

COMMISSION DECISION
of 4 December 1981
relating to a proceeding under Article 86 of the EEC Treaty
(IV/29.971 — GEMA statutes)
(Only the German text is authentic)
(82/204/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 86 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 ⁽¹⁾, and in particular Article 2 thereof,

Having regard to the application made on 9 November 1979 by Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), Berlin, for negative clearance of an amendment to its statutes as at September 1980,

Having regard to the publication of a summary of the notification pursuant to Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 46 of 5 March 1981,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered on 10 November 1981 in accordance with Article 10 of Regulation No 17,

WHEREAS:

THE FACTS

I. GEMA's activities

1. Object and membership

- (1) The Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (hereinafter referred to as 'GEMA'), which has its main establishment in Berlin, is an economic association constituted under German law for the purpose of protecting authors and administering their rights. GEMA administers as trustee with a view to exploitation the copyrights in musical

and cinematographic works assigned to it by its members or third parties (hereinafter referred to as 'beneficiaries'). The rights are assigned by means of a special contract (the contract of assignment) which details their scope and the nature of the administration. The assignment is limited to between three and six years and to certain types of exploitation such as the right to reproduce a particular work, to put it into circulation and to communicate it to the public.

- (2) The right of protection and administration assigned to GEMA is exclusive. During the currency of the contract GEMA is entitled to authorize, in its own name, performances, radio and television broadcasts or other exploitation of a work, to supervise the actual exploitation, to collect the royalties agreed with the users, to prohibit exploitation and to avail itself of the rights in its own name in any other way.
- (3) Only composers, librettists and music publishers can be beneficiaries within the meaning of the contract of assignment.
- (4) Music publishers are in a special position with respect to librettists and composers, since they are not authors, i.e. creators of musical works; however, on the basis of the exploitation rights assigned them by the authors, they reproduce and put musical works into circulation. As regards the works therefore the publishers fulfil the role of intermediary, yet their interests may run counter to those of the authors (composers, librettists). In practice this conflict of interests is often detrimental to the authors, who are in a weaker economic position.
- (5) The repertoire administered by GEMA consists not only of works by the beneficiaries. GEMA also administers in the Federal Republic of Germany the repertoire of foreign collecting societies' members. It can therefore offer a virtually worldwide musical repertoire within the Federal Republic.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

2. Administration of rights with respect to users

- (6) In order to administer the rights assigned it, GEMA concludes exploitation contracts with the users (mainly radio and television companies, sound recording manufacturers, theatres, orchestras, discotheques, etc.), thereby authorizing a specifically agreed form of exploitation of the work (broadcasting, performance, reproduction by visual or sound recording, etc.) in return for payment of royalty charges by the user, made either on an individual or flat-rate basis.
- (7) Under Article 11 of the German Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Act on the protection of copyright and related rights) (hereinafter referred to as 'Wahrnehmungsgesetz'), GEMA is obliged to grant exploitation rights to any person so requiring. In its relations with the users, GEMA is not allowed, without objective reasons, to depart from these charges. Only in connection with collective contracts with groups of users, such as associations of discotheques, may GEMA agree reductions in the charges.
- (8) The royalties the users have to pay are based on various calculation methods, depending on the type of exploitation.
- (9) In the case of performing or broadcasting rights, i.e. the right to have a work of music heard in public by means of personal performance or to communicate it to the public by means of technical equipment such as screens, loudspeakers, etc. (performing rights), or the right to make a work of music accessible to the public on the air, for example by means of radio and television (broadcasting rights), royalties are paid on a flat-rate basis. The type of music (e.g. serious, light or dance) or which actual protected works are being performed or broadcast has no bearing on the amount to be paid in royalties. The type (performance, radio and television broadcast, etc.) and duration of use are the only decisive factors.
- (10) In the case of rights to mechanical reproduction, i.e. the right to make a sound recording of a piece of music and to manufacture any number of these recordings, the royalties charged are in principle calculated in accordance with the number of copies manufactured and sold. The manufacturer therefore pays no royalty to GEMA for unsold recordings (records, tapes, etc.).

