27 April 2005 : Authors can now separate the rights they entrust to the SACD (Society of Dramatic Authors and Composers)

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> Version française

The *Conseil de la concurrence* accepts the SACD's commitments and decides to close the case

In an action disputed against the *Société des auteurs et compositeurs dramatiques* * (SACD), the Conseil de la concurrence decided yesterday to accept the SACD's commitments and to close the case.

History of the action

An initial complaint relating to the impossibility for an author to entrust theatrical works' rights separately from audiovisual rights to the SACD had resulted in a statement of objections but the plaintiff finally withdrew its complaint in November 2003.

Although taking note of the withdrawal, the *Conseil* then initiated *ex officio* proceedings over the same practices on 27th January 2004. This procedure was coupled on 8th November 2004 with another referral from the JFPM company, which also complained about the impossibility of separating the management of copyrights. The two referrals were combined.

The concerns of the Conseil de la concurrence about competition

The SACD made it compulsory for its members to combine the management of the rights of their theatrical performance together with their audiovisual rights through a statutory clause. Authors were thus forced to entrust the SACD with the management of all their rights, without any possible division.

The clause requiring the binding management of all rights thus enabled the SACD "*to use its monopoly position on the undisputable and unescapable market for audiovisual rights' management to consolidate and maintain its monopoly position on the potentially contestable and open market for dramatic works performance rights' management*".

In other words, since they had no other choice concerning the management of audiovisual rights, authors were also forced to entrust their theatrical performance rights' management to the SACD even though it is not the same market and they could have had them managed by another collective management society or manage them themselves.

The SACD's commitments produce satisfactory solutions to these concerns

The SACD's initial draft commitments were published in full on the *Conseil*'s website on 11th February 2005. Both parties and other interested parties submitted their opinions to the *Conseil*, which enlarged on the SACD's commitments at the hearing of 12th April 2005.

The SACD has undertaken to amend its statutes during its next general meeting, to be held in June 2005, in order to allow authors to divide their works into three different categories: dramatic works, audiovisual works and images.

This dividing option will take effect on 1st January 2006 but, in order for the SACD to accomplish its mission of collective management under conditions of reasonable economic balance, it will be subject to some restrictions:

- Some categories of works cannot be withdrawn during the author's lifetime until the end of each two-year period calculated from the date of the author's membership or the date of change of his contributions.

- The partial or total withdrawal of a given category of works may not be possible more than three times during an author's lifetime.

This balance was considered to comply with the principles adopted by EC case law under which the freedom of authors who may wish to manage some rights individually has to be reconciled with the ability of a collective management society to operate satisfactorily to the benefit of its members.

On the other points raised by the case

The *Conseil* did not want to express an opinion on the division of rights by country since no concern over competition had been expressed to the SACD, neither in the inquiries nor by the complainants. The question is therefore undecided.

Lastly, where the separation of audiovisual rights was concerned, the *Conseil* considered in view of the evidence, that the pooled contribution of audiovisual rights to the SACD was not currently having any noticeable detrimental effect on the copyright management market neither for producers nor for artists' agents.

*Society of Dramatic Authors and Composers / authors rights' collective management society