

Joined Cases 110/88, 241/88 and 242/88

François Lucazeau and Others

v

Société des auteurs, compositeurs et éditeurs de musique (Sacem)
and Others

(references for a preliminary ruling
from the cour d'appel, Poitiers, and
the tribunal de grande instance, Poitiers)

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

Report for the Hearing	2813
Opinion of Mr Advocate General Jacobs, see Case 395/87, p. 2536	2822
Judgment of the Court, 13 July 1989	2823

Summary of the Judgment

- 1. Competition — Agreements, decisions and concerted practices — Restriction of competition — Reciprocal representation agreements between national copyright-management societies — Lawfulness — Exclusive rights clause — Not lawful
(EEC Treaty, Art. 85(1))*
- 2. Competition — Agreements, decisions and concerted practices — Concerted practice — Parallel behaviour — Presumption of concerted action — Limits — Refusal by national copyright-management societies to grant a user established in another Member State direct access to their repertoire — Assessment by the national court
(EEC Treaty, Arts 85(1) and 177)*

3. *Competition — Dominant position — Abuse — Unfair trading conditions — Royalties applied by one copyright-management society appreciably higher than those charged in other Member States — Possible justification*

(EEC Treaty, Art. 86)

1. Reciprocal representation contracts between national copyright-management societies concerned with musical works whereby the societies give each other the right to grant, within the territory for which they are responsible, the requisite authorizations for any public performance of copyrighted musical works of members of other societies and to subject those authorizations to certain conditions, in conformity with the laws applicable in the territory in question, where those contracts have the dual purpose of making all protected musical works, whatever their origin, subject to the same conditions for all users in the same Member State, in accordance with the prohibition of discrimination laid down in the international conventions on copyright, and to enable copyright-management societies to rely, for the protection of their repertoires in another Member State, on the organization established by the copyright-management society operating there, without being obliged to add to that organization their own network of contracts with users and their own local monitoring arrangements, are not in themselves restrictive of competition in such a way as to be caught by Article 85(1) of the Treaty.
2. Article 85 of the EEC Treaty must be interpreted as prohibiting any concerted practice by national copyright-management societies of the Member States having as its object or effect the refusal by each society to grant direct access to its repertoire to users established in another Member State.

It is for the national courts, in accordance with the division of powers under Article 177 of the Treaty, to determine whether any concerted action by such management societies has in fact taken place.

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

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

those societies would be obliged to organize their own management and monitoring system in another country.

3. A national copyright-management society holding a dominant position in a substantial part of the common market imposes unfair trading conditions where the royalties which it charges to discothèques are appreciably higher than those

charged in other Member States, the rates being compared on a consistent basis. That would not be the case if the copyright-management society in question were able to justify such a difference by reference to objective and relevant dissimilarities between copyright management in the Member State concerned and copyright management in the other Member States.

REPORT FOR THE HEARING

delivered in Joined Cases 110/88, 241/88 and 242/88 *

I — Facts and procedure

1. *The parties to the main proceedings*

The parties to the main proceedings are the Société des auteurs, compositeurs et éditeurs de musique ('Sacem'), the French copyright-management society, and François Lucazeau, Xavier Debelle and Christian Soumagnac, who operate discothèques at Epargnes and Poitiers. The proceedings relate to the payment of royalties to which Sacem considers itself entitled in respect of the use of protected musical works but which Messrs Lucazeau, Debelle and Soumagnac consider to be contrary to Community law.

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

Sacem's repertoire comprises not only the works of its members but also those contained in the repertoires of those foreign copyright societies which have, by means of reciprocal representation contracts, appointed it to represent them in France. Each of the parties to such contracts undertakes to enforce within its own territory the rights of the other party's

* Language of the case: French.