

STUDIES
CULTURAL SECTOR

PIRACY OF PHONOGRAMS

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FOREWORD

This is the second edition of a comparative study of the problem of piracy of phonograms in the countries of the European Economic Community (EEC) requested by the Commission of the European Communities.

The first edition was published in 1980. However, having regard to the considerable interest manifested in recent months by Community institutions in the problem of piracy and a growing consensus on the need for Community action to combat it, the Commission suggested the updating of the study to take account of developments in the intervening period.

The terms of reference for the original study were:

- (i) to provide a detailed description of the extent, nature and special characteristics of piracy of phonograms for each individual country in the EEC, and for the Community as a whole;
- (ii) to analyse the methods available to combat piracy of phonograms in the countries of the Community, taking into account international conventions to which they are parties, their legislation or other means of regulation; and
- (iii) to make proposals for action.

In preparing the second edition these terms of reference have been adhered to. The study has been revised throughout to bring it up to date, taking account of changes in the economic situation, in the extent and nature of piracy in the Member States and of the legislative developments and new case law relating to piracy. It also includes information on Greece which became a Member State of the EEC on 1 January 1981.

The first edition of the study contained economic and market information and estimates of the extent and nature of piracy relating mainly to the year 1978 and included those available for 1979. This edition aims to update that information based on 1982 statistics but, again, such information as is available for 1983 has been used. Where appropriate, comparisons have been made between the situation in 1978 and that in 1982.

The state of legislation and case law and the national and international developments described in the study are based on information available to the author in July 1984.

The format has been changed slightly; a new chapter on international developments has been added and some of the sections of previous chapters have been converted into separate chapters of their own, for instance, the conclusions and proposals for action.

A new section citing the various statements and resolutions of Community institutions relevant to piracy made or adopted in the period 1980 to mid-1984 have been included as part of the conclusions. The proposals for action have been modified to take account of these developments and the opportunity has been taken to make them more precise.

The author would like to thank all those who have assisted her in the preparation of this study and, in particular, the Directors and staff of the National Groups of the Association of IFPI Affiliates in the European Communities, representing producers of phonograms, who responded most helpfully to her requests for information and assistance, namely:

Associazione dei Fonografici Italiani (AFI)
British Phonographic Industry (BPI)
Den Danske Gruppe af IFPI
Deutsche Landesgruppe der IFPI
The Irish National Group of IFPI
Greek Group, IFPI
Nederlandse Vereniging van Producenten en
Importeurs van Beeld-en Geluidsdragers (NVPI)
Syndicat de l'Industrie Belge d'Enregistrements
Sonores et Audio-Visuels (SIBESA)
Syndicat National de l'Edition Phonographique
(SNEP, France)

As mentioned above, the original terms of reference of the study have been adhered to; however, since 1980 great strides have been taken in the development of the video market, and video piracy is now a major problem. This phenomenon has been referred to on occasions in the study and the author would like to thank those national video associations of IFPI who assisted her in this regard.

The author is also greatly indebted to Mrs Michele Hung for her collaboration in the writing of Chapters I and II and with the compilation and presentation of the economic and statistical information included in the study.

Finally, the author is most grateful to Marianny Harvey and Carol Wilson for their assistance with the footnotes and bibliography and in preparing the text for publication.

July 1984

CHAPTER I - GENERAL CONSIDERATIONS AFFECTING THE PROBLEMS
OF PIRACY IN THE EUROPEAN ECONOMIC COMMUNITY
(EEC) ⁽¹⁾

1 THE RECORD MARKET IN THE EEC

1.1 The Economic Aspect

1.1.1 In 1982, sales of phonograms ⁽²⁾ (records and pre-recorded tapes) by legitimate producers of phonograms ⁽³⁾ in the ten Member States of the EEC amounted to a retail value of US\$3.0 thousand million (Table 1). The recording companies of the Community together represent the second largest record industry in the world, topped only by that of the United States of America, where the 1982 sales figure was US\$3.6 thousand million (Table 2).

1.1.2 Until the late 1970s, the recording industry worldwide enjoyed a steady growth in turnover. In the seven years 1971 to 1978, the growth in unit sales of the EEC market was maintained at an average of 11% per year and the growth in value was around 18% per year, well above the average inflation rate (Table 3). The retail turnover of the record industry reached its peak in 1978 with sales of US\$3.6 million in the EEC compared to US\$4.1 million in the USA (Tables 1 & 2). Sales of long-playing carriers (LPs and pre-recorded tapes) reached the record levels of 462 million units in the EEC (Table 4) and 536 million units in the USA (Table 2).

1.1.3 In 1979, the recording industry experienced an unprecedented recession. Units sold of legitimate long-playing carriers (records and pre-recorded tapes) decreased by 28 millions to 434 millions in the EEC and by 65 millions to 471 million units in the United States of America. Since then, sales figures have continued to decline (Table 1). Between 1978 and 1982, the turnover of record companies in the EEC has declined in real terms by an average of 4.7% per year (Table 5). Sales results for 1983 show no indication that the recession has ended (Table 6). The Federal Republic of Germany reports a drop of 4-5% in turnover. In France, estimated turnover is expected to be up by 4% on 1982 but, allowing for inflation, there will, in fact, be a slight drop in real terms; unit sales of albums are estimated to be around 10% lower and cassette sales around 3% lower. In the United Kingdom, turnover for 1983 appears to be steady in real terms; actual turnover increased by 5%, but inflation was also around 5% and sales of albums and singles dropped by 6%.

1.1.4 The recording industry is an important source of foreign revenue for the EEC, both from direct exports and from royalties ⁽⁴⁾ derived from the licensing of EEC repertoire abroad. The year 1978 was also a peak year for exports of records and pre-recorded tapes. During that year, EEC exports to non-EEC countries amounted to US\$184 million representing a net positive balance of over US\$100 million. In 1979 and 1980,

imports to the EEC from non-EEC countries increased substantially, particularly parallel imports, and, as a result, the positive balance of trade fell to US\$47 million, approximately half the 1978 level. Despite important currency fluctuations affecting comparisons from year to year and country to country, the fact is that, since 1978, all the major exporting countries of the EEC report a drop in their balance of trade for this commodity. In 1982, however, the situation improved and the balance of trade was up again at US\$83 million in favour of the EEC, but it is still too early to say whether this upward trend will continue.

