according to the letter and spirit of the relevant provisions of the Berne Convention;

2. States should, having regard to Article 9 of the Berne Convention, carefully examine whether sound and audiovisual private copying in their respective countries is not done in a way and to an extent that conflict with the normal exploitation of works or otherwise unreasonably prejudice the legitimate interests of right owners, including at least authors, performers and producers of sound and audiovisual recordings. Such a conflict or prejudice should be taken as established if sound and audiovisual private copying occurs on such a scale as to amount to a new form of exploitation of protected works, contributions or performances;

3. In case of such conflict or prejudice, states should seek solutions in accordance with the following paragraphs, with a view to providing appropriate remuneration to right owners:

a. The situations in which the reproduction of protected works, contributions and performances for private purposes does not require the authorisation of the right owners should be defined as closely as possible;

b. As regards those copies the making of which does not require the authorisation of the right owners, states should take note of the fact that, in a number of states where sound and audiovisual private copying has been found to be incompatible with the obligations under the international conventions on copyright and neighbouring rights, a royalty-type levy on blank recording media and/or recording equipment has been introduced and that the experience of states in which such systems are already in operation would indicate that they are an effective solution to the problem;

c. When considering the introduction of a right to remuneration, states should include amongst those entitled to remuneration at least authors, performers and producers of sound and audiovisual recordings. Insofar as these categories of persons do not already possess reproduction rights, such rights should be awarded to them.