COMMISSION

COMMISSION DECISION
of 8 October 2002
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case No COMP/C2/38.014 — IFPI 'Simulcasting')

(notified under document number C(2002) 3639)

(Only the English text is authentic)

(Text with EEA relevance)

(2003/300/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by Regulation (EC) No 1/2003 [2], and in particular Article 2 thereof,

Having regard to the application for negative clearance pursuant to Article 2 of Regulation No 17 and the notification pursuant to Article 4(1) of that Regulation registered on 16 November 2000 and as amended on 21 June 2001 and 22 May 2002 pursuant to Article 4(3) of Commission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17 [3],

Having regard to the summary of the notification published [4] pursuant to Article 19(3) of Regulation No 17,

Having regard to the final report of the Hearing Officer in this case [5],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

A. INTRODUCTION

(1) On 16 November 2000 the International Federation of the Phonographic Industry (IFPI) applied to the Commission, pursuant to Articles 2 and 4(1) of Regulation No 17 for negative clearance or, alternatively, for exemption under Article 81(3) of the Treaty, in respect of a model reciprocal agreement (hereinafter the Reciprocal Agreement) between record producers' rights administration societies for the licensing of 'simulcasting'.

[1] OJ 13, 21.2.1962, p. 204/62.
[2] OJ L 1, 4.1.2003, p. 1.
[3] OJ L 377, 31.12.1994, p. 28.
[4] OJ C 231, 17.8.2001, p. 18.
[5] OJ C 104, 30.4.2003.

(2) Simulcasting, as defined by the notifying parties, is the simultaneous transmission by radio and TV stations via the Internet of sound recordings included in their broadcasts of radio and/or TV signals ([6]). The Reciprocal Agreement is intended to facilitate the grant of international licences to radio and TV broadcasters who wish to engage in simulcasting.

(3) On 21 June 2001 the IFPI submitted an amended version of the Reciprocal Agreement. The effect of the amendment is that simulcasters located in the European Economic Area (EEA) are able to seek and obtain a multi-territorial license from any one of the rights administration societies (hereinafter collecting societies) established in the EEA which are party to the Reciprocal Agreement to simulcast into the signatories' territories.

(4) On 22 May 2002 the IFPI notified a second amendment to the Reciprocal Agreement pursuant to which the Agreement was renewed between the parties until 31 December 2004. The second amendment also provides for the parties to introduce a mechanism whereby the collecting societies in the EEA which are party to the Reciprocal Agreement will specify which part of the tariff to simulcasters obtaining a multi-territorial and multi-repertoire license corresponds to the administration fee charged to the user.

(5) The IFPI submitted the notification on behalf of a number of collecting societies which administer the rights of their record company members for the purposes of broadcasting and public performance.

B. **PARTIES**

IFPI

(6) The IFPI is an international trade association incorporated in Switzerland and with its principal place of management in London, whose members comprise a large number of record and music video producers. Those record and music video producers are members of national collecting societies which administer on their behalf the rights of which they are the legitimate holders. These rights are generally referred to as 'neighbouring rights' to copyright or 'related rights'.

(7) The IFPI submitted the notification on behalf of the record producers' collecting societies which are party to the agreement but is not itself party to the agreement, since it is not mandated to collect revenues on behalf of its members. The IFPI assisted the collecting societies to set up the arrangements that are the subject of the notification as the international representative of its record producer members.

The collecting societies

(8) The parties to the Reciprocal Agreement as lastly notified on 22 May 2002 are the following record producers' collecting societies: Wahrnehmung von Leistungsschutzrechten GesmbH (LSG), from Austria; Société de l'Industrie Musicale Muziek Industrie Maatschappij (SIMIM), from Belgium; Gramex, from Denmark; Gramex, from Finland; Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL), from Germany; Grammo, from Greece; Samband Flitjenda og Hljomplötuframleidanda (SFH/IFPI), from Iceland; Società Consortile Fonografici Per Azioni (SCF Scpa), from Italy; Phonographic Performance Ireland (PPI), from Ireland; Stichting ter Exploitatie van Naburige Rechten (SENA), from the Netherlands; GRAMO, from Norway; Associaçao Fonografica Portuguesa (AFP), from Portugal; IFPI Svenska Gruppen, from Sweden; IFPI Schweiz, from Switzerland; Phonographic Performance Limited (PPL), from the United Kingdom; Intergram, from the Czech Republic; Eesti Fonogrammitootjate Ühing (EFU), from Estonia; Zwiazek Producentów Audio Video (ZPAV), from Poland; Phonographic Performance Ltd, South East Asia, from Hong Kong; Phonographic Performance Limited (PPL), from India; Public Performance Malaysia Sdn Bhd (PPM), from Malaysia; Recording Industry Performance Singapore Pte Ltd (RIPS), from Singapore; The Association of Recording Copyright Owners (ARCO), from Taiwan; Phonorights Ltd, from Thailand; Cámara Argentina de Productores de Fonopgramas y Videograma (CAPIF), from Argentina; Sociedad Mexicana de Productores de Fonogramas, Videogramas y Multimedia S.G.C. (Somexfon SGC), from Mexico; Unión Peruana de Productores Fonográficos (Unimpro), from Peru; Cámara Uruguaya del Disco (CUD), from Uruguay; Recording Industry Association New Zealand (RIANZ), from New Zealand.

([6]) The parties define it more precisely as 'the simultaneous transmission by radio and TV stations via the Internet of sound recordings included in their single channel and free-to-air broadcasts of radio and/or TV signals, in compliance with the respective regulations on provision of broadcasting services'.

(9) The main function of these collecting societies is the administration of the neighbouring rights of their record producer members for the purposes of broadcasting and public performance. This includes the licensing of rights in the sound recordings of their members to users, determining tariffs for that use, collecting and distributing royalties, monitoring the use of the protected material and enforcing their members' rights.

(10) The collective management system offered by collecting societies enables right-holders to commercially exploit their rights to a multitude of users even in circumstances where it is difficult for users to obtain individual clearance. For large-scale users of musical works, having to seek individual clearance from each right-holder would be hardly feasible in most circumstances. Furthermore, it is often difficult to obtain all the relevant clearances with respect to a certain work given the need to clear rights between different co-right-holders. Collecting societies provide users with a 'one-stop shop' for the clearance of certain rights, traditionally on a national basis.

C. **REGULATORY CONTEXT**

(11) The protection of the rights of phonogram producers at the international level is afforded by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (the Rome Convention), by the TRIPS Agreement of 15 April 1994 ([7]) and by the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty, adopted on 29 December 1996 by the Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions ([8]). These international treaties recognise the following rights of phonogram producers: the right of reproduction ([9]), as well as the right of distribution, of rental and of making their phonograms available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them ([10]). The Rome Convention also provides for the right to remuneration with respect to the secondary use of phonograms, where a phonogram published for commercial purposes is used directly for broadcasting or for any communication to the public.

(12) At Community level, the protection of copyright and related rights is provided through a number of Directives ([11]). Mandatory collective administration of copyright and related rights has been acknowledged for cable retransmission by Community legislation, namely by Directive 93/83/EEC, where a 'collecting society' is defined as 'any organisation which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes.' ([12]) Article 13 of the same Directive expressly leaves the regulation of the activities of collecting societies to Member States at national level. Article 8(2) of Directive 92/100/EEC provides for the right of phonogram producers (as well as performers) to obtain an equitable remuneration when a phonogram is used for broadcasting and communication to the public.

([7]) The TRIPS Agreement corresponds to Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh on 15 April 1994. It came into effect on 1 January 1995.
([8]) The Treaty entered into force on 20 May 2002.
([9]) All the international treaties previously referred to.
([10]) WIPO Treaty.
([11]) Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ L 122, 17.5.1991, p. 42), as amended by Directive 93/98/EEC (OJ L 29, 24.11.1993, p. 9); Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 346, 27.11.1992, p. 61), as last amended by Directive 2001/29/EC of the European Parliament and of the Council (OJ L 167, 22.6.2001, p. 10); Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15); Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights (OJ L 290, 24.11.1993, p. 9) as amended by Directive 2001/29/EC; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20); Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10); Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13.10.2001, p. 32).
([12]) Article 1(4).

(13) As regards the application of Community competition law to collecting societies, the interventions by the Court of Justice of the European Communities and by the Commission up to now have addressed three broad issues: the relationship between collecting societies and users, the relationship between collecting societies and their members and, lastly, the reciprocal relationship between different collecting societies. The present case concerns directly the reciprocal relationship between collecting societies and indirectly the relationship between collecting societies and users. In the particular context of copyright licensing of physical premises like discothèques, the Court of Justice has addressed these issues in the cases Ministère Public v. Tournier ([13]) and Lucazeau v. Sacem ([14]).

D. **THE NOTIFIED AGREEMENT**

Scope

(14) Digital technology and the worldwide web have enabled broadcasters, who traditionally operate on a national or regional basis under limited territorial licences, to exploit globally the sound recordings administered by the collecting societies by simulcasting their programming onto the global digital network of the Internet. According to the parties, the Reciprocal Agreement is intended to facilitate the grant of a multi-territorial licence for the simulcasting activity.