1.2 The Social and Cultural Aspect

1.2.1 The continuing recession in the recording industry is having serious social consequences; large numbers of people employed in the industry have been made redundant. In 1978, the number of persons directly employed in the production, manufacturing, wholesale and retail trades in the EEC totalled over 130,000 people. (Table 7(a)). By 1982, this number had fallen to 120,000 people (Table 7(b)), an overall decline of approximately 10%, although the situation varies significantly from country to country. In the Federal Republic of Germany, between 1978 and 1982, employment in production and manufacture fell by 8% from 13,000 to 12,000 people. During the same period, employment in the retail sector fell by 20% from 26,000 to 21,000 people. In France, it is estimated that the number of people directly employed by the recording industry in 1978 in reproduction, manufacture and wholesale was 6,336. By 1983, employment had declined by 25%. In the United Kingdom, the recession in the recording industry has had an extremely damaging effect on employment with a reduction of 40% in manpower. The recording industry of Ireland has suffered an equivalent reduction. In Italy, the recession in the recording industry began to show its effects somewhat later. Until early 1983, employment remained steady; in the course of 1983, however, the recording industry had to lay off 10% of its staff.

1.2.2 The recording industry also indirectly affects the employment of tens of thousands more people: those employed in the music publishing industry and all the many thousands of authors, lyric writers, composers and performers (conductors, solo artists, musicians and actors) whose livelihood depends wholly, or partially, on the recording industry. In Germany alone, for instance, all the music-related industries employ 225,000 people. (5)

1.2.3 The decline of the recording industry has affected everyone connected with the music industry. The amount of royalties paid to authors and composers by record producers (Tables 8(a) and 8(b)) illustrates this point. Since 1978, mechanical royalties have shown only a modest annual increase of 3.9% for the EEC as a whole, whereas throughout the period from 1970 to 1978, the average annual increase was in excess of 22%.

1.2.4 The recording industry is a major cultural industry in

the EEC and its cultural influence throughout the world has been profound. Its decline has had the inevitable but undesirable effect of reducing the variety of recorded repertoire produced, made available to the public and exploited by EEC-based companies abroad. Over the past few years, the number of new releases has decreased since record companies can ill afford to promote specialised repertoire of appeal only to a limited audience, even though such repertoire may be of real cultural value. In France, for instance, new releases of albums have declined from 6,975 in 1980 to 6,154 in 1982. In Germany, the situation is similar; new releases of "pop music" albums fell from 3,654 in 1980 to 3,030 in 1982; releases of classical albums also dropped from 1,367 in 1980 to 1,140 in 1982.

1.2.5 The decline of this industry, of vital cultural and economic importance to the European Economic Community, may be attributed largely to the unfair competition to which it is subjected as a result of large-scale piracy and private copying. Both these activities are parasitic activities which feed on the successes of the recording industry and are encouraged by the general economic recession. Piracy of phonograms, which is the subject of this study, affects every country in the EEC, albeit at different levels. However, even in countries such as Denmark, where piracy is reported to be very low, it is so only because the recording industry is fighting a constant battle to keep piracy under control and maintains a heavy investment in teams of investigators and lawyers whose task it is to locate the pirates and bring them to justice. Private copying, referred to in more detail in paragraphs 7.2 to 7.4 below, has exploded over the last decade to reach a level where more minutes of music are taped at home each year in EEC countries than are sold by the legitimate recording industry. (6)

2 THE DEFINITION OF PIRACY OF PHONOGRAMS

2.1 "Piracy" is the term which has come to be widely used to describe 'the activities against which producers of phonograms should be protected'. (7) The word piracy has been used to describe infringement of copyright since the early 18th Century, (8) and, in relation to phonograms, may be defined as the manufacture of duplicates of legitimately produced phonograms without the authorisation of the original producer of the phonogram and the importation, distribution, or sale to the public of such unlawful duplicates for commercial gain.

2.2 Two different kinds of piracy of phonograms may be distinguished.

2.2.1 Piracy - stricto sensu - is the unauthorised duplication of an original phonogram distributed to the public with labels, artwork, trade marks and packaging different from, although often similar to, those of the original legitimate phonogram; the legitimate producer's trade mark is not used.

2.2.2 Counterfeiting is the unauthorised duplication and distribution of an original phonogram and its packaging in toto. The legitimate producer's original label, artwork, trade

marks and packaging are copied as well as the sounds contained in the original legitimate recording.

2.3 There is a third illegal activity that is also described as piracy, namely "bootlegging", which means the unauthorised recording of an artist's performance. This is done either at a concert or from radio and television programmes, from unpublished studio tapes or demonstration tapes without the artist's permission. The recording is then copied and the illegally produced duplicate sold for commercial gain.

2.4 All these forms of piracy are flourishing today, within the European Economic Community and elsewhere. Together they are described as pirate product in this study, the distinctions referred in the previous paragraphs being made when necessary. It has been estimated by IFPI - the International Federation of Phonogram and Videogram Producers - that the worldwide value of pirate product in 1982 was in excess of US\$900 million. This figure is up on 1978, when the total value of pirate product was estimated at around US\$880 million, but down on 1980 when piracy had a retail market of over US\$1,000 million (Table 9). This slight decrease between 1980 and 1982 is an encouraging sign for IFPI after years of active involvement and financial investment in fighting piracy at both national and international levels.

