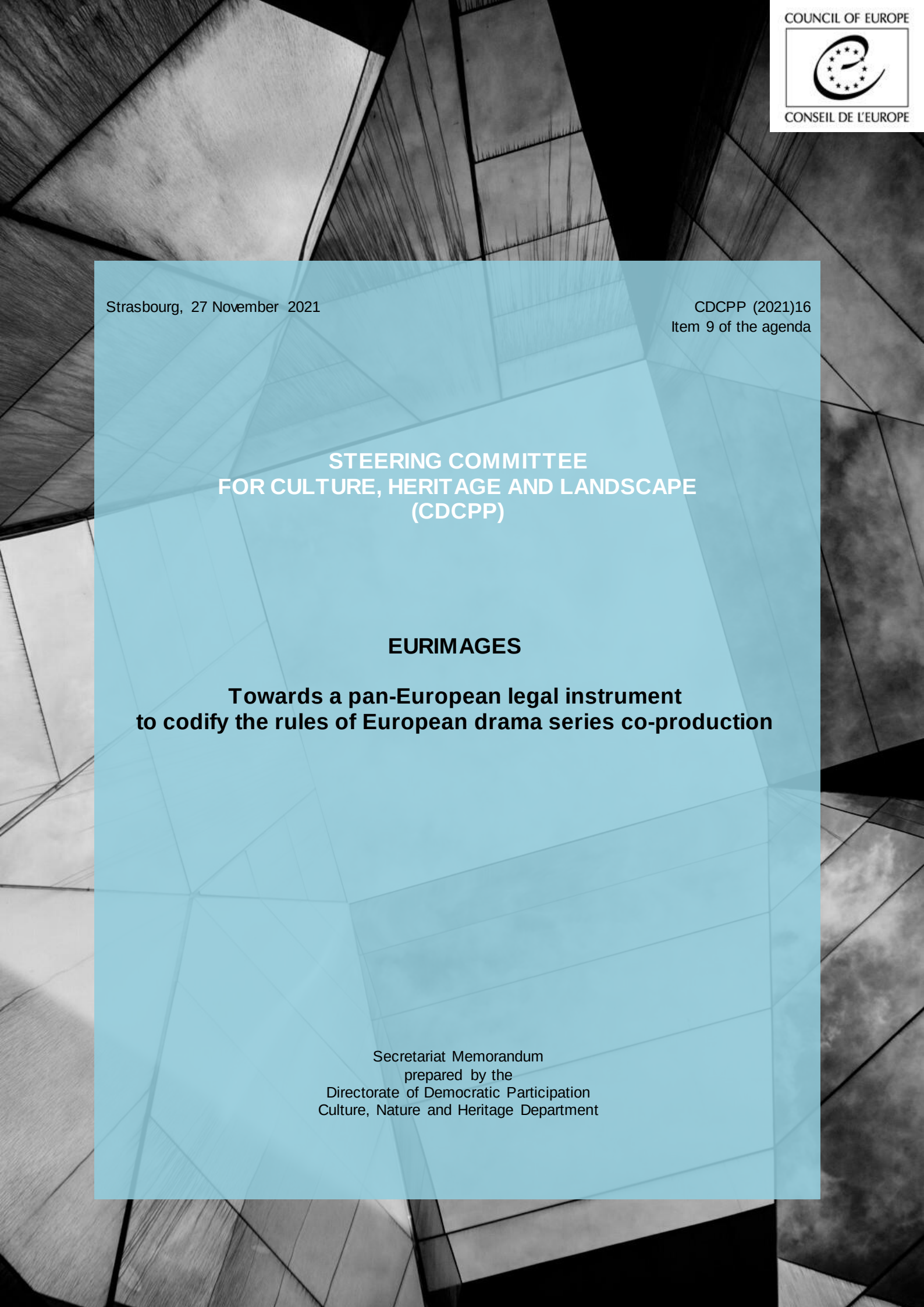


Strasbourg, 27 November 2021

CDCPP (2021)16
Item 9 of the agenda

STEERING COMMITTEE FOR CULTURE, HERITAGE AND LANDSCAPE (CDCPP)

EURIMAGES

Towards a pan-European legal instrument to codify the rules of European drama series co-production

Secretariat Memorandum
prepared by the
Directorate of Democratic Participation
Culture, Nature and Heritage Department

I. Scope

The Steering Committee for Culture, Heritage and Landscape (CDCPP) under the terms of (ii)c, (vii) of the Draft Programme and Budget 2022-2025, following deliverable 11 of the Terms of Reference of Intergovernmental Structures (ToR**) is to decide the establishment of an expert working group under CDCPP** authority reporting on the creation of a legal mechanism to support European drama series production**. The objective is to assess and possibly create a legal instrument to codify the rules of drama series co-production, eventually structured as a convention.**

II. Background

In view of the role of the CDCPP in "Promoting policy measures on the digitisation of culture, cultural heritage and the audiovisual sector in view of protecting their diversity and meeting the challenges and opportunities of artificial intelligence in this sector and help share best practices", Eurimages submitted in June 2021 a document for information. Its purpose was to describe the importance of the drama series format in the audiovisual landscape, its implications, and the possible fields of action for the Council of Europe and Eurimages.