3. Distribution to beneficiaries of royalties collected

- (11) After deducting its costs and any other charges, GEMA distributes royalty payments to the beneficiaries annually. As regards performing and broadcasting rights, the bases used for calculating sums to be paid by GEMA to authors and publishers are the type of music (serious, light or dance), the number of performances (frequency of performance) and the duration of the broadcasts of individual works. The more frequent the performances or the longer the broadcast, the greater the sum paid to the beneficiary. For this purpose GEMA determines as accurately as it can how many times and for how long each beneficiary's individual works have been performed and played.
- (12) Calculation of the sum to be distributed to individual authors or publishers for mechanical reproduction rights is calculated on the basis of sales proceeds.
- (13) GEMA takes the view that frequency of performance, playing time and sales proceeds provide fair yardsticks for the distribution of royalty payments collected. That way in the long run the royalties due depend on the favour the public bestows on a particular work.
- (14) GEMA calculates the share of royalties on works by members of foreign collecting societies in the same way as it does for its own members and transfers the relevant amount to the foreign society for payment to its members. For its part, GEMA receives royalty payments from foreign societies for the use of GEMA members' works in accordance with the calculation method employed by the foreign society.

4. Internal organization of GEMA

- (15) The main features of GEMA's internal organization and the procedure to be followed in calculating and distributing the royalty payments collected (GEMA's revenue) are laid down in its statutes and distribution scheme.
- (16) The statutes lay down GEMA's name, place of establishment, object, the nature of the protection provided, the rights and obligations of the society's management bodies (members' meeting, supervisory board, management board) and the establishment of an arbitration tribunal for disputes between GEMA and its members.

- (17) This arbitration tribunal has jurisdiction in particular in disputes over interpretation of the statutes and distribution scheme and on the legal validity of GEMA's decisions or other measures, above all by the management board. The tribunal is made up of a chairman and four arbitrators, two appointed by each party. These arbitrators may be neither members of the GEMA management board nor members of the GEMA supervisory board nor in a relationship of economic dependence on GEMA. The plaintiff may bring an action before the ordinary courts, instead of the arbitration tribunal.
- (18) GEMA's revenue is distributed in accordance with the distribution scheme outlined at 11 to 14 above; its general principles form part of the statutes.

II. Legal supervision of GEMA

- (19) In the Federal Republic GEMA is the only collecting society which administers copyright in music. In this capacity its activities are monitored by the German Patent Office, which may by agreement with the Federal Cartel Office, in the event of infringement by GEMA of its obligations, withdraw its authority to carry on business. By virtue of its Article 102 (a), the provisions of the German Gesetz gegen Wettbewerbsbeschränkungen (GWB) (Restrictive Trade Practices Act), provisions concerning restrictive agreements or decisions, do not apply to collecting societies, and hence to GEMA, where such agreements and decisions — as in this case — have been notified to the Patent Office. Where a collecting society abuses its position in the market the Federal Cartel Office can take action; it could therefore prohibit measures by GEMA or declare agreements and decisions null and void (supervision of abuse).

III. Amendment of the statute

1. Wording of the additional provision

- (20) GEMA has applied for negative clearance or, failing that, exemption of an additional provision in its statutes, worded as follows:

'Article 3

1. The rights to be administered by the association are assigned to it by conclusion of a special agreement (contract of assignment),

which defines the scope of the rights to be administered.

The contract of assignment must stipulate:

- (a) ... (d)
- (e) that the beneficiary shall refrain from making grants either directly or indirectly of a share of his revenue to parties who have entered into collective agreements with GEMA or with other collecting societies, where said parties, when using the GEMA repertoire, would favour unjustifiably certain works of the beneficiary.

2. ...'

2. Reasons for the additional provision

The main grounds for the amendment to its statutes which GEMA put forward are outlined below.

(a) Initial position

- (21) All collecting societies which distribute the funds they receive on the basis of sales proceeds, frequency of performance and playing time are faced with the problem of finding an effective way of preventing their members from manipulating sales figures, frequency of performance and playing time to the detriment of other members. There have always been authors and publishers who attempt to increase their share of royalties by influencing users and hence disregarding public taste, which in the long run should be the only decisive yardstick for exploitation of a given work.
- (22) It is very difficult to exert this kind of direct influence in the case of mechanical reproduction, for public partiality is reflected in sales figures and the beneficiary receives his share of royalties on the basis of sales proceeds. However, it is very easy to manipulate frequency of performance and playing time, particularly in radio and television broadcasts, but also in the case of direct personal performances. On these occasions public taste has no direct effect on the frequency and duration of the exploitation. A radio or television broadcaster could play certain pieces of music more often and for longer than usual and the public would not and could not do anything about it. Moreover, where frequency of performance and playing time are influenced in such a way, the beneficiary receives a greater share of the amount distributed, to the detriment of other members of GEMA and of other societies, than would be the case if manipulation did not occur.