(15) By virtue of the territorially limited way licensing has been carried out, each collecting society has pursued its activity on its own territory only. Accordingly, the licenses which societies traditionally grant to users for exploitation of sound recordings are limited to their individual national territories. Therefore, the right to simulcast on the Internet, given that it necessarily involves the transmission of signals into several territories at the same time, is not covered by the existing 'mono-territory' licenses granted by collecting societies to broadcasters where the simulcast includes the repertoires of several collecting societies. According to the parties, the Reciprocal Agreement is intended to facilitate the creation of a new category of licence which is simultaneously multi-repertoire and multi-territorial.

(16) Another consequence of the territorially limited way licensing has traditionally been carried out is that the existing reciprocal representation agreements between collecting societies do not provide for the possibility of a society granting a multi-territory license to a user including, besides its own, the repertoire of a represented sister-society (multi-repertoire license). The existing representation agreements allow a collecting society to grant a license to a user, where it includes the repertoire of a represented sister-society, for its own national territory only. This means that the existing agreements between collecting societies allow for the grant of both mono- or multi-repertoire licenses but, in the case of multi-repertoire licenses, these must always be mono-territory. Given that the applicable model for Internet simulcasting licensing is determined by the country-of-destination principle, a multi-territory mandate between collecting societies is required in order to allow for a collecting society to grant licenses which are both multi-territory and multi-repertoire. Therefore, the right to license simulcast on the Internet, given that simulcasting necessarily involves the transmission of signals into several territories at the same time, is not covered by the current mono-territory inter-society mandates resulting from the existing reciprocal representation agreements.

(17) The notified Reciprocal Agreement intends to establish a framework to ensure effective administration and protection of producers' rights in the face of global Internet exploitation. It reflects the new possibilities offered by digital technology, namely the ability to carry out the monitoring of copyright exploitation from a distance, and it is designed such as to enable collecting societies to grant 'one-stop' licences covering all the territories in which the local producers' collecting society is a party to the Reciprocal Agreement. In this way, simulcasters will have a simple alternative to obtaining a licence from the local society in every country in which their Internet transmissions are accessed, although this latter approach will still be available to them.

(18) The Reciprocal Agreement is intended to operate for an experimental period after which its nature, scope and operation will be reviewed. The amended version of the agreement will expire on 31 December 2004.

([13]) Case 395/87 Ministère Public v. Tournier, [1989] ECR 2521.
([14]) Joined cases 110/88, 241/88 and 242/88 Lucazeau v. SACEM, [1989] ECR 2811.

Content

(19) The Reciprocal Agreement provides for each participating collecting society to grant to the other participating societies the right (in respect of its members' repertoire) to authorise simulcasting, or to claim equitable remuneration in its territory (as appropriate) on a non-exclusive basis. Each party to the Reciprocal Agreement will enter into bilateral contracts individually and separately with each other party in terms following the model of the Reciprocal Agreement.

(20) More specifically, the Reciprocal Agreement will enable each participating collecting society:

(a) in the case of an exclusive right, to authorise, whether in its own name or in the name of the right holder concerned, simulcasting of sound recordings pertaining to the repertoire of the other contracting party and, where claiming equitable remuneration, to collect all remuneration, to receive all sums due as indemnification or damages and to give due and valid receipt for the aforementioned collections;

(b) to collect all licence fees required in return for the authorisations, and to receive all sums due as indemnification or damages for unauthorised simulcasts;

(c) to commence and pursue, either in its own name or in that of the right holder concerned, upon request and with explicit consent, any legal action against any person or corporate body and any administrative or other authority responsible for an illegal simulcast.

Remuneration of rights

(21) With respect to the remuneration of rights, the general principle underlying the Reciprocal Agreement is the country-of-destination principle. According to this principle, which appears to reflect the current legal situation in copyright law, the act of communication to the public of a copyright protected work takes place not only in the country of origin (emission-State) but also in all the States where the signals can be received (reception-States). It is opposed to the country-of-origin principle according to which the act of communication to the public of a copyright protected work takes place in the emission-state only. The application of the country-of-destination principle in the framework of the Reciprocal Agreement means that rights clearance is done in one country but that remuneration is due in all countries where the simulcast signal can be received.

(22) The Reciprocal Agreement is conditioned on the application in each of the countries concerned of such country-of-destination principle. Article 10(2) of the amended version of the Reciprocal Agreement (as notified on 21 June 2001) holds: 'The reciprocal agreement is entered into subject to the existence of a right to prohibit/authorise or claim for an equitable remuneration under the relevant national laws in the countries where the signals are transmitted to. In case a court or other judicial or legislative authority determines, or a Contracting Party considers, that besides clearance in the country from which the signals originates, clearance in the country to which the signal is transmitted is not required under its national law — so that such party is not entitled to collect license fees in respect of simulcasts transmitted into its territory — that Contracting Party shall no longer exercise any Simulcast rights on behalf of the other Contracting Party.'

(23) According to Article 5(2) of the Reciprocal Agreement, the country-of-destination principle will apply in respect of the amount to be charged by a collecting society to a user for a simulcast license ([15]). This means that each collecting society will take in consideration the tariffs applied in the territories into which the user simulcasts its services, and will charge the user accordingly.

(24) Given that the envisaged 'one-stop' simulcast license comprises several repertoires and is valid in multiple territories, the tariff for a simulcast license will be an aggregate tariff composed of the relevant individual tariffs charged by each participating collecting society for simulcasting on its own territory. This means that the society granting a multi-repertoire and multi-territory license will have to take into account all the relevant national tariffs, including its own, for the determination of a global licence fee.

(25) Article 5(3) of the Reciprocal Agreement states that 'the Contracting Parties shall each apply reasonable endeavours in discussion with the other party to reflect Article 5(2) as it is an experimental period.' In the light of the experimental nature of the Reciprocal Agreement, the parties declare that the individual collecting societies have not yet definitively decided how to structure the aggregate tariff. They indicate that, by virtue of the fact that there is little revenue generation from simulcasting activity at present, collecting societies have thus far tended to seek a lump sum payment for a simulcast licence. Nevertheless, the parties foresee two main possibilities:

(a) an aggregate tariff based on a percentage of the revenue generated from the simulcast in the territory of each collecting society;

(b) an aggregate tariff corresponding to a rate per track per stream (i.e. linked to repertoire use and number of hits on a site).

(26) While laying down the general principle for the determination of the global licence fee, the Reciprocal Agreement does not determine the national tariffs to be established by each of the collecting societies. The calculation of an appropriate and equitable remuneration level is therefore a matter for each individual collecting society. According to the parties, the structure and level of the national simulcasting tariffs remains a matter for individual collecting societies, who will set their national tariffs in accordance with respective national legislation and commercial needs.

Clearance of rights

(27) Under the originally notified agreement, a collecting society was empowered to grant an international simulcasting license only to broadcasting stations whose signals originated in its territory. This meant that broadcasters were required to approach the producer's collecting society in their own Member State in order to be granted a multi-territory simulcasting license, according to Article 3.1 of the Reciprocal Agreement:

> 'By virtue of the present contract each Contracting Party individually agrees that the right referred to in Article 2 for Simulcasting in and into its own territory is conferred on a non-exclusive basis on the other contracting party (…) with regard to those broadcasting stations whose signals originate in the other Contracting Party's territory and are licensed for Simulcasting by the other Contracting Party.'

([15]) 'Each Contracting party shall apply to the simulcasters the license fees which apply in the other Contracting Party's territory for those simulcasts received in the latter's territory'.

(28) On 21 June 2001 IFPI notified to the Commission an amended version of the Reciprocal Agreement allowing broadcasters whose signals originate in the EEA to approach any collecting society established in the EEA which is party to the Reciprocal Agreement in order to seek and obtain a multi-territorial and multi-repertoire simulcasting license, further to a new subparagraph under Article 3.1 ('reciprocal authorisation to administer'):

> 'Notwithstanding the provisions of the previous paragraph, each Contracting Party agrees that the right referred to in Article 2 for Simulcasting in and into its own territory is conferred on a non-exclusive basis on any Contracting Party established in the European Economic Area (EEA) with regard to those broadcasting stations whose signals originate in the EEA. For the avoidance of doubt, any broadcasting station whose signals originate in the EEA shall therefore be entitled to approach any Contracting Party established in the EEA for its multi-territorial simulcast license.'

Commercial terms

(29) The Reciprocal Agreement does not deal with the concrete commercial terms of the licence. The commercial terms (payment terms, rebates, discounts) will have to be negotiated between the user and the individual collecting society granting the licence, in a rather similar way to what has been the practice in the field of central licensing agreements for mechanical reproduction rights during the past years.

(30) The Reciprocal Agreement determines that disputes between participating collecting societies and broadcasters relating to royalties will be subject to national arbitration procedures where such exist. In circumstances where the national arbitration system does not exist or is unlikely to be effective, the parties will refer to a forum for International Arbitration, such as the WIPO Arbitration and Mediation Centre.

Benefits to right-holders and users

(31) According to the parties, the main advantage of the system envisaged by the agreement is the possibility of each collecting society functioning as a 'one stop-shop'. The advantages of the agreement can be summarised as follows:

(a) the societies function as a 'one-stop-shop' because each collecting society is in a position to grant a multi-territorial simulcast licence, which will include the repertoire of other collecting societies;

(b) all protected recordings, of whatever origin, are subject to the same conditions for all users in the same country, in accordance with the principle of national treatment;

(c) as a result, administration costs will be lower and these efficiencies can be passed on both to the rights-holder and to the user.

