

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (88) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON MEASURES TO COMBAT PIRACY

IN THE FIELD OF COPYRIGHT AND NEIGHBOURING RIGHTS

*(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 ;

Aware that the phenomenon of piracy in the field of copyright and neighbouring rights, that is, the unauthorised duplication, distribution or communication to the public of protected works, contributions and performances for commercial purposes, has become widespread ;

Noting that this phenomenon seriously affects many sectors, in particular those of the production and marketing of phonograms, films, videograms, broadcasts, printed matter and computer software ;

Conscious of the considerable harm that piracy causes to the rights and interests of authors, performers, producers and broadcasters, as well as to the cultural professions and related industries as a whole ;

Recognising that this phenomenon also has detrimental effects on consumer interests, in particular in that it discourages cultural creativity and thereby prejudices both the diversity and quality of products placed on the market ;

Bearing in mind the losses to national budgets suffered as a result of piracy ;

Taking into account the adverse effects of piracy on trade ;

Noting the links between the trade in pirate material and organised crime ;

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

Taking note of the work in relation to the fight against piracy being undertaken within other organisations, in particular the World Intellectual Property Organisation, the European Communities and the Customs Co-operation Council ;

Determined that effective action be taken against piracy through both appropriate measures at national level and co-operation at international level,

Recommends that the governments of the member states take all necessary steps with a view to implementing the following measures to combat piracy in the field of copyright and neighbouring rights :

Recognition of rights

1. States should ensure that authors, performers, producers and broadcasters possess adequate rights in respect of their works, contributions and performances to defend their economic interests against piracy. In particular:

— to the extent that such rights do not already exist, performers should be granted at least the right to authorise or prohibit the fixation of their unfixed performances as well as the reproduction of fixations of their performances, and producers of phonograms and videograms at least the right to authorise or prohibit the reproduction of their phonograms and videograms;

— authors of computer software should benefit from copyright protection.

Remedies and sanctions

2. States should ensure that their national legislation provides remedies which enable prompt and effective action to be taken against persons engaged in piracy in the field of copyright and neighbouring rights, including those implicated in the importation or distribution of pirate material.

3. Under criminal law, provision should be made for powers to search the premises of persons reasonably suspected of engaging in piracy activities and to seize all material found relevant to the investigation, including infringing copies and their means of production. Consideration should also be given to the possibility of introducing powers for the securing of financial gains made from such activities.

In the event of conviction, powers should exist for the destruction or forfeiture of infringing copies and means of production seized in the course of proceedings. The forfeiture of financial gains from the piracy activities should also be made possible. All or a part of forfeited financial gains should be able to be awarded to the injured party as compensation for the loss he has suffered.

Penalties provided for by legislation in respect of piracy offences should be set at an appropriately high level.

4. In the field of civil law, effective means should exist for obtaining evidence in cases concerning piracy.

The plaintiff should, as an alternative to an action for damages in respect of the loss he has suffered, have the right to claim the profits made from the piracy activities.

Provision should be made for the destruction or delivery to the plaintiff of infringing copies and means of production seized in the course of proceedings.

5. Consideration should be given to the need to introduce or reinforce presumptions as to subsistence and ownership of copyright and neighbouring rights.

6. States should give consideration to the possibility of closely involving their customs authorities in the fight against piracy and of empowering such authorities, *inter alia*, to treat as prohibited goods all forms of pirate material presented for import or in transit.

Co-operation between public authorities and between such authorities and right owners

7. States should encourage co-operation at national level between police and customs authorities in relation to the fight against piracy in the field of copyright and neighbouring rights as well as between these authorities and right owners.

8. States should also, in the appropriate forums, encourage co-operation in the fight against piracy between the police and customs authorities of different countries.

Co-operation between member states

9. States should keep each other fully informed of initiatives taken to combat piracy in the field of copyright and neighbouring rights in the world at large.

10. States should offer each other mutual support in relation to such initiatives and envisage, when desirable and through appropriate channels, the taking of action in common.

Ratification of treaties

11. States should re-examine carefully the possibility of becoming parties, where they have not already done so, to:

— the Paris Act (1971) version of the Berne Convention for the Protection of Literary and Artistic Works;

— the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961);

— the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (Geneva, 1971);

— the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960) and its protocols.

12. States should ensure that national measures adopted with a view to the ratification of the above-mentioned treaties fully take into account relevant new technological developments.