

European Commission: Santiago Agreement Potentially Incompatible with European Competition Law

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The European Commission has recently warned sixteen European collecting societies that their so-called Santiago Agreement is potentially in breach of European Union competition rules. The Santiago Agreement is a trial reciprocal agreement, concluded by nearly all the major European collecting societies representing authors in the area of music performing rights (lyrics writers and music composers). The agreement allows each of the participating societies to issue multi-territorial licenses of public performance rights to be used on-line. The aim is to grant on-line commercial users "one-stop shop" copyright licenses. These licenses include the music repertoires of all the societies and are valid in all their territories. In order to get a "one-stop shop" license, on-line users have to apply to the collecting society established in their own Member State.

The Santiago Agreement was notified to the Commission in April 2001. As clearly expressed in its Decision of 8 October 2002 concerning the IFPI Simulcasting case (see IRIS 2002-10: 5), the Commission fully acknowledges the need to ensure adequate copyright protection and enforcement in the digital environment. Besides, it strongly supports the "one-stop shop" copyright licensing for on-line use. But the Commission also considers that in order to achieve a genuine European single market, such crucial developments in on-line-related activities must be accompanied by increasing freedom of choice for consumers and commercial users throughout Europe as regards their service providers.

That is one of the main objections the Commission has to this Agreement. The structure put in place by the parties to the Santiago Agreement leads to an effective lock up of national territories. The Commission stresses that in order to safeguard the interests of rightsholders in the on-line world, it is not necessary to limit commercial users' choice to the monopolistic collecting society established in their own Member State. It considers that this territorial exclusivity is not justified by technical reasons and that it is irreconcilable with the world-wide reach of the Internet. The Commission believes that there should be competition between collecting societies. This should benefit companies that offer music on the Internet and consumers who listen to it. Competition is also necessary to achieve a genuine single market in the field of copyright management services.

The Commission invites the collecting societies to submit proposals to render the current arrangements compatible with European competition law. These will be

examined carefully and with an open mind. The collecting societies have two-and-a-half months to reply to the Commission. They can also request a hearing.

"Commission opens proceedings into collective licensing of music copyrights for on-line use", Press Release of the European Commission of 3 May 2004, IP/04/586

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