2.5 Piracy has increased continuously over the past twenty years in step with the development of new technology to reach this level approaching \$1,000 million. Both records and cassette tapes are pirated. The pressing of records has become a less complicated process with the help of modern machinery and automation, although it still requires substantial investment in plant, machinery and labour, as well as a considerable degree of expertise. More important for the development of the pirate trade has been the boom in sales of domestic tape-playing equipment and the consequent ready availability of legitimate pre-recorded tapes for copying. It is much easier and cheaper to produce pirate tapes than pirate records; relatively inexpensive magnetic tape reproduction equipment and blank cassette tapes for use with it are easily acquired on the open market and substantial piratical operations can be launched with limited capital investment. Furthermore, the recent availability of low-cost domestic high-speed duplicators now brings commercial-scale piracy within the reach of almost everyone. In proportion to the legitimate pre-recorded market, cassette tape piracy is far more widespread than record piracy. The tape share of both the legitimate and pirate markets has been steadily increasing since the mid-1960s when cassette tapes first became readily available. Another factor which encourages cassette tape piracy is that, whereas the bulk of legitimate record sales have traditionally gone through conventional record and music shops or department stores, legitimate cassette tapes are being sold in ever-increasing quantities by retailers who have not traditionally been involved in the record business, including supermarkets, petrol service stations, etc. Such retailers are easier prey for the pirates. Moreover, piracy has now become the domain of the professional criminal rather than the dishonest businessman

because of the enormous profits to be made from it.

2.6 Counterfeiting of both records and tapes is becoming an increasingly serious problem, particularly in Western Europe and the United States of America, where most record piracy is now counterfeit. Experience in the Member States of the EEC (especially Belgium, the Federal Republic of Germany, Italy, the Netherlands and the United Kingdom) shows that almost all best-selling international pop repertoire is now being counterfeited in huge quantities. The quality of counterfeit product has been improved to such an extent that, at first sight, it is scarcely possible to distinguish the illegitimate from the legitimate product, even for those who are familiar with piracy problems. Laboratory techniques are often required to identify counterfeits.

2.7 Bootlegging is a separate problem; in making unauthorised recordings of an artist's live or broadcast performance the pirate does not infringe the producer's rights, but those of the performer. It is estimated that the monetary value of bootlegging is far less than that of piracy stricto sensu and counterfeiting, at present, but in the United Kingdom, since early 1983, there has been a serious increase in bootlegging, with bootleg cassettes of all major popular artists available from street markets throughout the country at a price equal to, or less than, that of a legitimately produced cassette. This is a disturbing development as it extends the market for bootleg recordings far beyond the relatively small number of fans prepared to pay two to three times the normal retail price for a rare bootleg album. Pirates are attracted to bootlegging, not only because the demand for such recordings of performances of famous artists makes the practice highly profitable, but also because in many countries it is a less risky activity due to the lack or inadequacy of legal protection for performers. It is clearly in the interest of producers of phonograms to combat bootlegging, although they can only take action against bootleggers if performers have assigned their rights to them and in active co-operation with the performing artists and musicians concerned. This is because of the interdependency governing relations between the artists and the producers which reflect their mutual interest in the production and widest possible legitimate sale of quality recordings of the artists' performances. These relations usually take the form of contractual arrangements, based on close partnerships between recording artists and their recording companies, and are a safeguard to the producer in view of the investment costs of recording and promoting an artist's recording. In return, the artist receives a royalty on the sales of the phonogram, thus obtaining a stake in the income arising from the recording. Thus, in taking action against bootlegging, the producers are not only protecting the joint economic interests of producers and performers, but are also defending the artists' reputation (and, incidentally, their own) which suffer from the bad quality of bootleg recordings.

3 THE ESTIMATED EXTENT OF PIRACY OF PHONOGRAMS
IN THE EEC

3.1 It is self-evident that precise statistics concerning an illegal activity are impossible to obtain and it must be stressed at the outset that the figures given in this study are informed estimates made by the representatives of legitimate producers of phonograms in the countries of the Community, and elsewhere, on the basis of their day-to-day experience of the market where they are constantly engaged in combating piracy. The author has had access to the figures compiled by IFPI at regular intervals since 1970, and is also greatly indebted to the nine members of the Association of IFPI Affiliates in the EEC representing producers of phonograms for their assistance in providing detailed estimates with regard to piracy in their respective countries.

3.2 It is estimated that, in 1982, the total number of units of pirate product sold in the EEC was 26.6 million, of which 4.3 million were records and 22.2 million were tapes. The estimated retail value of this product was just over US\$100 million and cassette tapes accounted for nearly three-quarters of the total value (Table 10). Taking the ten countries of the EEC as a whole, it is estimated that sales of pirate records represented 1.5% of the total market for records and tapes and pirate cassettes 14%, in terms of units. The extent of piracy in the EEC has in fact declined overall in all countries since 1978 (Figure II, page 24). Although the total number of illegitimate tapes sold has increased from 16.2 million units in 1978 to 22.2 million in 1982, this is due only to the addition of Greece, as the tenth EEC member. Without Greece, sales of illegitimate tapes would have dropped to 12.7 millions in the EEC (Table 10). The retail value of pirate product has shown a dramatic decline from US\$153 million in 1980 down to around US\$100 million in 1982, although with the addition of Greece, the number of pirated cassettes sold has increased. The reasons for this decline are the marked reduction in the availability of bootleg product which is traditionally the most expensive pirate product and also the reduction in counterfeiting particularly in France, Germany and the Netherlands. The large number of pirate cassettes available in Greece, on the contrary, have a very low retail value. Record piracy is a lesser problem than tape piracy, which poses a more serious threat to record producers. The share of the market held by tape piracy fluctuates sharply within the EEC. For example, pirate tapes account for 5% of the total market in France and a staggering 75% in Greece. The extent of piracy of phonograms in the EEC has slightly decreased over the past few years and this has been due mainly to the active role of IFPI National Groups in campaigning against it. However, if one looks at the extent of piracy of audio and audio-visual works taken as a whole, there is no doubt that piracy has increased substantially. The advent of the home video industry and the rapid increase in penetration of video cassette recorders in households has been a bonanza for the pirates. Video piracy is now estimated to represent 70% of the total market in the Netherlands and 50% in the Federal Republic of Germany and 40% in the United Kingdom. (9)

Detailed analyses of the pirate markets in the Member States of the EEC are contained in Chapter II.

4 INTERNATIONAL "TRADE" IN PIRATE RECORDS AND TAPES

4.1 There is considerable international trade in phonograms. Music is international, knows no language barriers and recognises no frontiers. In terms of size, the main trade in legitimate phonograms is between the ten countries of the EEC themselves and between them and the United States of America.

