

Brussels, 7th August 2003

Commission clears Philips/Sony CD Licensing program

The European Commission has cleared a set of bilateral agreements establishing the worldwide Philips/Sony CD Disc Licensing Program. The Commission also cleared a standard joint licence agreement - modified following discussions with the Commission in order to render it fully compliant with EU competition rules (the 2003 SLA). The 2003 SLA covers only patents held by either Philips or Sony and which are essential to manufacture several standard types of pre-recorded CD discs (CD Audio, CD ROM, CD TEXT and CD Extra discs). The Commission found that the 2003 SLA, by which Philips and Sony offer access to their patents for any one or more of the different CD disc types, whilst each retaining the right to license their patents separately, does not restrict competition.

This clearance marks the end of the Commission's investigation into the Philips/Sony CD disc Licensing Program. The inquiry was launched after the Commission received several complaints by CD disc manufacturers alleging that both the bilateral agreements between Philips and Sony and the different versions in use of the standard joint licence agreement ran counter to Articles 81 and 82 EC Treaty.

Following a thorough assessment of the relevant facts and in view of the improvements made as to the structure, transparency and administration of the Program the Commission cleared the bilateral agreements establishing the joint CD Disc Licensing Program by means of a "comfort letter". Clearance is based on the conclusion that the agreements establishing the joint CD Disc Licensing Program are covered by the block exemption regulation concerning certain categories of technology transfer agreements.

The Commission has also cleared the 2003 SLA to be offered by Philips to third parties. The 2003 SLA covers the patents of Philips or of Sony as well as patents based on joint inventions of Philips and Sony, which are essential for compliance with the different specifications of the different types of CD discs. The Commission concluded that the new 2003 SLA does not appreciably restrict competition within the meaning of Article 81(1) of the EC Treaty.

The 2003 SLA has been overhauled in order to fully comply with EEA competition rules. The most important changes incorporated are:

The SLA 2003 explicitly recognises Philips' and Sony's right to license their respective patents separately and to give non-assertion undertakings with regard to jointly owned patents, whether within or outside the standard specifications of the CD systems.

The SLA 2003 provides for options of any Licensee as to different types of CD-Discs. The agreement specifies the patents required to the manufacturing of each type of CD discs.

The Commission is satisfied that only essential patents are included now in the different patent lists annexed to the 2003 SLA. In respect of each type of CD Discs, Philips and Sony have one essential patent each or at least a joint essential patent in Europe.

A recognised and independent patent expert has certified the essentiality of the patents covered by the SLA 2003. As regards CD extra and CD text, the independent expert has not yet concluded its analysis of the assessment of a couple of patents per format. However, the new SLA states that should the independent expert conclude that any patent is not essential, the patent will be deleted from the relevant annex. However, the licensee will have the right to still use the patent. However, the term of the agreement will be adjusted accordingly.

Still concerning the CD Extra format, Sony has two pending applications for which patents have not been granted yet. Should these patents be granted and should the expert consider them as essential, they will be included in the relevant patent annex. However, such inclusion will have no effects on the conditions of the SLA, as regards the royalty, the duration of the agreement or that of the grant back obligation.

Licensees are only obliged to license back their patents essential for the type(s) of CD Discs they have selected and for CD Players, also to other Licensees having selected the same type of CD Disc, and for CD Players.

Royalty payment obligations have been clarified to reflect the territorial scope and duration of the licensed patents. Furthermore, licensees will only be obliged to give information to Philips in respect of royalty bearing CD discs produced and sold.

Conditions for access to the reduced compliance royalty rate have been clarified and made more attractive. In particular,

- Philips will offer to all EEA licensees a one time only credit on royalty payments for the specific costs incurred by an initial audit covering the last three years, required to benefit from the reduced compliance royalty rate, up to a maximum amount of 25.000 USD,
- in addition, compliant licensees that send the above audit before 1 December 2003 can apply the reduced compliance royalty rate retroactively with effect as from 1 July 2002,
- finally, licensees that have produced less than 5 million CD discs in the preceding year will be exempted from the obligation to present yearly audits in order to show continued compliance for that year,

The SLA 2003 will terminate at the date of expiration of the last essential patent in the Territory for the type(s) of CD Discs selected by Licensee. For the EEA definitive cut off dates per type of CD Discs have been set for each EEA country.

The SLA 2003 can be entered into by all existing Licensees in lieu of their existing license agreements. Of course, such a switching will be free of charge for existing licensees.

Finally, Philips Licensing website (<http://www.licensing.philips.com/>) now provides clear information as to the Licensing Program, the patents involved and the essential character thereof, as well as a software tool freely downloadable for Licensees, to differentiate between different types of CD-ROM discs.

Philips has informed the Commission that it intends to inform all EEA licensees of all the above changes and benefits by means of a letter to be sent shortly. As part of that letter, Philips will grant a one-time credit of 10.000 USD on royalties due to each EEA licensee.

Note for the editors

Since the 1970s, Philips and Sony have engaged in joint research and development in the field of optical data storage technology which resulted in joint inventions protected by patents in many EEA countries as well as in other parts of the world. In the early 1980s, at a time when vinyl discs and magnetic tapes were the prevailing audio storage media on the market, Philips and Sony jointly developed the CD system standard specifications as part of an innovation program regarding digital audio recording initiated by the Electronics Industry Association of Japan. The CD system was one among several other systems presented by the participants in this program. The adoption of the system by music companies and consumer electronics manufacturers was strongly facilitated by the availability of the combined patents of Philips and Sony under reasonable and non-discriminatory terms. The CD system specifications and the licenses offered were subsequently extended to newly developed formats, such as CD-ROM, CD-I, CD-V and CD-Extra, of which only the CD-ROM format became successful once it was widely adopted by the computer industry.