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the department for Enterprise

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The Rt. Hon. Lord Young of Graffham  
Secretary of State for Trade and Industry

The Rt Hon Douglas Hurd, CBE  
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NBPM  
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Dear Home Secretary

TERMS FOR BROADCASTING RECORDS : MMC REFERENCE

I attach final draft terms of reference for the MMC to assess the effects on the public interest of the arrangements for collective licensing and negotiation of the rights to broadcast sound recordings. I am content that these terms are now focussed on the key questions and that the MMC, whose officials have been consulted, will appreciate the issues which we are raising.

I would like to make the announcement in a written answer and I attach a draft. In order to announce this next week and thus allow the MMC the maximum time possible I should be glad to know that you are content very early next week.

I am copying this letter to Nigel Lawson, other members of E(CP), Tim Renton, Richard Luce and Sir Robin Butler.

Yours sincerely

Jeremy Godfrey

(approved by the Secretary of State and signed in his absence)



Date: 25.03.88

Ref: JMLABX

DRAFT

1. The Secretary of State for Trade and Industry and the Secretary of State for the Home Department, in exercise of their powers under Section 78(1) of the Fair Trading Act 1973 ("the Act"), hereby require the Monopolies and Mergers Commission ("the Commission") to submit to them a report on the general effect on the public interest of the practices specified in paragraph 2 below, which appear to them to be practices within Section 78(1)(b) of the Act.

2. The practices referred to in paragraph 1 above are -

- (a) the practice of owners of copyright in sound recordings of assigning their public performance and broadcasting rights in such recordings to a collective licensing body; and

(b) the practice of any such collective licensing body of making it a condition of granting copyright licences in respect of sound recordings -

- (i) that the licensee pay royalties at the current rates (being the rates payable at the date of this reference for the right publicly to perform or to broadcast the sound recordings for specified lengths of time in defined periods or on specified occasions);
- (ii) that the rates referred to in sub-paragraph (i) above be calculated in accordance with a common tariff;
- (iii) that the licensee be restricted in respect of the number or proportion of broadcasting hours within defined periods during which he may broadcast the sound recordings.

3. In this reference -

"collective licensing body" means a society or other organisation which, either as owner or prospective owner of copyright or as agent for him, negotiates or grants copyright licences relating to the public performance and broadcasting rights in the sound recordings of several makers of sound recordings;

"copyright licences" means licences to do, or authorise the doing of , any of the acts restricted by copyright;

"sound recording" means -

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

An Assistant Secretary,  
Department of Trade and Industry.

1988      An Assistant Secretary,  
Home Office.

DRAFT QUESTION AND ANSWER FOR THE SECRETARY OF STATE

To ask Her Majesty's Government whether they intend to take any action over the practice of collective licensing of the use of recorded music for broadcast and performance.

As part of its general concern over uncompetitive practices the Government has today referred to the Monopolies and Mergers Commission certain practices in the collective licensing of public performance and broadcasting of sound recording.

The reference has been made jointly by the Secretary of State for the Home Department and myself in exercise of the powers conferred by Section 78 of the Fair Trading Act 1973. It requires the MMC to submit to us a report on the general effect on the public interest of specified practices.

These practices are those of:

- (a) owners of copyright in sound recordings of assigning their public performance and broadcasting rights in such recordings to a collective licensing body; and
- (b) any such body making it a condition of granting copyright licences in respect of such recordings
  - i) that the licensee pay royalties at the current rates;
  - ii) that the rates are calculated in accordance with a common tariff;
  - iii) that the licensee be restricted in the number or proportion of broadcasting hours during which the recordings may be broadcast.

We anticipate that the MMC will be able to make their report by the middle of October this year.

23. III.

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