4.2 Tables 11(a) to 11(c), on imports and exports of legitimate phonograms, show that in terms of value trade in this commodity is significant, but it should be borne in mind that trade in finished product represents only a small proportion of the total trade in phonograms originating in EEC countries. Since a number of the most successful and important record companies in the world are located in Community countries, large quantities of phonograms of the repertoire of Community producers are reproduced under licence in third countries. As already mentioned, licensing arrangements give rise to substantial royalties in favour of Community producers, performers and authors.

4.3 The pirate "trade" is also international and, indeed, intercontinental. Pirate records and tapes are imported into the EEC in large quantities from third countries. They also cross frontiers in very substantial quantities within the EEC. There is much evidence of pirate product being manufactured in one EEC country and transported into another for sale.

4.4 It is extremely difficult to estimate the amount of pirate product imported into and exported from the various EEC countries because of the illicit nature of the trade. However, IFPI and its National Groups representing phonogram producers in the EEC have provided estimates of this international trade which form the basis for the information presented in Figures VII and VIII in Chapter II. These Figures show the percentage of pirate product sold in EEC countries which is imported and the percentage of pirate product manufactured in EEC countries which is exported.

4.5 Imports of pirate product come mainly from other EEC countries, Singapore and the United States of America. The destination of exported product is estimated to be mainly to EEC countries, in most cases, although exports go to non-EEC countries from France and the United Kingdom.

5 THE RIGHTS INFRINGED BY PIRACY

5.1 The pirate is a parasite, living off the creativity, talents, art and investment of others. When an original phonogram is copied by a pirate, it is because he knows he is assured of commercial gain - he only duplicates hits - successful recordings. His profit is thereby assured at the expense of all those right owners who have contributed to the

production of the original recording.

5.2 The legitimate producer of a phonogram has a number of duties and responsibilities which are ignored by the pirate. When a legitimate recording is produced, the authors (including the composer, lyric writer, arranger, etc.) receive a royalty on each record sold (see Chapter III, paragraphs 2.1 to 2.12). The artists (including conductors, soloists, singers, etc.) also receive such a royalty. Other performers, for example, session musicians, members of orchestras, accompanists, etc., are remunerated in relation to time spent performing in the recording studio by session fees normally established by agreement between the unions representing the musicians in each country and the national body representing producers of phonograms.

5.3 In addition, the producer of the phonogram has to meet a number of other overheads: studio costs of recording, duplication costs (pressing of records and manufacture of tapes), packaging costs (the artwork, box and liner of the sleeves), marketing and promotion, consumer press advertising, distribution costs and dealer costs.

5.4 The pirate who copies the successful phonograms which result from all these efforts of others pays nothing to the authors and composers whose music and lyrics are copied, nothing to the recording artists and musicians and nothing, of course, to the producer of the legitimate recording. His only overhead is the cost of the equipment used to make the duplicates and of the packaging. His market is ready made as well as the product.

5.5 Apart from the financial loss caused to the contributors to the original phonogram, there is another factor to be considered: that of the damage to their reputation. The quality of pirate product is often inferior and the artist's reputation suffers from bad reproduction. In the case of counterfeits, it is not only the reputation of the performers that suffers, but also that of the record company, the quality of whose product is called in question. In both cases, the public is misled.

5.6 Because the pirate's business is based on such a limited outlay, he is able to sell his product for a fraction of the price of legitimate recordings. Table 12 gives comparative prices of legitimate, pirate, counterfeit and bootleg tapes in the EEC countries. Counterfeit product is normally sold at the same price as the genuine article. It is intended to deceive the purchaser into believing he is buying legitimate product. The pirate's profit is, therefore, grossly inflated as well as illegitimate. His costs are only marginally higher than those of the ordinary pirate. Both have to bear the cost of packaging their product, but the counterfeiter uses more sophisticated techniques to copy, in every detail, the packaging of the legitimate original phonogram.

5.7 "Bootleg" recordings are also normally sold at grossly

inflated prices, often above the price of a full-price legitimate LP. The justification for such inflated prices is scarcity; the performance is not otherwise available on record. Here again, it is the artist and the record company to which the artist is contracted who suffer. First, the recording is made without the permission of the performer and, consequently, in circumstances not conducive to good quality recording. The artist's reputation is compromised, a reputation that frequently, especially in the case of pop artists, has been built up as a result of a long-standing partnership between the artist and his recording company.

5.8 Dealers in pirate product (importers, wholesalers, retailers), who buy the product knowing it to be illegal, also share in these inflated and illegal profits. Pirate product, as opposed to counterfeit and bootleg product, is sold at such low prices compared to the genuine article that those who also deal in legitimate product must be aware of its nature. Those who knowingly deal in counterfeits and bootlegs reap even greater illicit rewards because of the inflated sales prices. Such people are accomplices in the pirates' illegal activities.

6 POSSIBLE METHODS OF CONTROLLING PIRACY

6.1 Piracy is "theft", and like "theft" or any other illegal activity, will never be completely eradicated. However, experience has shown that piracy can be controlled and contained within manageable proportions provided certain conditions are met. The key to controlling piracy is adequate legal protection, backed up by a vigilant and effective anti-piracy operation by the legitimate producers with the full support of the national law enforcement authorities.

6.2 In 1978, IFPI drew up guidelines for anti-piracy campaigns, listing twelve basic requirements for a successful campaign:

- (i) the existence of adequate legal protection for producers of phonograms, preferably by means of a specific right (copyright or related right);
- (ii) reciprocal protection for foreign phonograms in accordance with the provisions of one or both of the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome 1961) and the Convention for the Protection of Producers of Phonograms Against the Unauthorised Duplication of Their Phonograms (Geneva, 1971) (hereinafter referred to, respectively, as the "Rome Convention" and the "Phonograms Convention");
- (iii) adequate civil and/or criminal remedies to ensure the speedy application of the law;
- (iv) a special anti-piracy budget;
- (v) a central person or office acting as co-ordinator and providing finance and administration;
- (vi) one or more investigators;
- (vii) a lawyer or firm of lawyers specialising in anti-piracy work and retained by the National Group;
- (viii) the cooperation of all member companies within

the National Group;

(ix) the cooperation of authors' societies and performers (artists and musicians) whose interests are harmed by piracy;

(x) regular international communication and exchange of information about suspected pirates and illegal products;

(xi) the cooperation of governments (customs, police, government departments responsible for intellectual property, etc.);

(xii) the adoption and promotion of strict in-house security measures to ensure that pirates, and particularly, counterfeiters, are not able to obtain material such as inlay cards, labels and studio tapes from pressing plants due to careless or dishonest behaviour by employees of record companies.

