



República de Colombia
Ministerio de Cultura

Resolution Number 3441 of 2017, 22 NOV 2017

"By which general aspects related to the Colombian Audiovisual Heritage are regulated according to Laws 397 of 1997, 594 of 2000, 814 of 2003 and 1185 of 2008, and Decree 1080 of 2015"

THE MINISTER OF CULTURE

In exercise of her constitutional and legal powers, and especially those conferred in Laws 397 of 1997, 489 of 1998, 1185 of 2008 and Decrees 1746 of 2003 and 1080 of 2015 and,

CONSIDERING:

That Articles 8 and 72 of the Political Constitution of Colombia establish, respectively, that it is the obligation of the State and of the people to protect the cultural and natural wealth of the Nation, and that the National Cultural Heritage is under the protection of the State. On the other hand, article 74 establishes that all persons have the right of access to public documents except in the cases established by law;

That Article 12 of Law 397 of 1997 (General Law of Culture) establishes that the Ministry of Culture and the Ministry of the Interior, through the National Library and the General National Archive, respectively, are the entities responsible for collecting, organizing, increasing, preserving, protecting, registering and disseminating the bibliographic, hemerographic and documentary heritage of the Nation, kept in the different information supports. Likewise, the departmental and regional libraries, and the municipal, district and departmental archives may be depositories of their bibliographic, hemerographic and documentary heritage;

That the same aforementioned article determines that the National Government, through the Ministry of Culture, will ensure the recovery, conservation and preservation of the Colombian heritage of moving images;

That Article 4 of Law 397 of 1997, modified by Article 1 of Law 1185 of 2008, provides that the National Cultural Heritage consists of all material goods, intangible expressions, products and representations of culture that are an expression of Colombian nationality, such as the Spanish language, the languages and dialects of indigenous, black and Creole communities, tradition, ancestral knowledge, cultural landscape, customs and habits, as well as material goods of movable and immovable nature which are considered to have, among others, special historical, artistic, scientific, aesthetic or symbolic interest in areas such as visual arts, architecture, urbanism, archaeology, linguistics, sound, music, audiovisual, cinematography, testimony, documentary, literature, bibliography, museology or anthropology;

That the same article, likewise, provides that the state policy regarding the National Cultural Heritage will have as its main objectives the safeguarding, protection, recovery, conservation, sustainability and dissemination thereof, with the purpose of serving as a testimony of the national cultural identity, both in the present and in the future;

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That Law 814 of 2003 (Film Law), in its article 1, determines that because of its direct association with the National Cultural Heritage and the formation of collective identity, the cinematographic activity is of social interest. As such, it is the object of special protection and will contribute to its own industrial and artistic development and to the cultural protection of the Nation;

That Decree 1080 of 2015, Unique Regulatory Decree of the Culture Sector, regulates all matters pertinent to archives declared in the category of Assets of Cultural Interest;

That Article 27 of Law 1379 of 2010 (Law of Public Libraries), establishes as National Bibliographic and Documentary Heritage, any work or set of works or documents, in any support, that includes the collections received by legal deposit and any work that is considered as heritage and memory, or that contributes to the construction of the identity of the Nation in its diversity. It includes books, brochures and manuscripts, microforms, graphic, cartographic, serial, sound, musical, audiovisual, electronic resources material, among others;

That for its part, Article 28 of the aforementioned Law, determines that the legal deposit is a mechanism that allows the acquisition, registration, preservation and availability of the bibliographic and documentary heritage, and that is intended to preserve cultural memory and increase and ensure access to the National Cultural Heritage. It has public-interest nature because it makes it possible for anyone to have access to it;

That UNESCO's letter for the preservation of digital heritage (2003) defines it as cultural, educational, scientific, administrative and information resources; in addition, it states that digital objects can be texts, databases, still or moving images, sound recordings, graphic material, computer programs or Web pages, among others. It also highlights that the preservation of digital heritage begins with the design of reliable systems and procedures that generate authentic and stable digital objects;