E. THE RELEVANT MARKETS

1. Product markets

(32) Collective management of copyright and/or neighbouring rights concerns different activities corresponding to as many different relevant product markets: administration services of rights for right holders, administration services of rights for other collecting societies and licensing services for users. The Reciprocal Agreement affects directly two relevant markets:

(a) multi-territorial simulcasting rights administration services between record producers' collecting societies;

(b) multi-territorial and multi-repertoire licensing of the record producers' simulcasting right.

(33) As regards the relevant product markets, the preliminary question to be answered, from the point of view of demand, is whether the parties' customers would switch to readily available substitute products in response to a hypothetical small permanent relative price increase in the products and areas considered ([16]).

(34) In the present case, both product markets are restricted to simulcasting rights because the Reciprocal Agreement only covers simulcasting and simulcasting presents distinct features, both legal and technical, from other activities that also require the clearance of rights, such as pure mechanical reproduction or public performance. The grant of a license for the clearing of and the provision of inter-collecting society administration services with respect to record producers' simulcasting rights, now made possible by means of the Reciprocal Agreement, are therefore not substitutable by other services.

Simulcasting rights administration services between collecting societies

(35) The first relevant product market covered by the Reciprocal Agreement is the market for multi-territorial simulcasting rights administration services between record producers' collecting societies.

(36) The market is characterised on the supply side by record producers' collecting societies willing and capable of administering on a multi-territorial basis for simulcast use the repertoires of other societies located in territories other than the one where the former are established. On the demand side, it is characterised by record producers' collecting societies wishing to have their repertoires administered on a multi-territorial basis for simulcast use by another society located in a different territory.

Licensing of the record producers' simulcasting right

(37) The Reciprocal Agreement creates a second relevant product market which is the downstream market for the multi-territorial and multi-repertoire licensing of the simulcasting right.

(38) The market for multi-territorial and multi-repertoire simulcast licensing is characterised on the supply side by the record producers' collecting societies which have been mandated the necessary rights by their record company members to grant licences to users. On the demand side it is characterised by user TV and radio broadcasters who wish to make the conventional radio/TV signal simultaneously available via the Internet. Since mono-territorial or mono-repertoire simulcasting licences do not represent a viable alternative service for such users, multi-territorial and multi-repertoire licensing of the simulcasting right constitutes the relevant product market.

2. **Geographic markets**

Simulcasting rights administration services between collecting societies

(39) The relevant geographic market for multi-territorial simulcasting rights administration services between record producers' collecting societies will comprise at least all the EEA countries where the local collecting society is a party to the Reciprocal Agreement, i.e. all EEA countries except for France and Spain ([17]). Pursuant to the new paragraph added to the Reciprocal Agreement by means of the amendment notified to the Commission on 21 June 2001, the right to license a collecting society's (EEA or non-EEA) repertoire will be granted to EEA societies which are party to the Reciprocal Agreement for all the EEA countries where these societies are established, provided the signal of the prospective licensee originates in the EEA.

([16]) See Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5, point 17).

([17]) Given the absence of a phonogram producers' collecting society in Luxembourg and Liechstenstein, producers' simulcasting rights for these territories will be administered by other societies that are party to the Reciprocal Agreement. Simulcast licences for Liechtenstein will be administered by IFPI Schweiz. The territory of Luxembourg is covered by the Reciprocal Agreement and any participating EEA society will be able to issue licences to simulcasters based in Luxembourg, consistent with the principles set out in the Agreement.

(40) The framework resulting from the Reciprocal Agreement renders the conditions of competition in the EEA countries where the local collecting society is a party to the Reciprocal Agreement sufficiently homogeneous to distinguish this area from other areas ([18]). Therefore, collecting societies in the EEA which are party to the Reciprocal Agreement will constitute among each other real alternative sources of provision of this service.

Licensing of the record producers' simulcasting right

(41) As regards the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing, the preliminary question to be answered, from the point of view of demand, is whether the parties' customers would switch to suppliers located elsewhere in response to a hypothetical small permanent relative price increase in the products and areas considered ([19]). In defining the relevant geographic market, the Commission identifies possible obstacles and barriers isolating undertakings located in a given area from the competitive pressure of undertakings located outside that area ([20]).

(42) Pursuant to Article 3(1) of the Reciprocal Agreement, a broadcaster whose signal originates in the EEA is able to obtain a multi-territorial/multi-repertoire license valid throughout the relevant EEA countries from any one of the collecting societies established in the EEA which are a party to the Agreement. The same broadcaster, however, cannot in principle obtain a multi-territorial/multi-repertoire license valid throughout the relevant EEA territories from either a non-EEA society or from an EEA society which is not party to the Agreement.

(43) The Reciprocal Agreement does not require EEA societies to empower non-EEA societies on the basis of the bilateral representation agreements to grant multi-territorial/multi-repertoire licences to broadcasters located in the EEA. Consequently, broadcasters whose broadcasting signal originates in the EEA, even if faced with a hypothetical small permanent relative price increase in multi-repertoire/multi-territory licenses granted by an EEA-society which is party to the Reciprocal Agreement, will not in principle be able to switch to an alternative source of supply located outside the EEA. On the other hand, EEA collecting societies which are not party to the Reciprocal Agreement are by definition not subject to any of its provisions, and therefore Article 3(1) of the Reciprocal Agreement is not applicable to them. Accordingly, EEA societies which are not party to the Reciprocal Agreement are not an alternative source of supply either and the territories where they are located are excluded from the relevant geographic market.

(44) In the light of the foregoing, the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing comprises all the EEA countries except for Spain and France.

F. **STRUCTURE OF THE MARKET**

(45) Within the traditional (off-line) copyright and related rights licensing market, and as the parties themselves acknowledge in the notification, EEA collecting societies enjoy a dominant, and in most cases even monopolistic, position in their respective markets ([21]), the market being characterised on the supply side by minimal actual competition. It follows that collecting societies have a virtual 100 % share of the market in their respective territories, given that nearly all the individual holders of rights in sound recordings entrust them in each Member State to one collecting society. The Court of Justice has recognised the dominant position of collecting societies arising from their *de facto* monopolies in national territories in the cases BRT v. SABAM ([22]) and GVL v. Commission ([23]).

(46) As a result of the market structure in the market for the licensing of copyright and related rights, the collecting societies have an identical market position as regards the inter-society provision of rights administration services in each of the national territories.

([18]) See Commission notice on the definition of relevant market for the purposes of Community competition law, point 8.
([19]) See Commission notice on the definition of relevant market for the purposes of Community competition law, point 17.
([20]) See Commission notice on the definition of relevant market for the purposes of Community competition law, point 30.
([21]) Under certain circumstances, national legislation in some Member States confers to collecting societies a legal monopoly for the exploitation of rights.
([22]) Case 127/73, BRT v. SV SABAM et NV Fonior [1974] ECR 313.
([23]) Case 7/82, GVL v. Commission [1983] ECR 483.

(47) In the framework of simulcasting licensing, the situation is different in that the amended Reciprocal Agreement will allow for competition between EEA-based collecting societies which are party to the Agreement for the granting of multi-territorial/multi-repertoire simulcast licenses to broadcasters whose signal originates in the EEA. The same applies as regards the market for inter-society multi-territorial administration services concerning simulcasting rights.

(48) Given that the markets for simulcasting rights administration and licensing are new markets, no data are yet available as regards the position of each of the parties in the relevant markets. However, the envisaged structure for reciprocal administration and neighbouring rights licensing is based on certain elements that already currently exist in the off-line administration and licensing markets. In fact, the licensing entities are the same, which means that the structures, the people and the means that are going to be used are mostly the same. Furthermore, the legal basis under which such entities operate (national and international law) are the same.

G. **THIRD PARTY OBSERVATIONS**

(49) On 17 August 2001, the Commission published a Notice ([24]) pursuant to Article 19(3) of Regulation No 17, stating that it intended to take a favourable view in respect of the notified agreement and inviting third parties to submit their observations before adopting a favourable opinion.

(50) Six associations have submitted observations further to the publication of the Notice: ACT (Association of Commercial Television in Europe), EBU (European Broadcasting Union), EDIMA (European Digital Media Association), FIM (International Federation of Musicians), UTECA (Unión de Televisiones Comerciales Associadas) and VPRT (Verband Privater Rundfunk und Telekomunikation E.V.).

(51) Five of the associations strongly support the 'one-stop shop' principle enshrined in the Reciprocal Agreement. FIM says that such principle may be appropriate if it is implemented with the agreement of all right-holders.

(52) ACT and VPRT submit definitions of three relevant markets:

(a) the market for administration services provided by neighbouring rights societies with respect to the licensing of rights to simulcast;

(b) the market for the licensing of the neighbouring rights societies' aggregate repertoire to broadcasters for simulcast use; and

(c) the market for music content distributed by Content Providers over the Internet and similar networks.

(53) ACT and VPRT consider that collecting societies are competitors in those markets where they are active. Accordingly, they consider Article 81(1) of the Treaty to apply to the Reciprocal Agreement, particularly in the light of the Commission Notice concerning guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements ([25]). However, these associations, as well as UTECA, also consider the four criteria contained in Article 81(3) of the Treaty to be fulfilled such as to render an exemption for the Reciprocal Agreement possible.