6.3 In the EEC countries, as already stated (see paragraph 3.2 and Table 10), the average percentage of the total market for records represented by piracy was 1.5% in 1982 and for cassette tapes, 14%. While the legitimate producers are not overwhelmed by piracy in the EEC countries, if it were not for the very active anti-piracy campaigns maintained at great expense by legitimate producers, those percentages would no doubt be much higher.

6.4 Moreover, all the requirements for successful anti-piracy campaigns mentioned above are not met in all the ten countries of the EEC. First and foremost, as will be discussed in detail in Chapter IV, the legal protection of producers of phonograms is unfortunately not satisfactory in all the EEC countries and not all of them have adhered to the Rome Convention and the Phonograms Convention.

6.5 Piracy must be contained if the legitimate record industry is to be able to face the future with any confidence. The industry is also being undermined at present by private copying (the non-commercial copying of phonograms for private use), which is referred to in Part 7 of this Chapter. The combination of piracy and private copying has had a very damaging effect on the recording industry. The economic importance of the Community recording industry, both within the EEC and in a worldwide context, has been referred to above. A further weakening of the industry, or at worst, its disappearance, would have far-reaching effects, not only on employment and the economies of the ten Member States. European musical culture would be irreparably damaged and its significant influence on world music would become greatly limited.

7 PRIVATE COPYING AND COVER VERSIONS

7.1 There are two activities, private copying and the production of cover versions, which are sometimes confused with piracy, and which may also be considered illegal in certain circumstances.

7.1.1 "Private copying", sometimes called "home taping", is the non-commercial copying of phonograms for domestic use.

7.1.2 "Cover versions", also known as "sound alike", are recordings of musical works made famous by well-known artists but performed by other performers.

Private Copying

7.2 Private copying of phonograms by individuals has resulted from the ready availability to the consumer of simple, inexpensive magnetic tape reproduction equipment, coupled with inexpensive cassette tapes for use with such equipment. The practice has become so widespread over the past ten years that it is now of great concern to the various right owners (producers, authors, performers) and in economic terms is considered now more damaging to them than piracy. The possibility that copying for private use could be done on this scale was never envisaged in existing copyright laws and, in most countries, (10) it is not against the law to make a copy or a limited number of copies for private use. Even where private copying is against the law, however, normal methods of enforcement are not appropriate; detection is extremely difficult and, moreover, efforts to detect private copying would be undesirable since they would give rise to an unacceptable invasion of privacy.

7.3 The problem of private copying and its impact on right owners is the subject of a recent study, written by the author of the present study, at the request of the Commission of the European Communities. (11)

7.4 Private copying of phonograms has become the single, most widespread unauthorised use of the reproduction right in phonograms and, indeed, videograms (pre-recorded video cassettes and video discs). It represents a new use of copyright material for which none of the right owners receives remuneration. Penetration of tape recorders has reached a very high level in the EEC. Over 60% of households have at least one tape recorder and these recorders are used extensively to record music. Surveys carried out in EEC countries show that private copying has a very damaging effect on sales and that over 90% of home recordings consist of music (Table 13). Music is recorded mainly from records or radio (Table 14) and, in the latter case, from phonograms broadcast on radio. There is a growing consensus on the part of governments that this free use of copyright works, the scale of which is enormous, cannot be tolerated. The study on private copying referred to above puts forward a proposal for a solution to the problem which would enable right owners to obtain remuneration for this new and unauthorised use of their works and interested readers may wish to refer to that study for further information. It should be noted, however, that if private copying continues at its present level, without any remuneration being paid to right owners, the result will be an accelerating decline in creative endeavour and a consequent impoverishment of the musical repertoire available to the public. The scale of the private copying problem eclipses that of piracy so that the decline

referred to would not be prevented even were piracy to be totally eliminated.

Cover Versions

7.5 The terms "cover versions" and "sound alike" are used to describe two different practices.

7.6 The first, which is an entirely acceptable practice, is the production of a new recording of a musical work already published, performed by an orchestra or one or more artists different from those whose performances were recorded in the original recording.

7.7 The second practice is the production of such a recording with the additional factor that the performance of the work is in close imitation of the style and voice of the artist whose original interpretation of the musical work led to success. If the imitation is such as to tend to confusion and the producer attempts to pass the new recording off as including a performance of the original well-known artist, the cover version is illegal. A great deal depends on the packaging. Imitations will not necessarily be illegal if it is clear from the packaging that the performer of the work is not a famous star. However, they are illegal if they are sold in packaging which misleads the public into thinking they are acquiring a recording of a performance of the star.

7.8 In all EEC countries, legal action may be taken against illegal cover versions under either the law of unfair competition or consumer protection legislation. ⁽¹²⁾

8 THE FINANCIAL RISKS OF THE LEGITIMATE PRODUCER OF PHONOGRAMS

8.1 A great number of phonograms launched on the market fail to make a profit. Research carried out in the United Kingdom in 1977 and published by the British Phonographic Industry (BPI) in 1979 demonstrated that only one in nine of all singles and only one in sixteen of all LPs are profitable. A study prepared for the Commission in 1979 showed that 70% of all records produced in France made a loss. ⁽¹³⁾ The situation is still the same today; Table 15 shows that the majority of recordings in six EEC countries fail to make a profit within a year of their release. A cost breakdown of a typical "pop" LP or cassette, recently published by the BPI (Table 16) indicates that the net profit margin of the producer (excluding overheads) on each recording sold is low and hence the producer relies mainly on the number of copies sold of a particular recording in order to reach a profitable level.

8.2 The comparatively small proportion of successful new releases which make a profit (see Table 15) therefore not only have to cover their own release costs, but also those of the large majority which fail to make a profit. Fortunately for the survival of the recording industry, the profits on very highly successful phonograms with an international audience can be enormous. Without these profits from the small proportion

of "hits", the survival of the recording industry is at risk, and this is exactly why piracy is such a danger to the industry's future.