That in 2015 UNESCO, in its recommendation regarding the preservation of documentary heritage, including digital heritage and access to it, considers that the documents produced and preserved over time, in all their analogue and digital forms, constitute the primordial means of creating and expressing knowledge and have repercussions in all areas of human civilization and their future evolution. Its preservation consolidates the fundamental freedoms of opinion, expression and information as Human Rights; it also recognizes that a considerable part of the documentary heritage has disappeared due to natural or man-made disasters or is becoming inaccessible due to rapid technological changes, and stresses that the lack of legislation prevents the institutions responsible for memory from fighting against irreversible loss and impoverishment of that heritage;

That, in turn, it encourages member states to support their institutions responsible for memory in the establishment of policies for selection, assembly and preservation, through research and consultation, guided by the rules established and defined at the international level, in relation to documentary heritage in their territories; it also promotes the support and strengthening of its relevant institutions responsible for memory and, when feasible and timely, the promotion of research communities and private owners to take care of their own documentary heritage in the public interest. In the same way, public and private institutions should ensure the professional care of the documents they produce;

That in 2013 the Ministry of Culture - Directorate of Heritage, published the Policy for the Protection of Movable Heritage (PCMU), which is understood as the set of coordinated, articulated and sustainable strategies in the short, medium and long term, in which agents, institutions and society in general intervene in order to strengthen and increase management and investment in the development of PCMU components. This policy harmonizes with the strategic lines and principles included in the Policy for the Management, Protection and Safeguarding of

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the Colombian Cultural Heritage, the Policy of Safeguarding the Intangible Cultural Heritage, the Policy on Museums, the Reading and Library Policy, the Archives Policy and the Colombian Audiovisual Heritage Safeguarding Policy;

That the audiovisual, sound, graphic and photographic documents have value and relevance as part of the National Cultural Heritage. These are at great risk of loss, given the fragility of the supports, the technological obsolescence that affects them and the difficulty of accessing the information contained in them, which requires a legal instrument that serves as a tool for institutions commissioned by the Constitution and the Law, which integrates the criteria for their protection and safeguard, through the preservation, conservation, access, dissemination and appropriation;

That in compliance with the provisions of number 8 of article 8 of Law 1437 of 2011 and Resolution 1494 of 2017, this administrative act was published on the website of the Ministry of Culture during the appropriate period (October 3, 2017 to October 25, 2017), period during which comments were received from citizens, which were duly tabulated and analyzed;

In view of the foregoing;

RESOLVES:

Article 1 Object. This resolution regulates elements for the management, protection and safeguard of the Colombian Audiovisual Heritage, within the framework of the precepts established in the current laws and their regulatory decrees.

CHAPTER I USE OF TERMS AND FIELD OF APPLICATION

Article 2°. Concepts and terminology. For the purposes of this resolution, the following concepts and use of terms shall be taken into account:

- 1. Colombian Audiovisual Heritage (PAC).** Works and documents, considered individually or together, that are part of the PAC, since they have elements of identity, memory or representativeness for Colombian society.

They do not need any kind of administrative or legal declaration to be considered in such category. Such a declaration is only required when the respective works or documents are declared as an Asset of Cultural Interest (BIC).

The PAC (Colombian Audiovisual Heritage) is composed of:

- a.** Works and documents, published and unpublished, graphic, photographic, sound, musical, radio, film, television, video, multimedia, produced in any technique, format, support, invented or to be invented medium of analog, electronic, mechanical, electromagnetic, optical or digital nature.
- b.** The elements related to audiovisual works and documents that include materials related to the following fields: graphic, photographic, sound, musical, cinematographic, broadcasting systems or recordings, as well as publications, scripts, film scripts, photographs, posters, scores, metadata, research documents, advertising materials, journalistic information, web pages, programming codes and internet content, manuscripts and various creations, among others; including related legal and administrative supports.

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- c. The technology and set of goods associated with the production, reproduction, copying, projection, transmission, distribution, storage of the works and documents that are part of the PAC.
- d. Knowledge and intangible values associated with the creation, conservation, preservation and access to relevant works and documents derived from knowledge and skills related to techniques, technologies and methods from the historical, technical and industrial point of view, among others.