If this manipulation stems from contacts with a user, for instance a broadcasting company, the broadcasting company itself can virtually determine how much it pays to GEMA. The more frequently it plays the work given preferential treatment, the greater the amount of royalties to be paid by GEMA to its member for the said work and the greater the amount returned to the broadcasting company of the lump sum paid in royalties to GEMA. This is tantamount to the broadcasting company liable for royalties under copyright law 'helping itself' from the funds collected by GEMA.

This practice of 'helping oneself' is detrimental to members of GEMA and of other collecting societies who have not taken up such contacts and whose works are therefore not favoured in this way.

- (23) At the same time collecting societies have to tackle an additional problem: 'commercialization of exploitation potential'.

From the numerous works offered by the collecting societies economically powerful users will select certain works which, in their view, have economic potential. However, they will make the use of such works, i.e. the manufacture of copies (e.g. record manufacturer) or the broadcast of the works by radio or television dependent on payment of compensation by the copyright holder (beneficiary) to the user. In practice the GEMA members' willingness to enter into such an agreement always depends on the user's economic superiority or on the readiness of his access to a form of exploitation which is particularly important to GEMA members (e.g. certain manufacturing processes or broadcasting installations).

(b) Object of the amendment

- (24) The amendment should put a stop to users' preferential exploitation of certain pieces of music, where this preferential treatment depends solely on the direct or indirect share by the users in the amount of royalties paid to the GEMA member or beneficiary.
- (25) The new provision in the statutes should also prevent the users from commercializing exploitation potential; to make the copyright-holder pay a royalty to the user and

not vice versa is to pervert protection of copyright.

- (26) The granting of a share of revenue, which is prohibited by the new provision, enables users to manipulate beneficiaries, which is precisely what happens. By preferential treatment and by associating exploitation and a share in revenue, the user evades the uniform changes established by GEMA and in the long run pays substantially less in copyright royalties than he would otherwise.
- (27) Furthermore, where works are used by broadcasting companies whose broadcasting time is necessarily limited, a preferential selection of certain works limits the access of members of GEMA and of other societies to this potential exploitation, for part of the broadcasting time is already taken up by these favoured works. In so far as the broadcasting company's selection is based on its endeavours to reduce its royalty payments to GEMA instead of objective criteria (such as quality of the work, public taste, etc.), the amendment to the statutes should serve to prevent such occurrences.
- (28) Preferential treatment is therefore only 'unjustified' if the user directly or indirectly, i.e. via an intermediary (e.g. a subsidiary) shares in the GEMA member's royalties for the work used and this share is granted for an action performed by the user for which he is liable to pay royalties directly to GEMA. This connection between use of a work subject to royalty payments and a sharing in the revenue from royalties is the essential feature of 'unjustified preferential treatment'. In addition, the granting of a share of the GEMA member's revenue to parties to collective agreements and the preferential treatment must be linked by a specific objective. A user's share in the beneficiary's revenue pursuant to company law or any other provision and preferential exploitation *per se* fall beyond the scope of the new provision.

The additional provision is to be applied to all parties to collective agreements in the same way without discrimination. It is not directed against specific users (e.g. radio companies) or against a specific undertaking.

IV. Objections from third parties

- (29) Following publication of the notice concerning the GEMA statutes, two undertakings submitted their observations pursuant to Article 19 (3) of Regulation No 17.

The main arguments submitted jointly by the undertakings are outlined below.

- (30) The additional provision limits the beneficiaries' freedom to exploit musical works. The beneficiaries are interested in their works being promoted by music-publishing houses associated with broadcasting companies. The joint publishing agreements are the expression of a decision freely taken by the beneficiaries in the face of competition from other potential forms of exploitation.
- (31) The new provision hampers the user in his economic activities, since it restricts the commercial broadcasting companies' potential publicity, upon which, as private-sector undertakings, they depend. Nowadays publicity for music mainly takes the form of broadcasting by radio and television. This broadcasting serves another purpose, in that it could be decisive for up-and-coming artists.
- (32) While this type of programme exploits works on which royalties are due, it also provides publicity for which the broadcaster is entitled to a fee. In joint publishing agreements this fee is provided by a share in the success of the work. Success is also reflected in GEMA's distribution of royalty revenue to the beneficiaries.
- (33) Although GEMA charges for all music users are uniform, GEMA should not prevent its individual members, who are competing with other members (particularly publishers), from promoting exploitation of their works by means of discounts, contributions towards expenses, etc.

