

Case 395/87

Ministère public

v

Jean-Louis Tournier

(reference for a preliminary ruling from  
the cour d'appel, Aix-en-Provence)

(Competition — Copyright — Amount of royalties —  
Reciprocal representation contracts)

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Summary of the Judgment

- 1. Free movement of goods — Industrial and commercial property — Copyright — Protection — Limits — Sound-recordings marketed in a Member State with the consent of the author — Importation into another Member State — Objection or restriction relating to the charging of a copyright royalty — Not permissibility  
(EEC Treaty, Art. 30)*
- 2. Free movement of goods — Industrial and commercial property — Copyright — Freedom to provide services — National legislation permitting the charging, on the public performance of musical works by means of sound-recordings imported from another Member State, of copyright royalties — Permissible  
(EEC Treaty, Arts 30 and 59)*

3. *Competition — Agreements, decisions and concerted practices — Restriction of competition — Reciprocal representation agreements between national copyright management societies — Lawfulness — Exclusive rights clause — Not lawful*  
(EEC Treaty, Art. 85(1))
4. *Competition — Agreements, decisions and concerted practices — Concerted practice — Parallel behaviour — Resumption of concerted action — Limits — Refusal by national copyright management societies to grant a user established in another Member State direct access to their repertoire — Assessment by the national court*  
(EEC Treaty, Arts 85(1) and 177)
5. *Competition — Agreements, decisions and concerted practices — Restriction of competition — Refusal by a national copyright management society to allow a user access to only one part of the protected repertoire — Lawfulness — Conditions*  
(EEC Treaty, Art. 85)
6. *Competition — Dominant position — Abuse — Unfair trading conditions — Royalties applied by one copyright management society appreciably higher than those charged in other Member States — Possible justification*  
(EEC Treaty, Art. 86)

1. A copyright-management society acting on behalf of the copyright owner of his licensee may not rely on the exclusive exploitation right conferred by copyright to prevent or restrict the importation of sound recordings which have been lawfully marketed in another Member State by the owner himself or with his consent. No provision of national legislation may permit an undertaking which is responsible for copyright management and has a *de facto* monopoly on the territory of a Member State to charge a levy on products from another Member State where they have been put into circulation by the copyright owner or with his consent and thus to impose a charge on the importation of sound recordings which are already in free circulation in the common market as a result of the fact that they cross and internal frontier.

2. Articles 30 and 59 of the Treaty must be interpreted as not preventing the

application of national legislation which treats as an infringement of copyright the public performance of a protected musical work by means of sound recordings without payment of royalties, where royalties have already been paid to the author, for the reproduction of the work, in another Member State.

3. Reciprocal representation contracts between national copyright-management societies concerned with musical works whereby the societies give each other the right to grant, within the territory for which they are responsible, the requisite authorizations for any public performance of copyrighted musical works of members of other societies and to subject those authorizations to certain conditions, in conformity with the laws applicable in the territory in question,

where those contracts have the dual purpose of making all protected musical works, whatever their origin, subject to the same conditions for all users in the same Member State, in accordance with the prohibition of discrimination laid down in the international conventions on copyright, and to enable copyright-management societies to rely, for the protection of their repertoires in another Member State, on the organization established by the copyright-management society operating there, without being obliged to add to that organization their own network of contracts with users and their own local monitoring arrangements, are not in themselves restrictive of competition in such a way as to be caught by Article 85(1) of the Treaty.

by such management societies has in fact taken place.

In so doing those courts must bear in mind that mere parallel behaviour may amount to strong evidence of a concerted practice if it leads to conditions of competition which do not correspond to the normal conditions of competition but that concerted action of that kind cannot be presumed where the parallel behaviour can be accounted for by reasons other than the existence of concerted action. In the case of the practices followed by copyright-management societies, such a reason might lie in the fact that if direct access were granted to their repertoires, those societies would be obliged to organize their own management and monitoring system in another country.

The position might be different if the contracts established exclusive rights whereby the copyright-management societies undertook not to allow direct access to their repertoires by users of recorded music established abroad.

4. Article 85 of the EEC Treaty must be interpreted as prohibiting any concerted practice by national copyright-management societies of the Member States having as its object or effect the refusal by each society to grant direct access to its repertoire to users established in another Member State.

5. The refusal by a national society for the management of copyright in musical works to grant the users recorded music access only to the foreign repertoire represented by it does not have the object or effect of restricting competition in the common market and less access to a part of the protected repertoire would entirely safeguard the interests of the authors, composers and publishers of music without thereby increasing the costs of managing contracts and monitoring the use of protected musical works.

It is for the national courts, in accordance with the division of power under Article 177 of the Treaty, to determine whether any concerted action

6. A national copyright-management society holding a dominant position in a substantial part of the common market imposes unfair trading conditions where the royalties which it charges to discomptèques are appreciably higher than those charged in other Member States, the rates being compared on a consistent

basis. That would not be the case if the copyright-management society in question were able to justify such a difference by reference to objective and

relevant dissimilarities between copyright management in the Member State concerned and copyright management in the other Member States.

## REPORT FOR THE HEARING delivered in Case 395/87 \*

### I — Facts and procedure

#### 1. *The parties to the main proceedings*

The parties to the main proceedings are the Société des auteurs, compositeurs et éditeurs de musique ("Sacem"), the French copyright-management society, and Jean Verney, who runs the 'Whisky à Gogo' discothèque at Juan-les-Pins. The proceedings relate to the payment of royalties for the playing of musical works by Mr Verney at his discothèque. Mr Verney considers that the sums demanded by Sacem are excessive and contrary to Community law.

Sacem's object is to collect and distribute copyright royalties whenever musical works

in its repertoire are used. Sacem's members assign to it exclusive rights over the exploitation of their works as soon as they are created. By virtue of the membership contracts and the statutes of Sacem, Sacem has the exclusive right to authorize or prohibit the use of its members' musical works and to receive the corresponding copyright royalties.

Sacem's repertoire comprises not only the works of its members but also those contained in the repertoires of those foreign copyright societies which have, by means of reciprocal representation contracts, appointed it to represent them in France. Each of the parties to such contracts undertakes to enforce within its own territory the rights of the other party's members in the same way and to the same extent as it does so for its own members. That implies in particular that the scales, methods and means of collection and distribution of royalties are the same. In order to cover the operational costs incurred, each society has the right to deduct a percentage

\* Language of the case: French.