(54) Five of the respondent associations ask the Commission to guarantee that the licensor collecting society determines individually the tariff to be charged for a multi-repertoire/multi-territory license, so as to ensure that the competition allowed for by the amendment to the Reciprocal Agreement extends to pricing and that it is not undermined in practice by, for example, a concerted behaviour of the collecting societies party to the agreement.

([24]) OJ C 231, 17.8.2001, p. 18.
([25]) OJ C 3, 6.1.2001, p. 2.

(55) Three of the respondent associations call the Commission's attention to the very limited material scope of the Reciprocal Agreement and ask the Commission to encourage the collecting societies party to the agreement, as well as other societies, to extend the same type of agreements to other forms of exploitation of rights (for example, webcasting, broadcasting, pay-TV services), to other transmission modes (cable systems and satellite transmissions) and to 'other categories of copyright (for example, authors' rights).'

(56) FIM expresses their concern that rights of performers are not duly taken in consideration in the framework of the Reciprocal Agreement and that record producers societies, which in some cases also have performers as their members, may unduly collect and administer monies on behalf of performers. The notifying parties have confirmed to the Commission that the Reciprocal Agreement only covers phonogram producers' rights ([26]) given that it only mandates the societies to administer the rights of phonogram producers. However, the parties also clarified that a number of the collecting societies who are party to the Reciprocal Agreement also administer the rights of performers and that, in practice, such societies may be able to issue licences to simulcasters that also cover performers' rights, where such societies have been mandated with performers' rights either directly by performers or as a result of reciprocal agreements between societies representing performers' rights. The parties say that where this is the case, the collected sums will be divided between the right holders according to the society's distribution rules. Insofar as this issue concerns exclusively the internal relations between the collecting societies and their performer members, it is not relevant for the purposes of this decision.

(57) The EBU and FIM express their doubts as to the legal grounds of the simulcasting licenses envisaged by the Reciprocal Agreement. The EBU doubts whether simulcast licenses are legally required at all. FIM says that no contractual license is required where the law provides for a system of compulsory licensing due to which the act of communication to the public of phonograms is subject only to the payment of equitable remuneration. In this respect the doubts raised by both associations fall outside the scope of the present procedure and the Commission's analysis in this case is strictly limited to the assessment of the notified agreement under the relevant Community and EEA competition rules. Accordingly, this decision in no way prejudges any other legal question which may arise from national copyright or general civil law and that would fall within the competence of national authorities and/or national courts.

(58) After examining the comments in detail, and further to the amendments to the Reciprocal Agreement, there are no grounds for the Commission to depart from its provisionally favourable position, for the reasons further explained in the following sections of the present decision.

H. **ARTICLE 81(1) OF THE TREATY (AND ARTICLE 53(1) OF THE EEA AGREEMENT)**

1. **Agreement between undertakings**

(59) Collecting societies are undertakings within the meaning of Article 81(1) of the Treaty because they participate in the commercial exchange of services ([27]) and are therefore engaged in the exercise of economic activities. The Court of Justice does not consider collecting societies to be undertakings entrusted with the operation of services of general economic interest in the sense of Article 86 of the Treaty ([28]).

(60) The notified Reciprocal Agreement is a formal contractual arrangement entered into by the collecting societies and is therefore an agreement between undertakings within the meaning of Article 81(1).

([26]) 'Memorandum concerning issues arising from the country of destination principle and the tariff structure in the simulcasting agreement', submitted on 5 November 2001.

([27]) See, for example, the Court judgments in Case 127/73 BRT v. SABAM; Joined cases 55/80 and 57/80 MV membran et K-tel International v. GEMA [1981] ECR 147; Case 7/82 GVL v. Commission; Joined cases C92/92 and C326/92 Phil Collins v. Imtrat and Patricia Im- und Export v. EMI, [1993] ECR I-5145.

([28]) See GVL v. Commission, paragraph 32, and BRT v. SABAM, point 23.

2. **Restriction of competition**

(61) The licensing of copyrights and related rights in the online environment is significantly different from the traditional offline licensing, in that no physical monitoring of licensed premises is required. The monitoring task must necessarily be carried out directly on the Internet. The crucial requirements in order to be able to monitor the use of copyrights and related rights are therefore a computer and an Internet connection. This means that monitoring can take place from a distance. In this context, the traditional economic justification for collecting societies not to compete in cross-border provision of services does not seem to apply.

(62) Insofar as the Reciprocal Agreement creates a new product (multi-territorial and multi-repertoire licensing of the simulcasting right) that could not be realistically created without some cooperation among collecting societies, only certain particular clauses of the Reciprocal Agreement, namely Articles 5(2), 5(3) and 7 ([29]), deserve closer attention, since they may constitute restrictions of competition.

(63) The parties, supported by an expert opinion by Dr Thomas Dreier of the Max Planck Institut ([30]), state their belief that the country-of-destination principle provides the correct licensing model for Internet simulcasting ([31]). According to the parties, if right holders were to implement a system of licensing on a country-of-origin basis, then phonogram producers' rights could remain unrecognised or weakened in cases where the jurisdiction of origin of the simulcast did not offer adequate legal protection. Even in cases where adequate legal protection is in place, the parties emphasise the risk of proper remuneration of right-holders being endangered or weakened by means of 'forum-shopping' throughout jurisdictions offering the lowest possible remuneration level.

(64) Starting from the assumption, as the parties do, that remuneration is due in every country where the act of communication to the public is undertaken, it follows that a particular use of a phonogram should be assessed under the legal, economic and commercial conditions of each of the countries where the use takes place. It also follows that the value of the rights for each territory should be determined according to exploitation in such territory. Article 5(2) of the Reciprocal Agreement therefore sets out the principle that the tariff to be applied to the clearance of rights is that of the country of destination. However, the Reciprocal Agreement does not determine the tariff structure or level. According to the parties, this will remain a matter for individual collecting societies, who will set their national simulcasting tariffs in accordance with respective national legislation and commercial needs.

(65) In any event, the global tariff to be charged by a society granting a multi-repertoire/multi-territory license will reflect, in addition to its own tariff, the different national tariffs determined by each of the participating societies. The global tariff to be charged by the grantor society will therefore have to be an aggregate of all the relevant national tariffs. Assuming that either of the two envisaged possibilities in respect of the tariff structure is adopted ([32]), the aggregate will not be a mere accumulation of fixed tariffs. Rather, the aggregate will take into account factors such as the advertising revenue stream generated in each jurisdiction or the intensity of the use in each country, insofar as the relevant national percentage tariff is applied in proportion to the amount of such revenue or to the number of users that can be attributed to each territory ([33]).

(66) The Commission acknowledges the need for proper remuneration of right-holders, be it phonogram producers, as in the present case, or performers or authors, in other cases, and endorses the efforts made to protect and to encourage the productive or creative effort underlying the final act of

([29]) Article 7 reads:
'During the experimental period the Contracting Parties shall undertake to use their best efforts to exchange information for which they may be asked for the purpose of this agreement concerning:
— the license fees they apply to the simulcasts in their own territory,
— the number and origin of hits of the Simulcaster's website licensed by the parties,
— their repertoire.'

([30]) Annex 11 to the application submitted on 16 November 2000.

([31]) See recitals 21, 22 and 23.

([32]) Number of users or intensity of use, see recital 25.

([33]) See recital 25.

communication to the public of a work protected by copyright or neighbouring rights legislation. The right to remuneration of a right-holder for the public performance of a copyright protected work has been recognised by the Court of Justice as part of the essential function of copyright ([34]). However, it is settled case law that although the existence of an intellectual property right under national law is not prejudiced, pursuant to Article 295 of the Treaty, by the other Treaty provisions, its exercise may be affected by the prohibitions of the Treaty ([35]) and may accordingly be limited to the extent necessary to give effect to the prohibition under Article 81(1) ([36]). Given that collective administration of copyright and neighbouring rights clearly corresponds to the exercise of those rights, and not to their existence, the way in which collecting societies put in practice the administration of the rights they are entrusted with may, under certain circumstances, infringe Article 81(1) of the Treaty.

(67) In the present case, the model chosen by the parties for the simulcasting licensing structure results in the society granting a multi-repertoire/multi-territory license being limited in its freedom as to the amount of the global license fee it will charge to a user. In fact, the individual national tariffs determined by each of the participating collecting societies that contribute to the bundle of repertoires and territories being offered to a user through a single license will be imposed on the grantor society. This means that the global fee charged by the grantor society for a multi-repertoire/multi-territory license is to a large extent determined *ab initio*, which significantly reduces the competition in terms of price between EEA-based collecting societies. In this respect the participating EEA-based collecting societies will be offering exactly the same product, i.e. a neighbouring rights license covering the same repertoires and the same territories. As most of the third parties that submitted observations further to the publication of the Commission Notice pursuant to Article 19(3) of Regulation No 17 have emphasised ([37]), the degree of competition between the participating EEA-based collecting societies allowed for by the amendment to the Reciprocal Agreement could be undermined in practice if such competition did not extend to pricing and if all the participating societies ended up charging the same tariff for an identical license.

