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Cinéma et audiovisuel :  
quelles mémoires numériques pour l'Europe ?

## LES SITUATIONS EUROPÉENNES [ L'EUROPE, LA NATION, LA RÉGION ? ] – 1

### **Richesses et complexités de la mémoire audiovisuelle en Allemagne**

**Edgar LERSCH,**  
*Archives de Stuttgart*

*Like in many other European countries, in the F-R-of G the audiovisual heritage is distributed among different institutions.*

*The most important supporting organisational frames:*

- *the institutions safeguarding the German film heritage*
- *broadcasting archives in general.*
- *public administration / public archives*
- *educational institutions and fifth*
- *business archives.*

*In view of the German history in the twentieth century and in view of the pronounced German federalism - especially what cultural affairs are concerned - in general there is less transparency than the list may indicate.*

*A second general remark is necessary which indicates both the complicated circumstances and partly the cultural significance of the archival heritage of the media, especially of broadcasting institutions. First of all: There is no legal deposit concerning the audiovisual production. It is only regulated by law for printed books and newspapers. That is the reason why also rights of access to the broadcasting archives do not exist. In my lecture I focus on the broadcasting archives and its special problems. At the end I hope that you will understand the difficulties to find German partners. They are rare if people intend to cooperate with Germany on the European level in concern of the cultural heritage of the broadcasting institutions.*

#### **The institutional frame of German broadcasting archives.**

*In the Federal Republic of Germany there doesn't exist any legal regulation concerning the safeguarding and preservation of broadcasted audiovisual documents - in contrast to the written documents. Written documents of the federal government, the regional governments, the administrations of counties and cities are protected by means of a federal archive law and archive laws of the regional unities, the German Länder.*

*Because of some regulations concerning media laws and the data protection laws the electronic media are emphatically exempted from archive laws. Theoretically even public broadcasting corporations are not legally obliged to safeguard and preserve their audiovisual documents.*

*On the other hand you find many broadcasting archives in Germany. Each company, private or public, has its own audiovisual archive primarily established and serving their own purposes: in order to rebroadcast the productions or to reuse samples of different length in new productions. The following chart illustrates the institutional complexity of the German broadcasting archives.*

## **CHART**

*Nobody knows the exact quantity of the audiovisual heritage which the broadcasting companies keep. I asked some colleagues and I suggest that the public broadcasting archives are managing about one million hours of first broadcast TV programs. One of the most important private channels RTL speaks about 150,000 hours of television productions without news and sports broadcasts. And I suggest that the public broadcasting field is also managing at least one million hours of radio programs. A central catalogue is not available. Only at the DRA (Deutsches Rundfunk-Archiv, i.e. German Broadcasting Archive at Francfort) you find copies of references which the archives of the regional companies send to this institution. Also in the DRA you may find the broadcasted audio-records before 1945 (if not destroyed) and the GDR-programs until 1991.*

*Therefore: if you are interested in any German TV productions, it's necessary or at least very helpful to know which company produced it. In the time of online-data-processing it is also possible to do cross-searches in all companies belonging to the ARD. But do not forget: Data protecting law forbids free access to these internal references.*

*Moreover, users are confronted with other difficulties:*

*For scientific research, for TV historians, any legal foundation to have a look at the historical radio and especially TV documents does not exist. Whereas people has free access to the public written archive documents (normally after thirty years) or naturally get the print production since 1908 in the German national library or other public library with stocks concerning former times.*

*Without any problems historical media research is possible with the aid of the radio documents produced by the "Reichsrundfunkgesellschaft" until 1945 - in Francfort at the Deutsche Rundfunkarchiv (German Broadcasting Archive) – and the audiovisual heritage of the GDR at Potsdam-Babelsberg near Berlin until 1991(also DRA).*

## **Discussions and projects in Germany about legal regulations concerning safeguarding and access to archived broadcasting productions.**

*You can well imagine that without any legal regulation on the one hand the German audiovisual heritage will perhaps fall into a more and more rapid swirl of commercial exploitation where archivists and scientific interests will have no chance. On the other hand you all know that for the copyright owners audiovisual documents keep economic relevance – often for a long time –, and there are no reasons to refuse them economic exploitation. Insofar in Germany it would be necessary to find new solutions equalizing the commercial copyright interests and the public interest on the free flow of information. The legislation process of the amendment of copyright law in Germany shows the different positions of what balance of interest should be.*