8.3 As already mentioned, the pirates only duplicate the highly successful recordings, taking no financial risks whatever. In the great majority of cases, piracy occurs in the field of popular music rather than in the classical market, and is concentrated on product with a mass-market potential. They thus undermine sales of the legitimate product exactly where the legitimate producer is most vulnerable. When the pirates undermine the legitimate market for the small proportion of phonograms which bring the profits, and which, in turn, enable the industry to finance new releases of popular LPs and its classical repertoire, the financial viability of the entire industry is put at risk. It is well known that the profits from popular successes have enabled many record companies to maintain wide-ranging repertoires, especially in the classical and experimental area, which might otherwise have been impossible. "Fortunately, as a study of the Gramophone Classical Catalogue soon reveals, the record companies are by no means disposed to abdicate the role of encouraging interest in the new and unfamiliar." (14)

8.4 The financial risks of the legitimate producer of phonograms are often not appreciated. Phonograms are considered by many members of the public to be too expensive, and therefore fair game for the pirates. Table 17 reproduces figures published by three National Groups of the Association of IFPI Affiliates in the EEC which show that the sales prices of phonograms in the last ten years have declined in real terms in France, the Netherlands and the United Kingdom. Moreover, retail prices include excessively high rates of VAT on phonograms in a majority of EEC countries (see paragraph 9.4.4 below and Table 18).

8.5 A colourful and graphic description of this lack of appreciation on the part of the general public was given recently by an eminent record producer: (15)

"How curious it is that the pirating of recorded works should now be highlighting an idea which has coloured the judgment of individuals about records and cassettes.

How often and for how many years now have we, the sound recording producers, been reminded of our profits, which are unfailingly considered to be excessive? On the basis of a cursory calculation (which is claimed, however, to be authoritative and informed) the sale price to the public is set against the actual cost of pressing a disc, and this inevitably gives a mammoth profit figure. How often indeed every one of us has had this argument flung at him, often with the press casting its publicising attention onto the issue: a record costs three francs to make - and it is sold at fifteen times the cost. This is immoral.

Well, then on this point, and this point alone, we have our friends the pirates to thank. You, sirs, have shown, in the most pragmatic and therefore the most obvious way, that the expense lay not in the container, but in the content. In pillaging and robbing, by converting the content to your own use, you have no hesitation at all in bearing the necessary expense of the container, thus furnishing mathematical proof that by avoiding the whole of the investment costs involved in the creation of a work, and by depriving all the people involved of their rights in the work you manage, robbers that you are, and often unpunished ones at that, to give entire justification to the erroneous calculations with which publishers and sound recordings have been belaboured.

After all, people only steal what is worth stealing, and theft has only one purpose, high stakes, ready money, and illicit profit. As you only incur the expense of a slab of vinyl and a record sleeve, or in the case of a cassette, the cost of the magnetic tape and box it is wound into, you are thereby, at the expense of all those who were involved in the creation of a work, making a profit which benefits you alone and which is nothing other than theft."

9 THE CULTURAL VALUE OF PHONOGRAMS

9.1 There has never been any doubt that music is an important aspect of cultural life. Sheet music and musical scores have long been recognised as cultural materials along with books, periodicals and other printed matter under the terms of the Agreement for the Importation of Educational, Scientific and Cultural Materials, adopted at Florence in 1950. In contrast, it is only recently that it has become generally accepted that the phonogram is a vehicle for the dissemination of music equal in cultural value to printed music, as well as a creative work, and thus to be treated as a 'cultural good'. (16)

9.2 In the past, there has been a tendency to think of music and the vehicles for its dissemination (phonograms) as inferior in cultural importance to literature and the vehicles for its dissemination (books). It has also often been claimed (and still is in some circles) that the production in the studio of a phonogram is not a creative and artistic activity. This latter attitude is now widely recognised as erroneous. On the contrary, the sound recording stage involves genuine creative and artistic skills, backed by highly sophisticated technical facilities. This is an artistic activity on the part of the producer that may be compared, for example, with the artistic contribution made by the producer of a stage performance or the director of a film.

9.2.1 "Whichever musical discipline we are working in, whether it be song, variety numbers, jazz, folklore, productions for children, contemporary, classical,

lyrical or electronic music, or musique concrete, we have the task of making a faithful reproduction of the performance of the work, a task which often requires months of preparation, weeks of studio recording, nights and days of editing and mixing; we are involved up to the hilt in and irrevocably committed to the technical perfection we have set out to achieve, and we struggle through a perplexing maze of certainties and uncertainties peculiar to the quality of the recording we are seeking to produce. Everyone has his share in this task: the authors, composers, orchestra, conductors, musicians, actors, singers and technicians. It is a feverish bustle of activity, a long drawn-out, arduous and financially burdensome team effort, with forever at the end of it uncertain success." (17)

9.2.2 The cultural value of the recording industries' work has been endorsed by Yehudi Menuhin, when he stated during a filmed interview in 1978:

"I well know what an artist puts into his performance and how much he considers that performance, produced by a responsible company, a work which represents his whole achievement, his whole ambition, his mind, heart and thought. I also know what effort the company puts into such a recording, the engineers whom I have known over many years, the people who understand the music as well as the electronics." (18)

9.2.3 Herbert von Karajan himself has explained that the mixing work in the studio has become far more important than previously.

"One must forget the suggestion that in the process music is being manipulated by technique; it is simply not true. After all, in the first instance, the music is manipulated by the instruments, secondly, it is 'manipulated' by the acoustics of the hall. Finally, the performance is 'manipulated' by the listener, who may or may not be in a receptive frame of mind. If I have the right to ask a member of the orchestra to play his instrument softer or louder, why should I not also be allowed to push a button to obtain the same result, if it cannot be achieved any other way? This part of the work is truly also an artistic activity." (19)

9.3 The phonogram is now established as a serious creative art form in its own right. The Unesco Intergovernmental Conference on Cultural Policies in Europe, held in Helsinki from 19 to 28 June 1972, unanimously adopted Recommendation 10 on 'Culture and Information Media' which included a recommendation which recognises that sound recordings are cultural materials and should be treated as such. Moreover, the status of all sound recordings as cultural materials has now been recognised specifically by the EEC.