(68) In this case, a collecting society's freedom of action as regards the grant and the administration of a multi-territory/multi-repertoire license is limited to three elements: the amount of its national simulcasting tariff (to be subsequently aggregated with all other national tariffs determined by the other participating societies), the terms to be agreed with other societies, including commissions, for the administration of their repertoires in the framework of subsequent bilateral agreements, and the commercial terms to be agreed with individual licensees as regards, for example, payment terms, rebates or discounts. In this context, the non-exclusive character of the reciprocal mandates to be granted by and between societies in the framework of subsequent bilateral agreements dissipates the most serious concerns in respect of the market for simulcasting rights administration services. The same, however, cannot be said in respect of the downstream licensing market.

(69) The fact that a collecting society is free to determine its national simulcasting tariff does not translate into actual price competition between societies because all the national tariffs will be aggregated such as to result in a unique global simulcasting tariff for a multi-territorial/multi-repertoire license, and this unique global tariff will be the same no matter which of the participating societies grants the license. Such freedom does therefore not translate into any useful advantage to a prospective user in terms of its ability to choose one provider on the basis of price differences. On the other hand, the fact that a society is free to negotiate with a prospective user on an individual basis the commercial terms of a license (apart from the global fee) may certainly, in some cases, introduce an element of price competition between societies. However, this will not always be the case. The possibility of enjoying rebates or discounts or advantageous payment terms will necessarily depend on the profile of the user. This means that for large-scale users a certain degree of price competition

([34]) Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v Ciné Vog Films and others [1980] ECR 881, point 14.
([35]) Case 15/74, Centrafarm BV and Adriaan de Peijper v. Sterling Drug Inc [1974] ECR 1147, point. 7.
([36]) Joined cases 56/64 and 58/64, Établissements Consten SàRL and Grundig-Verkaufs-GmbH v. Commission, [1966] ECR English special Edition p.382. See also joined cases 55/80 and 57/80, Musik-Vertrieb membran GmbH et K-tel International v GEMA - Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte, point 12, where the Court states that, in respect of Article 36 of the Treaty, 'there is no reason to make a distinction between copyright and other industrial and commercial property rights'.
([37]) See Section G, Third party observations.

between societies may exist, depending on the different commercial terms offered to them by the various societies ([38]). However, this also means that for small- or medium-scale users no other terms besides the standard terms may be available. Given that the standard terms correspond to the undifferentiated simulcasting global tariff, the end result of the Reciprocal Agreement is that in most cases no price competition exists between the participating societies. Accordingly, a vast universe of users will be prevented from choosing a society on the basis of price differences for a multi-territory/multi-repertoire license.

(70) The need for a collecting society to guarantee an appropriate level of remuneration for its own repertoire certainly results from the essential function of copyright and neighbouring rights, and consequently it is only natural that agreements between collecting societies will contain provisions on this issue. However, Article 5(2) of the Reciprocal Agreement goes beyond the mere recognition that collecting societies must earn enough revenue to honour their financial commitments to each other, because it states how it is to be done, by obliging them to respect the tariffs of the country-of-destination. This provision is, thus, not objectively necessary for the existence of the Reciprocal Agreement.

(71) What renders this mechanism particularly restrictive is the fact that the lack of price competition as it results from the envisaged system occurs not only in respect of the royalty proper due for the use of protected works but also as regards that part of the license fee which is meant to cover the administration costs of the grantor society. In fact, no distinction is made between the two elements the sum of which necessarily constitutes the total amount of the license fee. By not distinguishing the copyright royalty from the administration fee, the notifying parties significantly reduce the prospects of competition between them as regards pricing for the provision of the licensing service. The confusion between the two elements of the license fee prevents prospective users from assessing the efficiency of each one of the participating societies and from benefiting from the licensing services from the society capable of providing them at the lower cost. Indeed, the Court of Justice has already found that operating expenses account for the most marked differences between collecting societies and that competition may have a role to play in order to limit the heavy burden of administration and hence the level of royalties ([39]).

(72) The amalgamation of copyright royalty and administrative fee that results in an undifferentiated global license fee to be charged to a user cannot be considered as directly related to the notified agreement or objectively necessary for the existence of the Reciprocal Agreement.

(73) First, the amalgamation of copyright royalty and administration fee bears no direct relation with the object of the notified agreement. There is no logical link that can be established between the reciprocal representation service between collecting societies envisaged in the notified agreement and the practice of confusing two distinct elements of a license fee to be charged downstream to a user.

(74) Secondly, it is self-evident that the service provided by a collecting society to a right-holder member and the service provided by the same society to a (prospective) licensee are different services which require different activities, involve different counter-parties and imply different costs. The service provided to a right-holder member is a service based on a membership agreement pursuant to which the collecting society commits to license the works of which the member is the legitimate right-holder and to collect on its behalf the revenues derived from the exploitation of its works by third parties. This service responds to the demand of right-holders to have their works administered by a specialised entity and implies the collection and distribution of monies, as well as the monitoring of the usage of the members' works by third parties. In contrast, the service provided to a (prospective) licensee responds to the demand of an operator wishing to use a copyright protected

([38]) Experience shows, for example in the field of central licensing agreements for mechanical reproduction rights, that differences in commercial terms are a crucial factor in the choice of a collecting society where the user has the possibility to choose the grantor-society from a number of different societies. In the field of mechanical rights, however, experience also shows that only large, multinational companies enter into central licensing agreements.

([39]) Case 395/87 Ministère Public v. Tournier, point 42.

work and is based on a licensing agreement. Above all, it provides the user with a centralised service that avoids the lengthy, cumbersome and in most circumstances unfeasible task of seeking copyright clearance from all the individual right-holders. The service to the user involves the grant of the license, the reception of monies and the definition of a framework pursuant to which reporting, accounting and monitoring can take place.

(75) An undertaking is expected to be able to identify its costs (as well as its revenues) in relation to the different products or services it supplies to different customers. Collecting societies should therefore be able to identify the costs inherent to the services they provide to right-holder members, on the one hand, and to licensees, on the other, and charge separate prices accordingly.

(76) The effect of the provision in the Reciprocal Agreement determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory is that the same product is offered to the market in the relevant EEA countries at a price which is to a large extent pre-determined as a result of a network of bilateral agreements between the different providers of the said product, such network of bilateral agreements being itself a result of the notified Reciprocal Agreement entered into by the different providers of the product. In the light of the foregoing, it must be concluded that Article 5(2) of the Reciprocal Agreement, determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory, restricts competition within the meaning of Article 81(1) of the Treaty.

(77) The parties to the Reciprocal Agreement are the vast majority of record producer rights collecting societies in the EEA, in addition to collecting societies from Central and Eastern Europe, Asia, Latin America and New Zealand ([40]). A significant proportion of the record producers that are members of the EEA-based collecting societies party to the Reciprocal Agreement are affiliated with the IFPI, which is the largest international trade association in the music industry, representing more than 1 300 record and music video producers in over 70 countries, in addition to national trade associations representing local record companies in 39 countries (IFPI national groups). The five major record companies (EMI, BMG, Vivendi/Universal, AOL/Time Warner and Sony) are members of all EEA-based collecting societies party to the Reciprocal Agreement, which, given the fact that those five companies are publicly known to have a market share of well above 50 % in the market for recorded music, means that a vast majority of the recorded music repertoire available for commercial exploitation through licensing for the purposes of, for example, simulcasting, is affected by the Reciprocal Agreement. Furthermore, as the parties themselves acknowledge in the notification, EEA collecting societies function as virtual monopolies. It follows that collecting societies have a virtual 100 % share of the market in their respective territories, given that nearly all the individual holders of rights in sound recordings entrust them in each Member State to one collecting society. Finally, to the knowledge of the Commission, the collecting societies party to the Reciprocal Agreement are the only entities in the world able to grant a 'one-stop shop' multi-territory/multi-repertoire license for the purposes of simulcasting protected musical works.

(78) A restriction of competition affecting, in terms of pricing, the licensing terms for such a significant part of the recorded music repertoire held by the vast majority of the administrators of record producers' rights in the EEA, themselves part of the group of the only entities in the world able to grant a 'one-stop shop' multi-territory/multi-repertoire license for the purposes of simulcasting,

([40]) See recital 8.

is clearly appreciable. Therefore, Article 5(2) of the Reciprocal Agreement, determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory, appreciably restricts competition within the meaning of Article 81(1) of the Treaty.

(79) As regards Articles 5(3) and 7 of the Reciprocal Agreement, the parties have explained that these provisions are designed to provide an element of flexibility in the arrangements during the experimental period due to the uncertainty surrounding the development of this new market. According to the parties, the envisaged discussions strictly concern the elements necessary to ensure the effective implementation of the Reciprocal Agreement and, in particular, the distribution of royalties between the participating societies. Such discussions would not restrict the collecting societies in their autonomy to decide the level of their own national tariff. The understanding of the Commission in this respect is that any discussions between the parties pursuant to Articles 5(3) and 7 of the Reciprocal Agreement must have a strict technical nature and be aimed at achieving technical improvements or technical cooperation, covering, for example, the determination of criteria for the establishment of the tariffs or the determination of the mechanisms to re-distribute royalties. Therefore, it appears that such discussions fall outside the scope of Article 81(1) of the Treaty provided that they do not result in joint price fixing practices or agreements.