*People in Germany forget sometimes: if the options of economic exploitation diminish or come to an end, the copyright owners will lose interest in their audiovisual documents. At the moment in Germany nobody is able to give guarantees that - in case of need - the storages of broadcast material will change to real audiovisual archives, where you find archival selection, sufficient documentation, technical safeguarding that preserves the documents for a long time and – last but not least - open access. Finally: what about the so-called 'context' records? TV archivists and also historians often forget that they a must be preserved, too. They inform whether TV programs were produced and perhaps why not and which circumstances are responsible for the special layout or performance of a program, a TV movie and so on.*

*In order to avoid the mentioned risks for the safeguarding and using of audiovisual documents in Germany the legal deposit for audiovisual and generally for TV programs was often discussed. A number of institutions like the ones in some European countries, the so-called audiovisual national archives serve as a model. Most familiar is the French Inathèque that is located in this building. Also in Germany some librarians and TV-Historians favoured an institution like Inathèque de France often recommended to be installed. Therefore, between 1985 and 1995, we had an engaged debate between professionals to establish a national German audiovisual archive, maybe within the context of a so-called "Mediathek". That meant a national "media center" that should allow the public to have a look at selected most popular historical TV-programs. The result of all these endeavours was disappointing: Since 2006/07 a small "TV- Museum" has been established attached to the Deutsche Kinemathek at Berlin.*

*One of the reasons for this disappointing result is based on the fact (mentioned above) that it is more difficult in Germany than elsewhere to inaugurate nationwide cultural institutions. So it is necessary to induce much pressure than elsewhere to inaugurate or reform cultural projects. Personally I hold that the German idea of the public broadcast separated from the political sphere is a second obstacle to find solutions in order to safeguard the broadcast cultural heritage.*

*For some years, we have had no public discussions about protecting the heritage of electronic media. On the one hand the lobby of interested TV historians and historians is small and on the other hand the politicians think that the media institutions are obliged to take care of it. But the media companies, commercial and public corporations, declare: we are not owners of public archives and we don't have enough to integrate public archive services in our internal storages. Indeed, the declaring of non-competence is – as often – a question of funds. Therefore it is careless that all German proponents of an audiovisual legal deposit institution did not and do not speak about financing a national media archive. The results of all these debates and discussions: Until today archivistic safeguarding of audiovisual programs in Germany is a 'no man's land.' - as I already wrote some years ago.*

*Perhaps in the future the situation will change in Germany. You know that "The Council of Europe" adopted an "European Convention for the protection of the Audiovisual Heritage and its Explanatory Report and Protocol on the protection of Television Productions and its Explanatory Report" from November, 8<sup>th</sup> 2001.*

*In Germany, since 2001 and summer 2004 difficult negotiations occurred between the public service broadcasting institutions, the "State minister for Culture and Media" in the Federal government and the Broadcasting commission of the German Länder (states). Finally the chairman of the ARD – the association of the regional public broadcasting corporations – and the Chief President of the Second German Television – Zweites Deutsches Fernsehen – signed a letter with a self-commitment: The ARD-Broadcasting Institutions und the ZDF respectively their TV archive will function as the archive body as adressed in the convention. Insofar they will be prepared to accept all the obligations. A similar letter from commercial TV institutions doesn't exist.*

*I think it is important to emphasise these points of view: On the one hand the legal deposit - integrated in the existing archive bodies - avoids to build up a second TV archive, the legal deposit archive. That doesn't seem necessary, if the Broadcasting Corporations do their duty. On the other hand the self commitment includes a guaranteed access: "ARD and ZDF allow - by respecting the primary aim [ i.e. producing TV-programs] – access to the records". This access is limited for cultural and scientific aims.*

*The convention was signed by the federal government on 15<sup>th</sup> September 2008, but not ratified by the German parliament. Therefore the self-commitment has not yet come in force in Germany. But generally it is, because until November 2008 five states have ratified the convention.*

*After coming in force in Germany scientific media research will have a legal title for access to public broadcasting archives in Germany. That means strictly considered only for programs deposited after the entry in force, but I hope also with consequences for the 'older' records.*

## **Practical problems of availability to German broadcasting archives**

*The present conditions of access to German TV-Archives are characterized by the fact that it is not yet possible to have a look on historical TV-programs via Internet. As I will explain beneath that depends on the actual level of digitalisation in Germany. Even the German copyright law forbids Internet distribution of programs without licence of each copyright owner. Up to the time when contracts between author producers and others and the broadcasting institutions grant license for it, each copyright-owner has to be asked.*

*The new copyright law that came in force on January 2008 allows distribution without licence. That means that the copyright owner may object against Net-distribution during some months than it is free. In any case the Net-distribution must be paid.*

