

JUDGMENT OF THE COURT  
OF 27 MARCH 1974<sup>1</sup>

Belgische Radio en Televisie and Société belge des auteurs,  
compositeurs et éditeurs  
v SV SABAM and NV Fonior  
(preliminary ruling requested by  
the Tribunal de Première Instance de Bruxelles)

'B.R.T. — II'

Case 127/73

S u m m a r y

1. *Competition — Dominant position within the market — Copyrights — Exploitation by an undertaking — Abuse — Competence of the national court*  
(EEC Treaty, Article 86)
2. *Competition — Community rules — Derogation — Undertakings entrusted with the operation of services of general economic interest — Definition — Strict interpretation — Competence of the national court*  
(EEC Treaty, Article 90 (2))

1. An abuse can consist in the fact that an undertaking entrusted with the exploitation of copyrights and occupying a dominant position within the meaning of Article 86 imposes on its members obligations which are not absolutely necessary for the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright. The inequitable nature of such provisions must be determined by the relevant court, bearing in mind both the intrinsic individual effect of those clauses and their effect when combined. If abusive practices are exposed, it is for the national court to decide whether and to what extent they affect the interests of authors or third parties concerned, with a view to deciding the consequences with regard to the validity and effect of the

contracts in dispute or certain of their provisions.

2. As Article 90 (2) permits, in certain circumstances, derogation from the rules of the Treaty, undertakings which can take advantage of it must be strictly defined. Private undertakings may come under that provision, but they must be entrusted with the operation of services of general economic interest by an act of the public authority.

It is thus the duty of the national court to investigate whether an undertaking which invokes the provisions of Article 90 (2) for the purpose of claiming a derogation from the rules of the Treaty has in fact been entrusted by a Member State with the operation of such a service.

1 — Language of the Case: Dutch.