

Brussels, 7th February 2006

Competition: Commission sends Statement of Objections to the International Confederation of Societies of Authors and Composers (CISAC) and its EEA members

The European Commission can confirm that it has decided to open formal proceedings against CISAC (the “International Confederation of Societies of Authors and Composers”) and the individual national collecting societies in the EEA that are members of CISAC and has sent them a Statement of Objections (SO).

The Statement of Objections concerns certain parts of the CISAC model contract and its implementation at bilateral level by CISAC members in the EEA. This model contract and its duplicates at bilateral level concern the collective management of copyright for every category of exploitation, for example the broadcasting of music in a bar, a night club or via internet. However, the SO concerns only certain relatively new forms of copyright exploitation: internet, satellite transmission and cable retransmission of music. The traditional forms of exploitation are outside the scope of the SO. As regards these new forms of copyright exploitation, the Commission considers that certain aspects of the agreements might infringe the EC Treaty’s prohibition of restrictive business practices (Article 81). These aspects are:

- (i) the membership restrictions which oblige authors to transfer their rights only to their own national collecting society (whatever the subsequent exploitations of the rights)
- (ii) the territorial restrictions, which oblige commercial users to obtain a license only from the domestic collecting society and limited to the domestic territory, and
- (iii) the network effects of the agreements (the effect of the network of interlocking agreements between the collecting societies is that the membership and territorial restrictions multiply and guarantee to collecting societies an absolutely exclusive position on their domestic market: the historical de facto monopoly is strengthened and potential new entrants are prevented from entering the market for the management of copyright).

Background

Statements of Objections are a formal step in European antitrust investigations. After receiving such statements, companies have two months to defend themselves in writing. They can also ask the Commission to hear their case at an oral hearing, which usually takes place about one month after the written reply has been received. After having heard the company's defence can the Commission take a final decision, which may be accompanied by fines.

Collecting societies act as trustees on behalf of their members (here, authors of musical works). They manage copyright and grant exploitation licences to commercial users of public performance rights¹ for the purposes (as far as are relevant to the present SO) of music broadcasting via satellite, cable retransmission and internet transmission.

Each collecting society that is a member of CISAC enjoys an exclusive position on its domestic (i.e. national) market and has its own portfolio of works (the "repertoire").

Each EEA collecting society also has a reciprocal representation contract with all the other EEA societies. As a consequence, all EEA collecting societies have a global portfolio of musical works – a multirepertoire- and can deliver to commercial users a multirepertoire licence to be exploited in the domestic market only.

The reciprocal representation contracts are a duplicate at bilateral level of a model contract proposed by the international association of collecting societies: CISAC. The Commission's concerns are not based on the reciprocal representation contracts as such, but only some of the restrictive clauses contained in the reciprocal representation contracts.

¹ The public performance right is one of the rights granted to authors of musical works. With that right, authors can notably authorise or prohibit each broadcasting of their works by commercial users (TV channels, radio...).