Under the auspices of the Hungarian Presidency of the Council of Europe, a conference on "Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Cooperation be Part of the Solution?" was held in Budapest, on September 30th – October 1st, 2021.

The event, organised by Eurimages, together with the Hungarian National Film Institute and the Ministry of Foreign Affairs and Trade of Hungary, was framed as a brainstorming session among industry professionals such as producers, distributors, broadcasters, and national film fund representatives. The participants exchanged on the most urgent needs if high-end series production in a highly competitive market dominated by non-European players were to be facilitated.

The aim was to explore further the possibility of creating a new legal and/or financial instrument to ease the international co-production of drama series. This exploration builds on the recommendation made in 2018 by the external evaluation of Eurimages. In response to this recommendation, Eurimages commissioned a Study[1] in 2019 from an independent consultant to better understand the changing environment created by the emergence of VoD platforms and the use of AI in the distribution of audiovisual content.

Acknowledging the groundwork carried out during this conference and the future steps to be taken during successive presidencies of the Committee of Ministers, the Hungarian authorities named this initiative "The Budapest Drama Series Process."

The participants' conclusions[2] confirm the importance of the role of the Council of Europe in preserving cultural diversity and pluralism in the audiovisual sector. They also highlight the necessity of international co-productions to offset the fragmentation of the European audiovisual market, especially for smaller countries with limited financial means. Creative and technical co-operation amongst professionals from different countries also positively affects the quality and originality of drama series. They underlined the need to codify the rules of drama series co-production through a legal instrument, similar to the Convention on Cinematographic Co-production. **Such a tool would make the market more transparent and allow independent producers to protect their rights – including their Intellectual Property – in negotiations with broadcasters or global platforms.**

[1] Baujard T., Tereszkiewicz R., de Swarte A.(2019); Entering the new paradigm of Artificial Intelligence and Series Executive Summary, Strasbourg, France, a study commissioned by the Council of Europe and Eurimages, available at https://bit.ly/3c41lRH
[2] BDSP Conclusion Paper (Appendix 1)

A financial tool is necessary, participants believed, to cover part of the higher budgets required at critical moments of the production chain: either for story development, at the beginning of the project, or for closing the production financing (the last 15-20 per cent); in addition, and complementary to the legal instrument.

The rapid developments within the sector govern the urgency of such measures. In 2021, Netflix became the most significant single commissioner of new European scripted content, according to a study[3] conducted by Ampere Analysis, and as such, for the first time, a non-European company takes the lead ahead of major European public and private broadcasters. The same company is forecast[4] to spend more on original programming than ever before, splitting its global content budget almost evenly between that and acquisition costs. In four years, 46.5% of the streaming giant's projected $18.92 billion budget will go toward original content, compared with 37.8% in 2020. Content acquisition costs will remain a dwindling majority of Netflix's budget, shrinking from 62.2% in 2020 to 53.5% in 2025. **Such forecasts are a clear sign of the pressure on independent producers to provide production services instead of creating their own content.**

Eurimages, following the industry's call for action summarised in the Budapest conclusion paper and taking into consideration the studies undertaken until now, is proposing two distinct yet complementary actions:

1. A **legal instrument** to codify the rules of drama series co-production, expected to be structured as a convention.
2. A **financial support programme** that aims to cover the needs of the independent producers by strengthening their position when negotiating with the big non-European platforms.

Considering the scope of the activity covered by the CDCPP, this paper will address further aspects related only to the legal instrument.

With this in mind, the legal instrument should create a standard use of the term 'co-production in the context of drama series, reflecting the following principles: shared intellectual property, shared responsibility, and shared financial and above all creative contributions. Further, the legal instrument should also facilitate bridging the different legal approaches to co-operation in the drama sector and emphasise the relevance of national film agencies and public broadcasters. As such, the legal instrument aims to provide an independent framework to the parties involved, allowing independent producers and creators to retain intellectual property and find themselves in a balanced co-operation with more commercially driven partners. Such measures will enable the producers and creators to provide higher cultural service to society, diverse and independent.

