LICENSING (BROADCASTING): THE IFPI CASE

Subject: Licensing

Industry: Broadcasting; music

Parties: The International Federation of the Phonographic Industry (IFPI)

Source: Commission Statement IP/02/1436, dated 8 October 2002

(Note. There are some odd features of this case. Granted that the exemption – the Statement does not specify from exactly what – may well be justified by the greater convenience to the music industry and to broadcasters of respectively granting and obtaining licences for "simulcasting", the Commission's statement raises more questions than it answers. If the full Decision, when it is published, clears up these points, it may justify a further report. The exemption appears to apply to an agreement between "the copyright administration societies of music record companies", but "does not concern authors' rights". In a comment on the exemption, the Commissioner for Competition Policy says, among other things, that "the framework put in place ensures that the rights-holders will be properly paid"; this is an unusual objective of an exemption. The Commission describes the exemption as "contributing to the completion of a European single market"; yet France and Spain are outside the scheme. Finally, while it is appropriate that the parties to the agreement "have undertaken to increase transparency as regards the fees charged for a copyright license", it is not clear whether this is a condition of exemption, nor why implementation of the condition is delayed.)

An exemption granted by the Commission is intended to facilitate arrangements for European television and radio companies, which simultaneously broadcast music shows on the Internet, to obtain a single "one-stop shop" licence from royalty collecting agencies to cover Internet broadcasts across most of the 18-nation European Economic Area (EEA). This will replace the old system under which they need to secure a license from each national copyright administration and from national collecting societies. The Commission hopes that the new system will also boost competition among the societies collecting the royalties on behalf of the music industry, notably in terms of the fees they charge.

This is the first decision by the Commission concerning the collective management and licensing of copyright for the purposes of commercial exploitation of musical works on the Internet.

Radio and television broadcasters have in the last few years begun to broadcast their programmes via the Internet along with the traditional terrestrial or cable transmission to European homes. This practice, known as simulcasting, requires broadcasters to obtain international licenses from music rights owners. Broadcasters traditionally operate on a national or regional basis under limited

territorial copyright licences. Therefore, because of its global nature, the Internet poses a new challenge in the way those rights are acquired.

The present case stems from a notification by the International Federation of the Phonographic Industry (IFPI). The notification was made in the name of the copyright administration societies of music record companies. It does not concern authors' rights, which are collected by different agencies. The notified agreement is intended to facilitate the creation of a new category of copyright licence with a multi-territorial scope, taking into consideration the global reach of the Internet.

Following the Commission's observations, the collecting societies have agreed to grant "one-stop" licences covering all the territories in which the local record producers' society is a party to the agreement. In effect this includes the whole of the EEA (which comprises the fifteen Member States of the European Union, plus Norway, Iceland and Liechtenstein), except for Spain and France. The agreement also includes societies from Central and Eastern Europe, Asia, South America, Australia and New Zealand.

This means that, rather than being obliged to obtain a licence from the local collecting society in every country in which their Internet transmissions are accessed, broadcasters whose signals originate in an EEA member State will be able, for the first time, to approach any EEA-based collecting society of their choice for the simulcast license. This, the Commission hopes, will allow for competition between EEA societies to grant these new multi-territorial licenses, thereby contributing to the completion of a European single market.

The parties have also undertaken to increase transparency as regards the fees charged for a copyright license. A set of proposals will be presented to the Commission by the end of 2003, aimed at separating the copyright royalty from the fee meant to cover the licensing administration costs of each society. The two elements will be separately identified upon the granting of a licence. In this way, TV and radio broadcasters are expected to be able to recognise the most efficient societies in the EEA and to seek their licenses from the societies providing them at the lowest cost. The licences will also include the repertoires of all societies party to the agreement. ■

Deutsche Post / DHL

For once, the news is good for Deutsche Post: the Commission has cleared an agreement giving Germany's Post Office sole control of Bermuda-based express mail company DHL International Ltd. The operation will not significantly affect competition, since Deutsche Post is already closely linked to DHL, of which it has hitherto shared control of with Lufthansa.

Source: Commission Statement IP/02/1533, dated 22 October 2002