(80) The independent determination by each economic operator of its commercial policy, and in particular of its pricing policy, corresponds to the concept inherent in the competition provisions of the Treaty ([41]), and, in this case, the discussions between the participating societies must not result in the loss of their autonomy to determine the level of their national tariffs and administration fees. The obvious reason for this is that the joint fixing of prices restricts competition, in particular by enabling every participant to predict with a reasonable degree of certainty what the pricing policy pursued by its competitors will be ([42]). Any discussion, practice or agreement between the parties pursuant to Article 5(3), or a result thereof, that goes beyond its intended strict technical character and which is restrictive of competition, is not covered by the notification, namely for the purposes of Article 15(5) of Regulation No 17.

3. **Effect on trade between Member States**

(81) In order to ascertain if an agreement may affect trade between Member States it must be determined whether such agreement 'may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, such as might prejudice the realisation of the aim of a single market in all Member States' ([43]). For the purposes of this analysis, 'account must be taken of the consequences for the effective competitive structure in the common market' ([44]).

(82) The Court has already adopted the view that the activities of undertakings managing copyrights are capable of affecting trade between Member States ([45]). Besides, the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing comprises most of the EEA ([46]). In this case, the need to aggregate a number of pre-determined national tariffs and the confusion between the element of the copyright royalty and the element of the administration fee result in the grantor society having a strictly limited margin of manoeuvre in the determination of the global license fee. This circumstance diminishes (although it does not eliminate) the economic incentive, and therefore the likelihood, of a prospective licensee seeking a license from a society located in a Member State different from that in which he sought it in the first place.

(83) In the light of the foregoing, the Reciprocal Agreement is clearly capable of affecting trade between Member States.

([41]) Case 26/76, Metro v. Commission, [1977] ECR 1875, paragraph 21; Case T-1/89, Rhône-Poulenc v. Commission [1991] ECR II-867, point 121; Case T-229/94 Deutsche Bahn AG v. Commission [1997] ECR II-1689, point 38.
([42]) Case 8/72 Cementhandelaren v. Commission [1972] ECR 977, point 21; Deutsche Bahn AG v. Commission, point 36.
([43]) Case 42/84 Remia BV and others v. Commission [1985] ECR 2545.
([44]) Joined cases 6/73 and 7/73, Istituto Chemioterapico Italiano Spa and Commercial Solvents Corporation v. Commission [1974] ECR 223.
([45]) Case 22/79 Greenwich Film Production v. SACEM and Société des Éditions Labrador [1979] ECR 3275; and Case 7/82, GVL v. Commission, point 38.
([46]) See recitals 41 to 44.

I. ARTICLE 81(3) OF THE TREATY (AND ARTICLE 53(3) OF THE EEA AGREEMENT)

1. Promotion of technical and economic progress

(84) The Commission has previously stated that in certain circumstances cooperation may be justified and can lead to substantial economic benefits, namely where companies need to respond to increasing competitive pressure and to a changing market driven by globalisation, the speed of technological progress and the generally more dynamic nature of markets ([47]). The Reciprocal Agreement appears to be a product of such a response, given the technological developments which lead to the simulcasting technology. It presents a number of pro-competitive elements which may significantly contribute to technical and economic progress in the field of collective management of copyright and neighbouring rights.

(85) First, simulcasting as such had not been yet the object of an agreement between collecting societies. The Reciprocal Agreement reduces substantially the legal uncertainty surrounding simulcasting licensing in that the agreement is based on a common understanding of the relevant legal framework by a significant number of the licensing entities in the EEA. The agreement will therefore allow collecting societies to supply users with simulcasting licenses covering the repertoires of all societies reciprocally represented by means of the reciprocal agreements in an environment of greater legal certainty.

(86) Secondly, the simulcasting licenses to users as they result from the Reciprocal Agreement present a new feature, which did not previously exist in the traditional copyright and neighbouring rights licenses. As opposed to traditional rights licenses, simulcasting licenses will allow for the use of the licensed rights in more than one territory. In fact, the notified structure will allow for a wide spread legitimate use of the rights, in accordance with the global reach of the Internet. By reciprocally granting the right to license simulcasting 'in and into its own territory', collecting societies enable each other to grant a 'one-stop shop' license to simulcasters which covers all the repertoires of the societies which are party to the agreement and which is valid in all the territories where the sound recording is made available. A simulcaster will therefore not need to seek a license from each collecting society in every territory where its simulcast is accessed to through the Internet.

(87) The two elements highlighted above indicate that the Reciprocal Agreement gives rise to a new product: a multi-territorial, multi-repertoire simulcasting license, covering the repertoires of a number of collecting societies, enabling a simulcaster to obtain a single license from a single collecting society for its simulcast which is accessible from virtually anywhere in the world via the Internet.

(88) One of the main concerns in relation to cooperation agreements, as regards both horizontal agreements and vertical agreements between competitors, are restrictions of competition by means of output limitation ([48]). In this case, however, the fact that a new product is created by means of the Reciprocal Agreement, in response to a clear demand, increases output. As long as the grant of licenses by collecting societies is carried out under normal circumstances, as foreseen in the Reciprocal Agreement, there seems to be no reason to fear an output limitation, mainly given the fact that competition in the EEA countries where the local collecting society is a party to the agreement will be reinforced as a result of the agreement.

([47]) Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Commission, point 3.

([48]) Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Commission, points 11 and 18.

2. **Improvement in the distribution of goods**

(89) The fact that the use of simulcasting technology is enhanced by the Reciprocal Agreement results in more sound/video recordings being made available to more consumers. Music records and videos broadcast via terrestrial means, satellite and/or cable necessarily have a limited reach due to technical reasons. By making such music records and videos available through Internet by means of simulcasting, simulcasters will allow virtually anyone from anywhere in the world to access such products.

(90) The notified arrangements avoid the necessity for a multiplicity of individual lengthy negotiations by users across the EEA with each collecting society. Consequently, the reciprocal framework should reduce transaction costs significantly and contribute to the creation of an almost EEA-wide market ([49]) for the licensing of simulcast transmissions. Under the reciprocal simulcasting licences system, broadcasters will obtain the comfort that, by obtaining one simulcast licence from a single collecting society, they will be able to simulcast in any participating territory without fear of being sued for infringement of the relevant rights ([50]).

(91) Small record companies tend to provide opportunities for new and untried artists and often concentrate their efforts in producing specialist repertoire. The reciprocal licences will ensure that they have the same level of remuneration for simulcasting their works as their more powerful rivals, since their repertoire will be available for licensing to users as easily as that of the international companies.

(92) The distribution of music included in records and videos is therefore improved.

3. **Benefits for the consumer**

(93) The creation of a legitimate marketplace for simulcasting will benefit consumers both in the short-term and in the long-term.

(94) In the short-term, consumers will get easier and wider access to a range of music by means of the available simulcasts. Furthermore, through the Internet they will be able to access their favourite radio and/or TV music programmes without the technical constraints inherent to traditional broadcasting and they will able to access such programmes from virtually anywhere in the world.

(95) In the long-term, the fact that simulcasting is now put in place within a legitimate framework which ensures the proper remuneration of right-holders ensures that the effort of music producers is duly rewarded and that therefore a wide range of music will still be available in the future.

4. **Indispensability**

(96) The parties have presented their choice of the country-of-destination principle in respect of tariff determination, and the resulting application of pre-determined national tariffs, as indispensable for the preservation of right-holders rights, in terms of proper remuneration and adequate legal enforcement. The model chosen by the parties is completed by the envisaged combination of the country-of-destination principle with the criteria of generated revenue and/or intensity of use.

([49]) With the exceptions of France and Spain.
([50]) This consideration is valid for phonogram producers rights only. Simulcasters will still have to seek different licenses from different societies where different copyright or right-holder categories are at stake.

(97) In order to assess the indispensability of the restriction introduced by Article 5(2) of the Reciprocal Agreement, the Commission must consider if a less restrictive alternative is available to the parties. In doing this, the Commission must take into consideration the legitimate objectives sought by the parties, namely the concerns for adequate legal protection, for proper remuneration of right-holders and for remuneration schemes that reflect the level of exploitation of protected works, and balance them against one of the main concerns in relation to cooperation agreements, as regards both horizontal agreements and vertical agreements between competitors: restrictions of competition by means of price fixing ([51]).

(98) The model proposed by the parties raises two issues. The first one concerns the fact that neither the national tariffs, as proposed by the parties, nor the global license fee distinguish between copyright royalty and administration fee, i.e. the amount meant to remunerate the right holder, on the one hand, and the amount meant to cover the administrations costs of the grantor society, on the other. The second issue concerns the pre-determination of national tariffs the aggregate of which constitutes the global license fee to be charged by every one of the participating societies for a multi-territory/multi-repertoire license.

The amalgamation of copyright royalty and administration fee

(99) With respect to the first issue, the confusion between copyright royalty and administration fee (the amalgamation of which results in the global license fee) restricts competition between collecting societies as regards the pricing for the licensing service provided to users ([52]). Where no distinction is made between those two elements, it becomes impossible to know which part of the license fee will be used to remunerate the right holder and which part thereof will serve to cover the administration costs incurred by the grantor society when providing and administering a multi-territory/multi-repertoire license. Among other things, this confusion shows that under the envisaged structure the societies would not take in consideration their actual administration costs when determining their administration fee vis-à-vis the users. This means that the part of the license fee that was meant to cover the administration costs of the grantor society would be arbitrarily determined and, as such, potentially excessive. In a scenario where the societies faced price competition, the concern would be somehow dissipated by the fact that the marginal cost of the service would tend to zero due to existence of competition between different societies. However, under the envisaged structure no price competition is made possible due to the obligation of aggregating all pre-determined national tariffs so as to arrive at a fixed global license fee.