In parallel to the legal instrument dedicated development process, Eurimages will further explore options and viable models for a financial support programme. In the first phase, Eurimages, with its extensive experience in financing European co-production and with the support of an expert working group under its authority, will develop a proposal for a pilot support scheme that could be further administrated by the fund.

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[3] Bison G, (2021), *Netflix now the largest commissioner of Scripted European content*, Ampere Analysis, London, available at https://bit.ly/3EYZGJK accessed on November 2nd, 2021

[4] Lebow S.(2021), *Netflix throws itself further into original content*, Insider Intelligence, New York, available at https://bit.ly/3BYRsPT , accessed on November 5th, 2021

III. CPPWG-Series – Expert working group for the creation of a legal instrument to codify the rules of drama series co-production (Term of Reference – Appendix 2)

Meeting the challenges and opportunities of digitisation and artificial intelligence in the sector, the CDCPP promotes policy measures on the digitisation of culture, cultural heritage and the audiovisual industry in view of protecting their diversity. In that perspective, the **CDCPP decides to establish, under its authority, an expert working group further referred to as CPPWG-Series.**

III.1 Mission

Under the supervision of the Steering Committee for Culture, Cultural Heritage and Landscape (CDCPP), the CPPWG-SERIES is entrusted with the task of assessing the possible creation of a legal instrument to support European drama series, and if appropriate drawing up such an instrument, possibly in the form of a convention which considers recent technological and financial changes in the European film and drama sector.

III. 2 Professional profile of the experts who will sit on the CPPWG-SERIES

To select the experts who will sit on the CPPWG-SERIES, the Eurimages Secretariat has drafted the following profile to guide Member States in identifying appropriate experts.

Required professional profile:

a. with experience in the drama series sector and preferably with knowledge in implementing the European Convention on Cinematographic Co-Production;
b. a thorough knowledge of procedures, legal aspects, mechanisms, and policies in co-production at national, European and international levels;
c. with solid experience in international relations.

The composition of the working group will reflect a geographical and gender balanced representation of the Council of Europe's member states.

III.3 Procedure for the selection of the experts sitting in the working group.

The Secretariat will forward to the CDCPP Bureau the proposed working group composition based on the member states' proposals.

Once the CDCPP Bureau members have selected up to 15 experts, the Secretariat will confirm the selection with the CDCPP and provide details concerning the work expected from them, who will sit in the working group and the provisional schedule, financial and logistical aspects of the three meetings taking place in 2022/23.

IV. Envisaged Roadmap/timeline

Date/Period	A legal instrument to codify the rules of drama series co-production	Comments
18 June 2021	Eurimages secretariat submits to CDCPP Plenary the rationale for the Drama Series process	
30 September – 1 October 2021	In Budapest, under the auspices of the Hungarian Presidency, the conference "Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Cooperation be Part of the Solution?"	• Think Tank reflection format • Consulting the industry • Conclusions summarised in Appendix 1
5 October 2021	• The Executive Director of Eurimages reports to the GR-C on the Budapest Drama Series Process conclusions	• As a next step, Eurimages would further explore the legal and financial solutions to be implemented to facilitate drama series co-production. • The Fund would also work to promote a political consensus which might be found under a future Presidency of the Council of Europe.
November 2021	• The Eurimages Secretariat completes the extended version of the conclusion paper reflecting the discussion that took place in Budapest.	• The conclusion paper is made available to CDCPP.
November – December 2021	• Eurimages Secretariat together with Culture and Culture Heritage Division follows up on the relevant events that will take place during the Italian Presidency of the Council of Europe	• A joint Council of Europe Conference of Ministers of Culture is envisaged: "Culture and Cultural Heritage as strategic resources for a sustainable Europe"
December 2021	• In line with the ToR 2022-2025, Eurimages Secretariat sends to CDCPP plenary the request for the establishment of CPPWG-Series, a working group of experts	• The objective is to assess and possibly create a legal instrument to codify the rules of drama series co-production, possibly structured as a convention.
January 2022	• Eurimages launches a call for tender - Study on transposing the concepts of official co-production from feature film to drama series	• Feasibility study for the creation of a legal instrument to codify the rules of drama series co-production
Second half of January 2022	• CDCPP Bureau requests to the Member States proposals for experts for the CPPWG-Series	
First half of March 2022	• CPPWG-Series Secretariat sends to the CDCPP Bureau the proposed group composition	• The experts' profiles review process will have the support of Eurimages.
Second half of March 2022	• Council of Europe Conference of Ministers of Culture under the auspices of the Italian Presidency of the Council of Europe, "Culture and Cultural Heritage as strategic resources for a sustainable Europe" *Session 3 - Policies for Diversity and Pluralism – supporting European Drama Series co-productions*	• Expected political consensus on moving forward with the Budapest Drama Series Process, **translated in a ministerial declaration**