LEGAL ASSESSMENT

- (34) Under Article 2 of Regulation No 17, upon application by the undertakings or the associations of undertakings concerned, the Commission may certify that, on the basis of the facts in its possession, there are no grounds under Article 85 (1) or Article 86 of the Treaty for

action on its part in respect of an agreement, decision or practice.

A. Applicability of Article 86

- (35) Article 86 of the EEC Treaty prohibits as incompatible with the common market any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

Under Article 86 (a) of the Treaty such abuse would be presumed in particular if GEMA, which is an undertaking occupying a dominant market position, by means of the amendment to its statutes, were to impose, directly or indirectly, unfair trading conditions on its members or third parties.

1. *Case law of the Court of Justice on statutes of collecting societies*

- (36) In its judgment of 27 March 1974 in Case 127/73 (BRT II ECR 1974 316), with reference to an appraisal of 'unfairness' in collecting societies' statutes, the Court of Justice of the European Communities ruled that it is necessary to investigate whether the collecting society, through its statutes, takes account of all the relevant interests in such a way that a balance is ensured between maximum freedom for librettists, composers and publishers to dispose of their works (hereinafter referred to as 'freedom to dispose') and effective management of their rights by the collecting society (hereinafter referred to as 'operational interest').

In this case the Court also stated that in determining whether in these circumstances statutes constitute abuse within the meaning of Article 86 account must also be taken of the fact that a collecting society is an association whose object is to protect the rights and interests of individual members against in particular major exploiters and distributors of musical material, such as radio broadcasting bodies and record manufacturers.

For these reasons, in its BRT II judgment, the Court recognized that a collecting society must enjoy a position of influence and operate on the scale required to protect effectively copyright holder's rights and interests. It may also be

inferred from the BRT II case that, in an examination of a collecting society's statutes in the light of the Treaty competition rules, the decisive factor is whether they exceed the limits absolutely necessary for effective protection (indispensability test) and whether they limit the individual copyright holder's freedom to dispose of his work no more than need be (equity).

2. *Reconciling GEMA's operational interest and the collecting society's freedom to dispose*

(a) Operational interest

- (37) On account of the conflict of interests between the copyright holders (beneficiaries) and the users, the former, who are in a weaker economic position, have to form collecting societies. This was pointed out by Mr Advocate-General Mayras in his opinion of 12 February 1974 on the BRT II case (ECR (1974) 324): 'some exploiters of musical material (record manufacturers, public authorities and private companies concerned with radio and television broadcasting) occupy such a strong position on the market that it enables them completely to control authors and composers by requiring the assignment of some of their works, especially those who are very successful and whose exploitation is particularly profitable'.

He went on to refer to 'the danger in this situation' against which a collecting society ensures 'the necessary protection'.

In its Decision of 22 June 1971 relating to GEMA (OJ No L 134, 20. 6. 1971), the Commission also recognized the need for joint copyright protection by collecting societies to counterbalance the users' market strength. Collecting society membership is above all necessary in relation to communication to the public and broadcasting rights, where copyright holders are up against powerful users of music and the demand side, i.e. the listener, can exert only a very limited influence on these users. Only through the collecting societies therefore can the copyright holders obtain the fair compensation due for their intellectual labour.

- (38) The basis for any effective activity on the part of GEMA is the collective administration of

copyright for the purpose of joint exploitation with respect to users. It is indispensable that GEMA have joint, uniform control of the rights assigned it. This collective, uniform approach to the administration of rights is of particular importance in connection with the exploitation charges which are laid down by GEMA but supervised by the State. GEMA has to ensure that these charges are applied uniformly and evaded neither by the beneficiaries nor by the users. This joint implementation of exploitation terms is of particular importance to GEMA, since its membership also includes users of music in the guise of publishers, whose interests often coincide with those of manufacturers and broadcasting companies, but not with those of authors. On account of their dual role as 'beneficiaries' and 'initial users' of music, publishers are rather inclined to undermine GEMA's joint approach to third parties.