(100) The agreement between the societies to amalgamate administration fee and copyright royalty, thereby jointly determining a global license fee, clearly goes beyond what is required to pursue the legitimate concerns of the parties in respect of adequate legal protection, proper remuneration of right-holders and remuneration schemes that reflect the level of exploitation of protected works.

(101) The parties say that administration fee and copyright royalty are amalgamated because the administration costs are borne exclusively by their right-holder members by means of a commission charged on the collected revenues, and not by the users who obtain a copyright license. The amount paid by a user for a license is considered by the parties in its entirety as remuneration for the usage of copyright and not, even partially, as the payment of administration costs. However, the explanation given by the parties ignores economic reality and corresponds rather to a financial fiction. It is known that the remuneration of the societies corresponds to a commission charged to their right-holder members in respect of collected revenues. This commission is claimed to serve the purpose of covering the administrative costs of the societies. It is also known that the amounts charged by

([51]) Guidelines on the applicability of Article 81 of the EC Treaty to horizontal co-operation agreements, Commission, points 11 and 18.
([52]) See recital 76.

collecting societies to users for copyright licenses are their sole source of revenue. Logically then, part of the license fee paid by a user is allocated to cover the administration costs of a grantor society, reflecting the costs of granting and administering that very same license ([53]). If national tariffs reflect different costs, there is no logic, as regards a 'one-stop shop' system, in simply adding national tariffs that correspond to other collecting societies' costs. Since the 'one-stop shop' system will inevitably lead to savings of administrative costs, maintaining a tariff structure that simply reflects the sum of different national tariffs structures is at odds with one of the major advantages of the proposed simulcasting multi-repertoire/multi-territory licensing system.

(102) It is in respect of the 'one-stop shop' service that the different societies must necessarily have different costs, depending on each one's efficiency (salaries, rents, communications, etc). The Commission sees no justification for the amount of the fee charged to users for this service to be agreed upon by the notifying parties.

(103) In order to resolve the concern expressed by the Commission in respect of the agreement between the societies to determine the amount of the administration fee, the parties changed the notified agreement such as to separate the copyright royalty from the administration fee and to identify them separately when charging a license fee to a user. Another change introduced in the Reciprocal Agreement is aimed at determining the administration fee with reference to the actual administration costs incurred by the grantor society in respect of the granting of multi-territorial/multi-repertoire licenses. Annex 1 to Schedule A of the amended agreement as notified on 22 May 2002, which extends to all signatories the terms set out in a letter sent to the Commission on 19 April 2002, reads as follows:

'(…) IFPI and the record producers' collecting societies within the EEA will examine how, consistent with applicable national and European laws and regulations governing the simulcasting of sound recordings and/or the operation of producers' collecting societies, to introduce a mechanism whereby collecting societies in the EEA will specify which part of the tariff to simulcasters obtaining a multi-territorial and multi-repertoire licence pursuant to the notified agreement corresponds to the administration fee to the user. This administration fee will then be indicated separately from the royalty proper paid for the use of phonogram producers' rights by simulcasters obtaining a multi-territorial and multi-repertoire licence pursuant to the notified agreement. Accordingly, the envisaged mechanism will result in the two elements of the fee to be charged to simulcasters in the EEA being separately identified: the royalty for the use of phonogram producers' rights and the administrative fee to cover the administration costs related to the granting of multi-territorial simulcasting licenses.

The determination of the element of the administrative fee shall be made independently by each and every grantor collecting society according to the costs of the administration of the collecting society's service to multi-territorial users. Furthermore, the parties acknowledge that whilst the determination of the element of the tariff for the use of phonogram producers' rights may be carried out according to the country-of-destination principle, pursuant to Article 5(2)

([53]) On the link between high administrative costs and high level of royalties, see Case 395/87 Ministère Public v. Tournier, point 42.

of the notified Agreement, the determination of the element of the administrative fee shall be made according to the administrative costs incurred by the grantor society.'

(104) The parties acknowledged the importance attached by the Commission to the principles referred to in their letter by modifying the Reciprocal Agreement such as to implement the separation of the copyright royalty from the administration fee at the latest by the date on which the current experimental period of the notified agreement expires. In the amended version of the Reciprocal Agreement, as notified on 22 May 2002, the parties agree to present to the Commission by the end of 2003 a set of proposals for the implementation of the required mechanisms and to implement it as soon as possible after that date. More precisely, the Reciprocal Agreement reads:

'The collecting society signatories undertake to use their best efforts to submit to the Commission proposals for the above-referred mechanism by 31 December 2003 and to implement such a mechanism as soon as possible after that. In any event the collecting society signatories undertake to implement the mechanism described in this letter by 31 December 2004 and acknowledge that such implementation is a crucial element to be taken into consideration by the Commission in the assessment of any future arrangement concerning the management and licensing of phonogram producers' rights for the purposes of multi-territorial and multi-repertoire simulcasting.'

(105) The parties have explained the need to enter into discussions in respect of the scope of the services they will provide to each other under the reciprocal agreements. Such discussions may not, however, lead to a loss of autonomy of each of the societies in respect of the determination of their individual administration fees and/or to any kind of price-fixing practices or agreements. Where this is the case, such discussions are understood not to be covered by the notification. Accordingly, the Reciprocal Agreement reads as follows:

'As a result of the principles set out above, the signatories hereto acknowledge that any agreements or concerted practices entered into by the notifying parties in relation to the determination of their individual administrative fees are not covered by the notification of the notified agreement, namely for the purposes of Article 15(6) of Regulation No 17. The notification should however be understood to include necessary discussions between participating societies in order to specify the scope of the administration services the participating societies are required to provide to each other under the reciprocal agreements.'

(106) The parties have demonstrated that the collecting societies do not currently have in place the administrative and accounting structures allowing them to implement immediately the separation of the copyright royalty from the administration fee. Accordingly, even if the parties were required to implement such separation immediately, since they would not be able to do so, they would have to abandon the Reciprocal Agreement and therefore the advantages resulting therefrom would not be achieved. The parties also demonstrated that a certain period of time will be required for studying the various possibilities to put in practice the envisaged separation and for the subsequent implementation of the chosen mechanism. Furthermore, the Commission acknowledges the fact that such separation introduces a significant change in the way collective management is carried out, evidenced, *inter alia*, by the fact that no other group of collecting societies has put such separation in place and that, in fact, collective management of copyright has been carried out along the same lines for many decades now.

(107) The change introduced by the parties into the notified agreement will induce an important degree of transparency in their relationship with users ([54]). Moreover, it will allow for actual, although limited, price competition between collecting societies in respect of the licensing service in the market for the licensing of the record producers' simulcasting right. In the light of the foregoing, the Commission considers that the changes introduced into the Reciprocal Agreement are adequate in order to solve the competition concerns previously expressed in this respect. Lastly, in view of the elements put forward to the Commission by the parties, the Commission considers the time period required for the assessment and implementation of the mechanisms directed at separating the copyright royalty from the administration fee as indispensable within the meaning of Article 81(3)(a) of the Treaty.

Pre-determination of national copyright royalties

(108) Regardless of the question of the amalgamation of the royalty proper with the administrative fee, the global simulcasting tariff to be charged to a user for a multi-repertoire/multi-territory license will include a royalty element which results from the aggregation of all the copyright royalties determined at national level. The model proposed by the parties therefore implies that, even if the administration fee is split, the copyright-royalty element will remain pre-determined and unchangeable by the society that grants a simulcasting license. This results from the aggregation of the national royalty determined by each and every one of the participating societies (including the grantor society) for the use of their repertoires on their own territory.

(109) The alternatives to the model proposed by the parties (pre-determination of different national royalty levels) correspond to different degrees of autonomy by the grantor society in the determination of the royalty-element of the license fee. The first alternative would be the complete freedom by the grantor society in determining the royalty level. The second alternative, in contrast, would be an agreement between all societies determining a unique royalty level for the use of every one's repertoire on all territories.

(110) The less restrictive option is clearly the free determination of the royalty level by the grantor society. However, the notifying parties have demonstrated that the maintenance of a certain degree of control by the individual collecting societies over the licensing terms of their own repertoire so as to ensure a minimum level of remuneration for their right-holder members is in the present circumstances indispensable for the conclusion of the Reciprocal Agreement, in that the absence of such minimum degree of control would jeopardise the willingness of a collecting society to contribute with its own repertoire to the licensing framework allowed for by the Reciprocal Agreement and, more concretely, by the set of bilateral agreements to follow.

([54]) However, the change introduced by the parties does not necessarily lead to a modification of the current arrangements between collecting societies and their members.

(111) By contributing with its own repertoire to the 'package' of repertoires to be included in a 'one-stop' simulcasting license, and given that any participating collecting society in the EEA may grant such a license to a user no matter where it is located in the EEA, a society potentially puts in the hands of all other societies the act of granting a license covering its own repertoire, in what entails a significant and yet to a large extent untested change as regards the traditional way licensing has been carried out. In the absence of a minimum degree of control over the licensing terms, a society which contributed with its members' repertoire to the 'one-stop' package of repertoires would incur the risk that another participating society, in order to attract users, lowered the global royalty fee below the level considered to be acceptable by the former society and/or its members. In this situation, such society (and its members) would lose revenues when compared with the scenario where it did not participate in the Reciprocal Agreement arrangement. Therefore, the absence of a certain degree of control over the licensing terms as regards the royalty level would cause the economic incentive to participate in the Reciprocal Agreement to disappear.