Date/Period	A legal instrument to codify the rules of drama series co-production	Comments
Second half of April 2022	• CDCPP confirms the CPPWG-Series composition of experts	•
May 2022	• Preliminary findings on the commissioned drama series study.	•
June 2022	• CPPWG-Series 1st meeting	CPPWG-Series: • analyses the findings commissioned by Eurimages' study; • decides on its working method; • decides on its deliverable; • decides on its calendar;
November 2022	• CPPWG-Series 2nd meeting	CPPWG-Series: • Analyses and debates on the legal instrument (1st draft)
December 2022	• CPPWG-Series secretariat informs CDCPP members on CPPWG-Series development	
April 2023	• CPPWG-Series 3rd meeting	CPPWG-Series: • Analyses, debates and approves final draft; • Forwards the draft for approval to CDCPP
June 2023	• CDCPP approves draft and forwards it for adoption to CM	
January 2024	• Goteborg (Sweden)/ Lille (France), Open for signature	

IV. Budgetary information*

The costs related to CPPWG-Series activities and organisation will be identified in the 2022-2025 programme and budget of the Directorate General of Democracy. The Eurimages budget will also cover part of the expenses of this working group.

V. Action required

The CDCPP is invited to:

- thank Hungary for organising the conference on "Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Cooperation be Part of the Solution?" laying the foundations of "The Budapest Drama Series Process";
- welcome the conclusions of this meeting, including the need to codify the rules of drama series co-production through a legal instrument similar to the Convention on Cinematographic Co-Production;
- decide to establish an expert working group (CPPWG-Series), assessing the possible creation of a legal instrument to support European drama series, and if appropriate drawing up such an instrument, possibly in the form of a Convention which considers recent technological and financial changes in the European film and drama sector;
- request its Bureau to select up to 15 experts for the working group;
- support the proposal to find political consensus through a ministerial declaration at the Council of Europe Conference of Ministers of Culture, under the auspices of the Italian Presidency of the Council of Europe.

Appendix 1 - The Budapest Drama Series Process conclusion paper

Follow the link for the English version



DGII/EUR (2021)28
Restricted

Suivez le lien pour la version française



DGII/EUR (2021)28
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Appendix 2 – CPPWG-Series Terms of Reference

Committee of experts for the creation of a legal instrument to codify the rules of drama series co-production production (CPPWG-SERIES)

Type of Committee: Working Group

Terms of Reference valid from 1 January 2022 until 31 December 2024 Main tasks

Under the supervision of the Steering Committee for Culture, Cultural Heritage and Landscape (CDCPP), the CPPWG-SERIES is entrusted with the task of assessing the possible creation of a legal instrument to support European drama series and if appropriate, drawing up such an instrument in the form of the Convention which considers recent technological and financial changes in the European film and drama sector.

The CPPWG-SERIES will submit its final draft to the CDCPP, which will transmit it to the Committee of Ministers for adoption and opening for signature.

Pillar/Sector/Programme

Pillar: Democracy
Sector: Democratic participation

Programme : Culture, Nature and Heritage

Expected results

To determine the necessity of a legally binding or non-binding framework, and if appropriate prepare and submit a draft to the CDCPP's approval before being sent to the Committee of Ministers for adoption and opening for signature.

Composition

Members:
Each State Party can appoint one or more experts in drama series and preferably knowledgeable on cinematographic co-production, having extensive knowledge of procedures, legal aspects, mechanisms, and approaches at domestic, European, and international levels.
The final group, comprising of up to 15 voting members, should have a balanced geographical and gender representation of Council of Europe's Member States.

The Council of Europe budget will bear one representative's travel and subsistence expenses from each States Party.
Other Member States may send representatives without defrayal of expenses.

Participants:
The following may send a representative, without the right to vote and at the charge of their corresponding administrative budget:
- Eurimages;
- European Audiovisual Observatory;
- European Film Agencies Directors;
- European Broadcasters Union;
- European Producers Club.

The following may send representatives, without the right to vote and without defrayal of expenses:
- European Union;
- Observer States to the Council of Europe: Canada, Japan, Mexico, United States of America.

as well as the following intergovernmental organisations:
- United Nations Educational, Scientific and Cultural Organisation (UNESCO);
- Conferencia de Autoridades Cinematográficas de Iberoamérica (CACI).

Observers:
The following may send representatives, without the right to vote and without defrayal of expenses:
- Israel