- (39) It is therefore particularly important to GEMA that it should not be influenced in its activities by parties representing the users' interests or persons economically dependent on them. This principle of independence with respect to other parties is particularly significant in relation to the determination of exploitation charges.

In its Decision of 2 June 1971 relating to GEMA (OJ No L 134, 20. 6. 1971), the Commission pointed to the conflict of interests between users of musical works and authors and stated that sanctions imposed by the society to prevent tying arrangements (between GEMA members and users of music) was an appropriate means of eliminating the dangers of vertical integration, as for example in the case where a record manufacturer subjects the use of certain works to the condition that these works be published by the publishing house he controls.

(b) Freedom to dispose

- (40) In these circumstances the beneficiaries' interest in an independent legal position with respect to users as regards compensation for exploitation has to take second place.
- (41) The beneficiaries have assigned their copyright and royalty claims to a large extent to GEMA for the purpose of joint uniform exploitation on a

trust basis. This forgoing of an individual contractual relationship with the users should in fact restore the balance between beneficiaries and users, thereby fulfilling the objective need to preclude, as far as possible, agreements between beneficiaries on an individual basis, which could affect GEMA's charges.

- (42) On this account any contractual share on the part of a user in a GEMA member's revenue from royalties can create problems for GEMA if it is also connected with the royalty due on the work played by this user. The granting of such a share invalidates and reduces, to the benefit of the user, the charges set by GEMA. The user does pay GEMA the full amount due, but on account of his share in the author's revenue a substantial proportion of this amount is automatically paid back to him. This inevitably depresses GEMA's charges and impairs the consistency of GEMA's approach to third parties. Moreover, this share in revenue provides an incentive for all kinds of manipulation as described at 22 above.

- (43) However, whether GEMA could prevent any grant at all to users of a share in the beneficiaries' revenue without infringing the rules of competition in the Treaty can remain an open question. The new provision prohibits only the grant of such a share where the object is to favour works unjustifiably. Where this object is lacking, the provision is not applicable. Despite GEMA's acknowledged interest in the uniform determination of charges the new provision would therefore constitute abuse within the meaning of Article 86, if, in its current form, it was 'not indispensable' or 'excessive', i.e. inequitable.

3. *Indispensability and equity*

- (44) Scrutiny of the practices that GEMA is endeavouring to prevent is crucial to the question of whether the new provision exceeds the bounds of what is indispensable to effective administration of copyright or is excessive. It is therefore necessary to explain the concept of 'favour unjustifiably' to which the new provision refers.
- (45) GEMA would exceed the bounds of necessity if it wanted to induce the users to withhold all preferential treatment of its individual members' works or to treat them all the same. This would

be completely inconsistent with the users' need to select only certain music works out of the numerous works offered them. Similarly GEMA is not entitled to prevent the beneficiaries from paying the users for publicity, distinguished as such, to promote the sale of copies of certain works (paid advertising).

According to GEMA's concept of 'favour unjustifiably' such treatment only occurs where a user influences the frequency of performance or the length of playing time in order to reduce the amount of royalties he actually pays to GEMA (manipulation) or where he makes exploitation of the work subject to reception of a share in the beneficiary's royalties on the work (commercialization of exploitation potential).

(a) *Manipulation*

- (46) On account of the copyright holder's joining GEMA and the resulting assignment of rights on a trustee basis, in law the beneficiary no longer has the opportunity of authorizing exploitation of his work at a higher or lower fee than the rate agreed by GEMA with the users. It is therefore impossible in law for the individual beneficiary to exert direct influence on the compensation paid for the use of his work. Under the *Wahrnehmungsgesetz*, as a collecting society, GEMA is even obliged to ensure that similar cases are dealt with in the same way, that all users pay the same amount of royalties for playing similar works of music and that all beneficiaries receive a share of royalty revenues proportionate to the exploitation of their works.