The audiovisual concept, composed of the two audio and visual terms, is appropriate, in the terms of this resolution, separately or in association. Every audiovisual document is an asset consisting of three components: the visual and/or sound content, the support and the technology, and they constitute an inseparable unit.

2. **National Cultural Heritage (PCN).** That which, according to Article 4 of Law 397 of 1997, modified by Article 1 of Law 1185 of 2008, consists of material goods, immaterial manifestations, as well as products and representations of culture that are an expression of the Colombian nationality, which are considered to have, among others, special historical, artistic, scientific, aesthetic or symbolic interest in diverse areas including sound, audiovisual, cinematography, testimony or documentary.
3. **Declared works and audiovisual documents BIC.** Works and audiovisual documents, considered individually or jointly, that have been declared in the BIC category by the competent authority, in accordance with the precepts of Law 1185 of 2008 and its regulations, and on which the Special Protection Regime established in such legislation is applied, regardless of its public or private ownership.

BICs of any kind are declared in such category by the Ministry of Culture at the national level; by the Mayor's Offices and Departmental Governor's Offices in the territorial context; and by the authorities of indigenous and Afro-descendant communities in their jurisdictions. At the national level, the General National Archive (AGN) is responsible for declaring the archives that call for it, as BIC.

Article 3°. Ownership of the Colombian Audiovisual Heritage. The PAC can legitimately belong to individuals, public entities or groups to which the exercise of rights is recognized.

Article 4°. Field of application. The provisions of this resolution apply to:

1. Any individual or legal entity that is the owner or responsible for works or documents of the PAC, in terms of what is specifically regulated in this resolution.
2. Any natural or legal person who is the owner or responsible for works or documents of the PAC, when those are declared BIC, in which case the provisions of Law 1185 of 2008, Decree 1080 of 2015 or the regulations that modify or replace them, as well as the complementary provisions of this resolution, will be observed.
3. Public entities holding works or documents of the PAC.
4. Private entities with public functions and entities obliged by Law 594 of 2000 (General Law of Archives), which conserve, guard, administer, produce, broadcast, transmit, give access to or publish works or audiovisual documents that are part of archives.

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Article 5°. Public responsibilities. The following public entities are responsible for the functions listed below in relation to the PAC, without prejudice to any other established in legal regulations:

1. Ministry of Culture. The Ministry of Culture is responsible for:

- a. Establishing guidelines and regulations for the management of the PCN, in which the PAC is immersed, and doing the respective public follow-up.
- b. Declaring Assets of Cultural Interest at the National level (BIC-NAL), following up and applying the Special Protection Regime.

2. National Library of Colombia. It is the responsibility of the National Library, public libraries or those to which may concern according to Law 1379 of 2010:

- a. To collect, organize, preserve, protect, register, allow access and disseminate bibliographic and documentary heritage, in which the PAC is immersed, produced at national and regional level, and recovered through mechanisms such as legal deposit, digital deposit, exchange, donation and purchase.
- b. To ensure compliance with the Legal Deposit of audiovisual works, and citizen access to knowledge of them.

3. General National Archive (AGN). The AGN is responsible for:

- a. Establishing, organizing and directing the National Archives System, in order to plan and coordinate the archival function throughout the Nation, safeguard the archival documentary heritage of the Country and put it at the service of the community;
- b. Establishing policies and issuing the necessary regulations to guarantee the conservation and proper use of the archival documentary heritage of the Nation, in accordance with the plans and programs adopted on the matter by the Board of Directors;
- c. Promoting the organization and strengthening of archives to guarantee the effectiveness of State management and the conservation of archival documentary heritage, as well as supporting private archives that have special cultural or historical significance;
- d. Carrying out the declarations of BIC at a national level, regarding movable assets of archival documentary nature, following up and applying the Special Protection Regime.

4. Territorial entities and authorities of indigenous and Afro-descendant communities: these institutions are responsible for:

- a. Ensuring the management of the PCN in their jurisdictions and agreeing to protect it.
- b. Declaring BIC in their jurisdictions.