*Generally, in former times copyright law was an easygoing pretext for broadcasting institutions to say "No" to TV historians, if they asked access, though the copyright law doesn't forbid scientific research in the TV archives. Given the current and already mentioned non-regulation of archival access the other important reason to refuse historical research are the hints at the only workflow-oriented producing and distributing functions of broadcasting archives and their personal appointment and technical equipment. Insofar German archive chiefs may declare namely their interest in scientific visitors. Unfortunately, not all but many of their professionals know little or nothing about the historical value of their records and historical research.*

*Therefore the research is exposed to imponderable risks concerning the TV archives. If the media historian intends to look at the records needed, then access depends on several accidents. It depends on the settings with staff, on particular capacities of archive professionals and technical conditions – i.e. recorders – and so on. And last but not least it is important whether the archive chief or his boss are interested in TV-history or know something about it. If a TV-historian needs productions of the regional broadcasting corporation X – perhaps it produced a lot of documentations with historical subjects in the beginning of this genre in the sixties – and the archive is closed for him, then he is possibly not able to do anything to change this uncomfortable situation.*

*But let me speak about another chance to see historical TV-productions. You all know that the TV signal is "on air" for everybody and therefore everyone may generate a copy via receiving the program. The copyright law doesn't forbid private copies. But for instance universities aren't allowed to copy TV-programs in that way and store it over a long time.*

*Nevertheless German universities - respectively the literature and media departments – have tape-recorded for many years a big deal of the daily program, some perhaps the whole day. Because of the non-legalisation of this practice, unfortunately there doesn't exist any cooperation between these TV-record stores or a network that functions nation-wide. Insofar foreign TV-researchers would be well advised to ask the university media departments whether they hold a copy of the required productions or not.*

## **Level of digitisation in the German broadcasting archives.**

*Now I would like to finish with some remarks about the state of digitalisation in the German public broadcasting.*

*The reason why broadcasting companies in Germany began digitalisation or rather spent so much money for it is on the one hand due to the digital workflow. Archivists also intend to preserve the audiovisual stocks. Digitalisation of analogue records firstly needs substantial funds: two/three hours manpower and machine-power for one hour magnetic tape and up to twelve hours for a celluloid film is required. Concerning the archives of the German public broadcasting (on one hand) we can assume that probably all the analogue TV records will be digitised in the future in order to be all integrated in the processes of production and distribution of archival material. At least that is the intention of my corporation, the Südwestrundfunk. I suppose it is not sure whether it will be possible to do so and whether the other companies will have similar possibilities.*

*At this time preservation is the most important drive to digitise the analogue stored records – especially the magnetic recorded tapes get out of use and some broadcasting archives have great problems with the tapes. Moreover it is impossible to get other recorders than digital storing engines.*

*Often reused programs will be digitised in order to integrate them in digitised production and distribution workflows, not yet for 'classic' broadcasting but also for new ways of distribution like 'video podcasting', video on demand a.s.o. Other ways of distribution such as the Internet are now discussed concerning actual but not historical productions.*

*The TV-Archive of the public Southwest Broadcasting Corporation (SWR) intends to digitise both magnetic recorded tapes and all programs on celluloid film. But the valuable TV films – for example the weekly detective movie "Tatort" (in English "site of crime") – and valuable documentaries will not be abolished. For preservation they are stored in a deep-freeze storage.*

*The SWR TV-Archiv started first digitalisation programs in 2002. The digitising professionals declare that the whole process should require until 2020/2022. In view of these conditions it is necessary to develop priorities. The responsible managers of the digitalisation project try to find a mixture of content oriented and preservation oriented evaluation and selection. They hope that in this way it will be possible to avoid the distraction of historical TV programs. It is possible, however, to increase the output of the digitalisation project in case of urgency, if they find a lot of magnetic tapes or celluloid films in worse condition. Other TV archives beginning only now to digitise projects may perhaps not avoid the risk that there is not enough time to migrate all the jeopardized tapes unless they spend more funds than planned.*

*Professional video mass storages don't yet exist in Germany, the archive and preservation specialists hope that they will be available in 2009 / 2010. They suggested that the whole stock of a TV Archive then will be stored in video mass storages. Presently, digitised video signals are stored on IMX data tape.*

*As a summary, I would like to avoid a misunderstanding: Most German TV archives in the public service sphere and also archives of private companies – are well organised and you 'll find there approximately the whole TV production of fifty five respectively twenty five years. We need in Germany a real legal and - in any way - an organisational archival perspective for the records. We need better solutions for access that keeps in mind at least the expectations and needs of scientific research and educational aims. Then it would be possible to have more archive-oriented professionals as cooperation partners on the European level.*

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