Annex CI of the Protocol to the Florence Agreement, referred to above, adopted in Nairobi in 1976, acknowledged that sound recordings, as well as all other audio-visual materials, are cultural materials, and accords them the same status and treatment as books and other categories of cultural material. The principal impetus for the recognition of this principle in the Florence Protocol came from the Commission of the European Communities, the latter's then nine Member States, (20) and the United States of America. The Commission (on behalf of the EEC Customs Union) and Member States of the EEC have now accepted the Protocol and in 1979 declared their intention of accepting Annex CI on the basis of strict reciprocity. (21) Annex CI provides for the importation of phonograms free of import duties and other restrictions.

9.4 The lack of recognition of the cultural value of the phonogram in the past led to a number of practical consequences.

9.4.1 First, some countries have considered that the process of recording is not a creative and artistic activity and that, therefore, phonograms could not be considered as creative works in the same way as books and musical compositions. As a result, in many countries sound recordings were not given the same kind of protection that, for example, books and music in printed form enjoy under existing legislation dealing with the copyright of authors and composers. This is true in several of the ten Member States of the EEC. Belgium, France, Greece and the Netherlands do not protect phonograms as a form of intellectual property but under the law of unfair competition. However, the rights of producers of phonograms have been gaining recognition fast during the past twenty years. There is today an increasing understanding of the creative and artistic skills involved in the production of phonograms and governments (including those just mentioned) have become aware of the fact that piracy adversely affects, not only the rights of the producers, but also the rights of the authors, composers and performers whose works and performances are fixed on records.

9.4.2 Second, this lack of recognition has in the majority of countries led to discrimination against phonograms in matters such as national taxation on sale and importation. As a general rule, because books and music in printed form are recognised as cultural materials, they are either not subject to national taxes on sale or importation, or an especially low rate is applied to them.

9.4.3 There are of course no import duties on phonograms circulating between Member States of the EEC, and the acceptance by the Commission of the Florence Protocol (on behalf of the Customs Union of the ten), together with its readiness to apply Annex CI on the basis of reciprocity, means that, so far as the EEC is concerned, this particular discrimination has been removed in principle. The present external tariffs applicable to records and tapes are set out in Table 18.

9.4.4 The situation is not so satisfactory with regard to national taxes on sales in the EEC. Table 18 also shows the rates of Value Added Tax (and other taxes) applied to the sale of records and tapes in the ten Member States; these are particularly high in Belgium, Denmark, France and Ireland. Not only are such high rates of VAT unjust, but they may encourage piracy (as do the very high rates of import duty in countries where these exist). The price of the legitimate phonogram, which as we have seen is already much higher than the pirate product, is inflated unjustifiably, making the cheap product of the pirate all the more attractive to the consumer. Where the retailer or importer is an innocent accomplice, VAT and duties will, of course, be paid. More often than not, however, pirate product is imported illegally and sold without the issue of any invoice. It has been suggested that:

"there would be no great difficulty in determining average rates (of VAT) likely to be accepted by all Member States for products as common as books and records. A "European rate" in these fields would be a concrete way - accessible to all - of showing evidence of the cultural unity of Europe". (22)

9.5 It is sometimes claimed that "serious" or "classical" music is "cultural", but that "popular" music is not. It is certainly true that some music is generally regarded as, and indeed is, "better" than other music, but the true distinction is between "good" music, on the one hand, and "less good", or "bad", music on the other, not between "serious" music on the one hand and "popular" music on the other. The popular music of one age may well become part of the classical heritage of later generations. Furthermore, granted that much of today's popular music, like much of the popular music of the past, is ephemeral and of little or no permanent value, the best may be outstanding in quality and scope. Moreover, it is impossible for anyone, however musically distinguished, to know where the line between the "good" and the "bad" is to be drawn. Any such judgment must be subjective, and musicians themselves may be least able to make objective evaluations. Popular music, including the many twentieth century derivatives of Afro-American music (work songs, spirituals, gospel music, ragtime, blues, jazz, rhythm and blues, rock and roll, reggae, disco), and European repertoire (the French chanson, folk music, country, vaudeville) reflect the history not only of musical taste in the twentieth century, but also reflect social conditions and the cultural values of the time. "Look through the nearest thing to a definitive work on million sellers, Joseph Murrell's Book of Golden Discs, and the shape of the musical accompaniment to our lives and the lives of our fathers and grandfathers becomes apparent." (23)

9.6 The 100th anniversary of the invention of recorded sound simultaneously by Thomas Edison and Charles Cros was celebrated in 1977. It was the occasion to review the importance of the role of the phonogram in cultural life. The Centenary celebrations were sponsored by Unesco and the World Intellectual Property Organisation whose representatives drew

attention to the cultural importance of phonograms. Mr. John Fobes, then Deputy Director-General of Unesco, spoke of "the important role which phonograms play, as a vehicle for communicating works of the mind, in the promotion and interpenetration of cultures". Other aspects were highlighted by Madame K.L. Liguier-Laubhouet, Deputy Director General of WIPO, when she stressed:

"... the immeasurable impact of the invention of sound recording on the lives of men and on the future of the world, and of the progress it has opened the way to ... in the unrestricted dissemination of music, which from that time on, has ceased to be the prerogative of an elite, of a privileged circle ... The development of a dynamic phonographic industry is a necessary corollary of any action to promote the artistic heritage". (24)