5. Public entities that own, administrate or manage Colombian Audiovisual Heritage. They are responsible for:

- a. Complying with the legal provisions on protection of the PCN and PAC under their charge.

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- b. Complying with the Special Protection Regime for the Protection of BICs under their responsibility.

CHAPTER II PROVISIONS COMMON TO COLOMBIAN AUDIOVISUAL HERITAGE

Article 6°. General criteria. They are general parameters that are projected with respect to the PAC by private individuals or entities, to take over their recuperation, rescue, organization, conservation, preservation, documentation, dissemination, valuation, research, protection, safeguard and appropriation.

The audiovisual works and documents referred to in this resolution may be of an analogical, electronic, mechanical, electromagnetic, optical or digital nature, or of any technology invented or to be invented, so the guidelines for their conservation and preservation must take into account international and national parameters and standards issued by the competent entities.

Article 7°. Access. Given the social interest, as well as the historical, scientific, anthropological, documentary, social, artistic, aesthetic, symbolic or testimonial value, among others, which characterizes the PAC and places it as an invaluable educational and cultural resource, whoever is in charge of the works or goods of such nature will seek their knowledge and enjoyment by the community.

In terms of access, appropriate protection and conservation measures will be taken, and applicable copyright will be respected.

Public entities will open the PAC to their charge, in accordance with the legal provisions that regulate access and transparency regarding public documents.

The individuals who are in charge of PAC under any title, are custodians of it as PCN. They will give access to it according to their own interests and possibilities, under the understanding that this is a cultural heritage of interest for society. Likewise, jointly with public entities, they may associate efforts and resources that support the purpose of facilitating community access to this Heritage, under considerations and motivations that in each case are expressed.

Article 8°. State support. Any natural or legal person who is in charge of and under any title, works, documents, archives or collections that are part of the PAC, can request advice, assistance, training or encouragement from public entities competent in the matter in accordance with article 5 of this resolution, with the purpose of attending to their protection, safeguard and appropriation.

Public entities will support these tasks subject to their powers, competences and resources.

Article 9°. Archive documents. Audiovisual documents that are part of archives regulated by the provisions of the General Law of Archives must be treated in accordance with the parameters for document management established in Decree 1080 of 2015, Title II Chapter V, and other current archival regulations.

Article 10°. Integrated Conservation System (SIC). The entities required by the General Law of Archives must formulate and implement the Integrated Conservation System (SIC) with the purpose of guaranteeing the conservation and preservation of any type of audiovisual information, maintaining its attributes, from the moment of production, until its final disposition.

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These entities must formulate and implement the applicable conservation plan and the digital preservation plan.

Article 11°. State public libraries and documentation centers. Bibliographic and documentary material. The audiovisual documents produced and guarded on the grounds of their functions by state public libraries, documentation centers and other information units, must apply the relevant methods for the management of their collections, in accordance with the parameters established in the current regulations for the National Network of Public Libraries.

Article 12°. Radio, television and convergent media. All types of audiovisual documents of radio, television and convergent media origin, produced and guarded on the ground of their functions by broadcasting organizations, must apply the relevant methods for the management and enhancement of their collections.

Article 13°. Management strategies. Within the functions of conservation of their own assets, public entities are called to implement strategies to encourage investment, planning, management, conservation, research and training regarding audiovisual works and documents under their charge.

Article 14°. Identification. The public entities responsible for the PAC will create methodologies that lead to its identification in order to initiate management strategies that guarantee its protection and safeguard.

Article 15°. Investigation. The public entities will establish mechanisms to determine the origin, appropriate treatment or creation of new knowledge and information, from the PAC, as well as its theorization and criticism.

Article 16°. Inventories. The inventory processes, inherent in the archival, bibliographic and documentary practices of the PAC by public entities, should reference the qualitative and quantitative information, in order to establish the particular attributes and characteristics, as well as the related elements that account for their origin and management. The inventory processes should serve to provide useful value recognition when setting priorities for preservation, conservation and restoration.

