

Collective administration and reciprocal agreements

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Content

- Reciprocal Representation Agreements
- The CISAC case of 16.07.2008
- And its consequences:
 - At the European level
 - At the national level
- Conclusion

Reciprocal Agreements

- Network of reciprocal representation agreements:
 - Right to grant on each other the right to grant licences for their own territory;
 - Rights cover management ‘off-line’ and ‘on-line’ rights;
 - ‘Multi-repertoire mono-territory’ licences;
 - In certain circumstances, ‘mono-repertoire multi-territory’ licences.

European competition law

- Complaint lodged in 2000 and 2003 against CISAC and its members;
- Two clauses declared contrary to Article 81 of the EC Treaty:
 - Exclusive membership clause;
 - Concerted practice to delineate territory (leads to monopoly position on national territory);
 - Distinction between ‘off-line’ and ‘online’

Consequences at European level

- Five European societies (Artisjus, SACEM, Teosto, GEMA, ZaiKS) asked the European Court of Justice for the partial suspension of the CISAC decision;
- Decision rendered on 14.11.2008:
 - No proof of irreparable harm;
 - Request denied

Consequences at national level

- BUMA and Beatport:
 - Buma had granted a multi-repertoire multi-territory licence to Beatport for performance of music on website;
- Licence contested by PRS and GEMA:
 - District court of Haarlem (NL)
 - District court of Mannheim (DE)
 - Both courts struck the licence down!

Conclusion

- Reciprocal agreements not illegal per se – only concerted arrangements to restrain trade;
- Decision to be seen in the light of the EC Recommendation of 18.10.2005 on cross-border online music licensing services;
- Much uncertainty at this point on the direction to follow next.