- (47) The new provision precludes manipulation of broadcasting time and frequency of performance. In particular, it places restrictions, under the conditions at 28 above, on the grant of a share of royalties which GEMA distributes to the beneficiaries. This makes it impossible for the user to end up paying less for exploiting the GEMA repertoire than agreed with GEMA. The additional provision therefore prevents evasion of the user contract concluded in the interests of all GEMA members. Any such evasion is particularly detrimental to the beneficiaries who have not agreed with the users on any unjustifiable preferential treatment of their works. Since the revenue from the flat-rate

royalties paid by the users is distributed to the beneficiaries on the basis of broadcasting time and frequency of performance in accordance with the distribution scheme, unjustified preferential treatment of individual works causes an appreciable loss in earnings for the other beneficiaries. The new provision, which prevents this consequence, therefore does not exceed the bounds of what is indispensable to the protection of all beneficiaries' interests.

(b) Commercialization of exploitation potential

(48) A principle common to copyright law in all Member States is that the user has to pay a royalty to the copyright holder for exploitation of his work; the royalty payment represents the author's 'salary' for his intellectual creative labour.

(49) However, in commercializing exploitation potential the user makes the copyright holder pay for exploitation liable for royalty.

(50) Whether such a perversion of the payment rationale under copyright law in the case of an arrangement based on an individual contract between a user and a copyright holder who has not assigned his rights to a collecting society is admissible can remain an open question in this context. At any rate, it cannot be regarded as inequitable for a collecting society to prevent such perversion of copyright law on behalf of its members who no longer have any opportunity in law of influencing the amount of royalty payments. The additional provision therefore merely safeguards the spirit of copyright law.

(51) Moreover, no objection can be raised that the new provision impedes (lawful) paid advertising of a work. So long as publicity is recognized as such and is paid for by the beneficiary, publicity by means of exploitation is not caught by the new provision. It covers only those cases where a user exploits a work and makes the beneficiary grant him a share of his royalties for doing so, although it is not generally apparent that such exploitation is in fact advertising.

(c) Prohibition of abuse

(52) The new provision does not infringe the prohibition of abuse.

By the new provision GEMA restricts itself to prohibiting the beneficiaries from granting shares of royalty revenue to users, only where the purpose is to favour certain works of said beneficiaries. In such cases the granting of the share and the preferential treatment must be directly linked by a specific objective.

The mere fact of participation pursuant to company law or the existence of joint publishing agreements between beneficiaries and parties to collective agreements are not in themselves caught by the new provision. GEMA only wishes to prevent those contacts whereby the users seek, by exploiting certain works frequently and taking no account of public taste and qualitative criteria, to share in the royalties collected by GEMA, helping themselves, as it were, without any restrictions. In this way GEMA protects its membership as a whole.

(53) The new provision provides a means, which is not excessive but is effective, of preventing the practices described above. There is therefore no abuse of a dominant position within the meaning of Article 86.

B. Applicability of Article 85 (1)

(54) The question whether the agreement concerning the statutes is caught by the prohibition in Article 85 (1) of the EEC Treaty and could, if appropriate, be exempted under Article 85 (3), is not decided here. So far as individual cases are concerned, the additional provision to the statutes has no object or effect beyond the normal activities and purposes of a copyright collecting society. The agreement concerning the statutes merely ensures the proper enforcement of copyright by GEMA, in that it prevents indirect influence on the use of their works by particular beneficiaries. This proceeding is not concerned with judging the amendments to the statutes globally with the other agreements concerning the statutes and internal rules of GEMA.

C. Supervision of GEMA's conduct

(55) All beneficiaries may appeal to an arbitration tribunal or the ordinary civil courts in respect of application or interpretation of the new provisions. The German Patent Office monitors

GEMA's activities and the Federal Cartel Office is responsible for supervision of abuse. Moreover, any misapplication of the new provision would also lead to proceedings before the Commission under the Treaty competition rules. It therefore seems sufficiently certain that the new provision, which in view of its wording and GEMA's own interpretation is not caught by Articles 85 and 86 of the EEC Treaty, will be lawfully applied without discrimination,

Community in respect of Article 3 (e) of the statutes of the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte of September 1980.

Article 2

This Decision is addressed to Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), D-1000 Berlin 30, Bayreuther Straße 37—38.

HAS ADOPTED THIS DECISION:

Done at Brussels, 4 December 1981.

Article 1

On the basis of the facts in its possession, the Commission has no grounds for action under Article 86 of the Treaty establishing the European Economic

For the Commission

Frans ANDRIESEN

Member of the Commission