Article 17°. Assessment. Each entity responsible for the PAC must establish methodologies for its implementation, taking into account for what and for whom it is valued, promoting participation, inclusion and interdisciplinarity, in accordance with the criteria established in Law 397 of 1997, modified by Law 1185 of 2008.

Article 18°. Diagnosis and technical verification. Prior to any technical intervention on the PAC by public entities, diagnoses based on technical verifications carried out by people or teams specialized in the subject, must be carried out.

Article 19°. Prioritization. The criteria for determining the priority in the PAC administration and management processes, without prejudice to their assessment, are:

1. Fragility of the supports and formats, and the imminent risk of any type of deterioration.
2. Existence of a single copy.
3. Obsolescence by techniques and technologies in disuse.
4. Documents without metadata or contextual information.

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5. Abandonment, disintegration and orphanhood.

Article 20°. Documentation, description and cataloging. The process of documentation, cataloging or description of the PAC by public entities should include all types of metadata, in order to ensure the recuperation, analysis and access to information, following national and international standards in force.

Article 21°. Conservation. The conservation of the PAC by public entities includes the interaction of institutional policies and technical measures that guarantee the integrity and stability of the supports, through the implementation of infrastructures and environmental conditions that favor their durability.

Public entities must implement preventive conservation plans, which at least include actions to identify and mitigate risks, monitoring and permanent control of environmental conditions, identification and management of biological agents, cleaning, sanitation, handling and use practices, maintenance to the infrastructure, storage practices, media change actions, awareness actions and training of people involved in the entire management cycle.

The digital media must be stored contemplating security rules and practices to avoid the loss or deterioration of information due to human failures, infrastructure, emergency situations and cybercrime.

Article 22°. Integral conservation. The PAC that is a responsibility of public entities, cannot be eliminated or removed under any argument.

This Heritage must be conserved and preserved, through its proper administration and management. When the deterioration is irreversible or is in a high degree of contamination or affectation, will be separated in order to make a diagnosis that allows the decision-making informed and documented according to its recuperation or authorized final disposition, previous technical concept of experts and under conditions of safety for people and for the environment.

Paragraph. The suppressed public entities or those whose dissolution has been determined, must make the transfers of their historical archives to the AGN or to the territorial general archives of their jurisdiction, in accordance with the current regulations.

Article 23°. Preservation of documents on analogue supports. The public entities that are responsible for PAC in these supports must guarantee the integrity of the original documents or matrices, with the aim of ensuring the reproduction and retrieval of the information with characteristics of originality.

Paragraph. The analogue supports must be stored separately, according to their physical and chemical composition and format, to ensure better control of environmental conditions.

Article 24°. Migration. In order to mitigate the risks of deterioration and obsolescence, mainly when the integrity of the data has not been verified, the contents in electronic, electromagnetic, digital or any other technology supports, intended for long-term conservation or preservation, the migration to other means of storage is necessary, using emulation, digitization, transfer, transcoding, among others.

Digitization, understood as the transfer of analogue to digital content, is seen as part of the processes of long-term preservation and access to information, not as an objective in itself.

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Therefore, it is not an argument for the elimination or discharge of analog documents or original supports and their annexes.

When the PAC is digitized, special attention will be paid to preserve the original characteristics of the document. The compression will be used only for access and consultation purposes as it derives, in terms of conservation, in loss of information.

Article 25°. Restoration. When the public entities responsible for the PAC design restoration plans and projects, they must be executed by qualified people specialized in the subject. This management should seek to restore, as far as possible, the original characteristics of the documents, without modifying or distorting the nature of the original materials or the intentions of their creators.

Article 26. Long-term preservation. The preservation of the PAC by public entities requires continuous actions to guarantee access, authenticity and integrity, regardless of its means and ways of registration or storage, such as certified digitalization, migration to new technologies, maintenance of infrastructure, permanent review of the administration and management protocols, as well as the periodic technical verification, among others.