(112) Furthermore, the determination at national level of the royalty to be applied to the exploitation of a society's repertoire on its own territory seems to adequately meet the parties' concern of ensuring a proper remuneration of the right-holders according the commercial realities of the territory where the copyright is exploited.

(113) In conclusion, the option for the pre-determination of national copyright royalty levels appears to correspond to the least restrictive of the alternatives in the present circumstances so as to create and distribute a new product.

(114) The Court has acknowledged the entitlement to remuneration of a right-holder for any showing of the respective literary or artistic work as part of the essential function of copyright ([55]). It is also relevant in this respect that the Court has considered as legitimate the interest in calculating the fees in respect of the authorisation to exhibit an audiovisual work on the basis of the actual or probable number of performances ([56]), where the placing of such work at the disposal of the public is separate from a material support ([57]). Furthermore, the practical result of the other alternatives at the disposal of parties at present would not safeguard in the same degree the legitimate rights of the parties, or would only safeguard them by means of even more restrictive practices that would be unlikely to qualify for exemption under Article 81(3).

(115) In the light of the foregoing, and given that all elements in the possession of the Commission indicate that the restriction of competition resulting from Article 5(2) of the Reciprocal Agreement represents in the present circumstances a guarantee without which the participating societies would not contribute with their individual inputs so as to create and distribute a multi-territory/multi-repertoire simulcasting license, the Commission considers such restriction to be indispensable within the meaning of Article 81(3)(a) of the Treaty.

5. **Non-elimination of competition**

(116) The exclusion of reciprocal vertical agreements between competitors from the scope of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices ([58]) and the explicit reference made in the Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements ([59]) illustrate the concern that reciprocal agreements raise in relation to possible market partitioning. In the case of the Reciprocal Agreement, however, a number of different factors will lead to competition between EEA collecting societies being actually created and, accordingly, dissipate the concern regarding possible market or customer sharing.

([55]) Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 14.
([56]) Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 13.
([57]) Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 12.
([58]) OJ L 336, 29.12.1999, p. 21.
([59]) Point 140. See also point 147.

(117) First, it should be recalled that within the traditional framework of copyright and neighbouring rights licensing, actual competition between collecting societies in Europe has been virtually non-existent in a number of the relevant markets, except as regards central licensing arrangements between authors' collecting societies and major record companies for mechanical reproduction rights.

(118) In the present case, whilst the establishment of the Reciprocal Agreement will require a degree of cooperation between the collecting societies, it will not be replacing any existing competition, since it is geared to the development of an entirely new service.

(119) Moreover, the amendment to the Reciprocal Agreement notified by the parties on 21 June 2001 ([60]) encourages competition between record producers' collecting societies. The collecting societies will be able to actually compete and to differentiate themselves in terms of efficiency, quality of service and commercial terms. From the point of view of the prospective licensees, this fact in itself is already a positive development from the original notified agreement, pursuant to which a user would have been confronted with a single supplier of the required licenses. This also represents a major evolution from the situation concerning traditional rights licensing where, given the *de facto* monopoly enjoyed by all collecting societies in their national territories, actual competition between societies does not occur in most relevant markets.

(120) Furthermore, the changes introduced by the parties in the Reciprocal Agreement as notified on 22 May 2002 will ensure that, after an initial adaptation period, the competition between collecting societies will extend to pricing. The fact that, when granting a license, each society will have to determine independently the administration fee to be added to the copyright royalty and that such determination will have to be made with reference to the actual costs incurred by the grantor society, will create actual competition between the participating societies as regards the amount of the license fee. Accordingly, the participating EEA societies will have to increase their efficiency as regards their administration costs in such a way as to be able to provide a 'one-stop' simulcasting license at the lowest cost possible to EEA users.

(121) In addition, the split between copyright royalty and administration fee that the parties undertook to implement will bring about an increased degree of transparency in the relationship between collecting societies and users. This will allow users (as well as members of the societies) to better assess the efficiency of each of the societies and have a better understanding of their management costs.

(122) Finally, by creating and encouraging competition between participating collecting societies in the EEA, the Reciprocal Agreement furthers the goal of creating and sustaining a single market, in this case a single market for the provision of inter-society administration services and a single market for the licensing of simulcasting.

(123) In conclusion, the Commission considers that the Reciprocal Agreement, and in particular Article 5(2) thereof, does not eliminate competition in respect of a substantial part of the relevant products in the meaning of Article 81(3)(b) of the Treaty.

6. **Conclusion**

(124) In the light of the foregoing, it can be concluded that the cumulative conditions of Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement are fulfilled.

([60]) See recital 3.

J. **DURATION OF THE EXEMPTION**

(125) Pursuant to Article 8(1) of Regulation No 17, a decision in application of Article 81(3) is to be issued for a specified period. The notified Reciprocal Agreement is intended to operate for an experimental period, after which it will be reviewed. It is therefore appropriate to define the duration of this exemption accordingly. Exemption should therefore be granted pursuant to Article 8(1) of Regulation No 17 from 22 May 2002, date of notification of the last version of the Reciprocal Agreement, until 31 December 2004, its expiry date,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement, the provisions of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement are hereby declared inapplicable for the period from 22 May 2002 to 31 December 2004 to the 'Agreement on reciprocal representation to license simulcasts' entered into by the collecting societies identified in Article 2 of this Decision, as lastly notified to the Commission on 22 May 2002.

Article 2

This Decision is addressed to the following undertakings:

Wahrnehmung von Leistungsschutzrechten GesmbH
Schreyvogelgasse 2/5
A-1010 Vienna

Société de l'Industrie Musicale Muziek Industrie Maatschappij
Place de l'Alma/
Almaplein 3 B5
B-Brussels 1200

Gramex
Gl. Kongevej 11-13, 2
DK-1610 Copenhagen V

Gramex
Pieni Roobertinkatu 16
FIN-00120 Helsinki

Gesellschaft zur Verwertung von Leistungsschutzrechten mbH
Grelckstrasse 36
D-22529 Hamburg

Grammo
24a Salaminos
GR-152 32 Athens

Samband Flitjenda og Hljomplötuframleidanda
Eidistorg 17
170 Seltjarnarnes
Iceland

Società Consortile Fonografici Per Azioni S.c.p.a.
Via S. Tecla, 5
Milan
Italy

Phonographic Performance Ireland
PPI House
1 Corrig Avenue
Dun Laogharie
Dublin
Ireland

Stichting ter Exploitatie van Naburige Rechten
Catharina van Reneslaan 8
PO Box 113
1200 AC Hilversum
The Netherlands

GRAMO
Karl Johanseit 21
0159 Oslo
Norway

Associação Fonográfica Portuguesa
Rua Augusto dos Santos 2-4
P-1050-028 Lisbon

IFPI Sweden
PO Box 1429
S-11184 Stockholm

IFPI Schweiz
Toblerstraße 76A
8044 Zurich
Switzerland

Phonographic Performance Limited
1 Upper James Street
London W1R 3HG
United Kingdom

Intergram
Na Porici 27
110 00 Prague 1
Czech Republic

Eesti Fonogrammitootjate Ühing
Laki 12
10621 Tallinn
Estonia

Zwiazek Producentów Audio Video
ul. Kruczkowskiego 12/2
00-380 Warsaw
Poland

Phonographic Performance Ltd
Room 3705, 37th Floor, Hopewell Centre
183 Queens Road East
Wanchai
Hong Kong

Phonographic Performance Limited
Flameproof Equipments Bldg
2nd Floor, B-39, off New Link Road
Nr. Monginis Factory, Andheri (West)
Mumbai 400 053
India

Public Performance Malaysia Sdn Bhd
2nd Floor, Wisma Haip Lee
139-2, Jalan Segambut
51700 Kuala Lumpur
Malaysia

Recording Industry Performance Singapore Pte Ltd
163 Tras Street
#04-00 Lian Huat Building
079024
Singapore

The Association of Recording Copyright Owners
4F, No. 59, Tunghsing Road
Hsin-Yi District
Taipei, ROC
Taiwan

Phonorights (Thailand) Ltd
14th Floor, PM Tower
731 Asoke-Dindaeng Road
Bangkok 10400
Thailand

Cámara Argentina de Productores de Fonogramas y Videogramas
Hipolito Yrigoyen 1628
Piso 6
1344 Buenos Aires
Argentina

Sociedad Mexicana de Productores de Fonogramas, Videogramas y Multimedia S.G.C.
Miguel Angel de Quevedo 531
Colonia Romero de Terreros
Delegacion Coyoacan
004310
Mexico

Unión Peruana de Productores Fonográficos
Los Cipreses N. 355 – Lima 27
Peru

Camara Uruguaya del Disco
Edificio Ciudadela
Juncal 1327 Apt 1701
11000 Montevideo
Uruguay

Recording Industry Association New Zealand
11 York Street
Parnell, Auckland
New Zealand

Done at Brussels, 8 October 2002.

For the Commission
Mario MONTI
Member of the Commission