The management of backup copies for preservation of the originals must be foreseen, with adequate people, technology and infrastructure; likewise, periodic reviews of the information and its migration to new technologies should be contemplated.

Article 27°. Technical regulation. The competent institutions, in accordance with the provisions of this resolution, may establish technical measures necessary for the conservation of the PAC in addition to the provisions of this resolution, and must disclose such provisions and support training in these matters.

Article 28°. Equipment, machines, devices and technological means. In all cases, the conservation and maintenance of the necessary equipment for reproduction should be considered, as well as the preservation of the technical environment, for the corresponding materials, including the operating systems, original application software and hardware and media units.

Article 29°. Circulation. The PAC, in particular the works that comprise it, may be subject to public communication, reproduction, transfer, distribution, transfer of rights or any other legal juridical business, except for the special restrictions established for BICs.

CHAPTER III COLOMBIAN AUDIOVISUAL HERITAGE DECLARED ASSET OF CULTURAL INTEREST (BIC)

Article 30°. Heritage of Moving Images. In accordance with articles 4, 12 and 40 of Law 397 of 1997, the so-called Heritage of Moving Images is part of the PCN and, consequently, it is also part of the PAC, which is governed by the aforementioned provisions and by the special provisions of Law 814 of 2003 and Decree 1080 of 2015, as well as by the regulations that modify or replace them.

Article 31°. PAC declared BIC. The works, documents or goods belonging to the Colombian Audiovisual Heritage that are declared in the category of Asset of Cultural Interest (BIC), in singular form or altogether, by the competent authority, are subject to the provisions of Law 1185 of 2008, of Decree 1080 of 2015 and the special regulations of Resolution 0983 of 2010 issued by the Ministry of Culture, as well as those that substitute or modify them.

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With the declaration operates the Special Protection Regime established in the aforementioned regulations, whether they are public or private assets, works, documents or audiovisual property.

In each case, during the declaration process, the pertinence of adopting the Special Management and Protection Plan (PEMP) will be defined.

Article 32°. Regime of BIC members of the Heritage of Moving Images. The cinematographic works and other works that make up the Heritage of Moving Images, once declared in the category of BIC, are subject to the regime established in Decree 1080 of 2015, as well as to tax incentives for maintenance and conservation. The relevant competences are in charge of the Directorate of Cinematography of the Ministry of Culture.

Article 33°. Rights. Pursuant to the first paragraph, article 2.10.4.6 of Decree 1080 of 2015, the declaration of audiovisual works or cinematographic works in particular as BIC, does not affect any of the rights legally recognized in favor of their producer or owner of the support, including the freedom of negotiation, disposition, reproduction, circulation, exploitation of the work and others proper to the nature of this type of assets.

Paragraph. The provisions of this article apply to the works of the PAC in general.

CHAPTER VI OTHER PROVISIONS

Article 34°. Applicable Regulation. Public entities that are responsible for works or documents of the PAC or declared BIC, are subject to the provisions of this resolution as well as other special and comprehensive regulations on the subject, in particular Laws 397 of 1997, 594 of 2000, 1185 of 2010, and Decree 1080 of 2015.

Private entities that fulfill public functions or administer public resources are subject to the same regime.

Article 35°. Individuals. Individuals and private entities that are not in the condition indicated in the previous article, are obliged to comply in their entirety with the Special Protection Regime provided for BICs, and have the duty to contribute to the preservation of the National Cultural Heritage, for which they can subject themselves voluntarily to the diverse regulations described in this resolution and in the general regulations.

When they receive public stimuli, the entity that grants them will value their acceptance of such provisions and precepts.

Article 36°. Validity and derogations. This resolution governs from its publication and repeals the other provisions that are contrary.

PUBLISH, COMMUNICATE AND COMPLY

Given in Bogotá, D.C., at 22 NOV 2017

MARIANA GARCÉS CÓRDOBA
Minister of Culture

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Gonzalo Castellanos, External Advisor to the Directorate of Cinematography of the Ministry of Culture

Revised by: MACR, Legal Advisory Office

Approved by: JMVA, Head of the Legal Advisory Office