FOOTNOTES TO CHAPTER I

1. Unless otherwise stated, statistics shown have been collected by IFPI (International Federation of Phonogram and Videogram Producers), its National Groups and affiliated organisations.
2. 'Phonogram' is defined in the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Rome, 1961, and the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms, Geneva, 1971, as follows: "Phonogram means any exclusively aural fixation of sounds of a performance or of other sounds".
3. Producer of phonograms is defined in the same conventions as: "the person who, or the legal entity which, first fixes the sounds of a performance or other sounds".
4. The major record companies in the EEC have established subsidiary companies or appointed licensees throughout the world. For example, a major company based in the Federal Republic of Germany and the Netherlands has 26 record operations companies in 26 countries and 25 licensees all over the world. Another major company based in the United Kingdom has 34 subsidiaries in as many countries and 27 licensees throughout the world.
5. K. Fohrbeck and A. Wiesand, Musik, Statistik, Kulturpolitik. Daten und Argumente zum Musikleben in der Bundesrepublik Deutschland. Published on behalf of the German Music Council and on behalf of the Federation of Producers of Musical Instruments. Koln, DuMont Buchverlag, 1982.
6. G. Davies, The Private Copying of Sound and Audio-visual Recordings. Brussels, European Commission, 1983 and ESC Publishing Limited, Oxford, 1984.
7. Records of the International Conference of States on the Protection of Phonograms, Geneva, 1971, paragraph 31. Dr S.M. Stewart, in an article entitled "The Geneva Convention for the Protection of Phonograms", published in Copyright, May, 1973, p.111, pointed out that "The word "piracy" was removed from the text of the Convention as being too emotional".
8. However, the word "piracy" has been used to describe infringement of rights conferred by a patent or copyright since the beginning of the 18th century in the UK, as may be noted from the following quotations from the Shorter Oxford Dictionary: Pirate, "... One who appropriates or reproduces without leave, for his own benefit, a composition, idea, or invention that he has no right to;

especially one who infringes on the copyright of another ..." (1701); "To appropriate or reproduce (the work or invention of another) without authority, for one's own profit ..." (1706); Piratical, "...Given to literary piracy" ... (1736). Infringement of copyright has been commonly described as piracy by judges in the UK since the 19th century. See, for example, Kelly C.B. in Wood and Boosey [1867] LR3 QB 229; James V.C. in Pike v Nicholas [1869] LR5 Ch. 251; Pearce L.J. in Ladbroke (Football) Limited v William Hill (Football) Limited [1964] 1 WLR 291.

9. Billboard, 10 March 1984.

10. (a) Private copying is not permitted:
 (i) of works in Belgium (Copyright Law, 1866, as amended 1958); there is no specific legislation protecting producers of phonograms;
 (ii) of works in Greece (Copyright Law, 1920); there is no specific legislation protecting producers of phonograms.
 (iii) of works or phonograms in Ireland (Copyright Act, 1963);
 (iv) of works in Luxembourg (Copyright Law, 1972, Article 11);
 (v) of works or phonograms in the United Kingdom (Copyright Act, 1956); (cf. Report of the Committee to Consider the Law on Copyright and Designs, March 1977, paragraph 296).

(b) Private copying is permitted:
 (i) of works and phonograms in Denmark (Copyright Law No. 158, 1961, Articles 11 and 46);
 (ii) of works and phonograms in the Federal Republic of Germany (but right owners have the right to claim compensation for private copying) (Copyright Law, 1965, Article 53);
 (iii) of works in France (Law No. 57-296 on Literary and Artistic Property) - there is no specific legislation protecting producers of phonograms;
 (iv) of works in Italy provided the copies are "made by hand or by a means of reproduction unsuitable for circulating or diffusing the work in public" (Law for the Protection of Copyright and Other Rights Connected with the Exercise Thereof, 1941, Section 68);
 (v) of phonograms in Luxembourg (Law on the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Article 13(1));
 (vi) of works in the Netherlands (Copyright Law, 1912, as amended to 1972) - there is no specific legislation protecting producers of phonograms.

11. G. Davies, op.cit.

12. Cover versions, for example - France: Article 1 of the Law for the Repression of Fraud, 1905, and Article 44 of the Competition Law, 1973 (Loi sur la répression des

- fraudes, 1905; Loi de 1973 sur la concurrence); United Kingdom: Common law of passing off.
13. M.A. Chiavelli, Etude sur l'évolution de la concentration et des prix dans l'industrie et le commerce du disque en France, collection Etudes, Série évolution de la concentration et de la concurrence, No. 30, EEC, June 1979.
 14. "Post-War Music on Record", The Gramophone, January 1980, p. 1125.
 15. Lucien Adès, L'Edition sonore, May 1979, p.1.
 16. With regard to the term "cultural good", see "Community Action in the Cultural Sector", Bulletin of the European Communities, Supplement 6/77, and Jean Duquesne, "The System of Trade in Cultural Goods in the Nine Member States of the EEC", September 1975, p.11: "Objects, articles and products also constitute cultural goods when ...they are by their nature or purpose cultural "vehicles", but at the same time constitute goods and works: books and other products of graphic art, photographs, films, records, tape recordings ..."
 17. L. Adès, op.cit, p.2.
 18. "The Great Record Robbery", London, IFPI Secretariat, 1978.
 19. "Sound and Audio-visual Recordings are Cultural Materials, Just Like Books", London, IFPI, 1979, p.5.
 20. Regulation (EEC) No. 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials, O.J. L184/1, 15 July 1975.
 21. Decision No. 79/505/EEC of the Council dated 8 May 1979 on the conclusion of the Protocol to the Agreement on the importation of educational, scientific and cultural materials O.J. L134/13, 31 May 1979; and see the Recommendation for a Council decision on the same subject from the Commission, dated 30 January 1978 (COM(78)19 final).
 22. J. Duquesne: op.cit., p.71.
 23. Derek Jewell, "Popular Marriage Begets Golden Children", The Times, 18 April 1977, The Gramophone Supplement, IV.
 24. Speeches delivered at the Centenary Celebration of the Invention of Recorded Sound, Unesco House, Paris, 18 April 1977.

CHAPTER II - COMPARATIVE STUDY OF THE INCIDENCE OF PIRACY
IN THE MEMBER STATES OF THE EEC

1 INTRODUCTION

1.1 The information in this Chapter has been provided by the nine members of the Association of IFPI Affiliates in the EEC (1) representing producers of phonograms and relates to the incidence of piracy in the year 1982. The information provided for Belgium also covers Luxembourg.

1.2 As already stated in Chapter I (paragraph 3.1), all the data contained in this study with regard to the extent and nature of piracy in the EEC countries is necessarily based on informed estimates. It must be reiterated that precise and detailed information regarding illegal activities is impossible to obtain. However, the figures are as accurate and reliable as it is possible to provide in the circumstances.

2 THE EXTENT OF PIRACY IN THE EEC MEMBER STATES



2.1 Piracy is a problem throughout the EEC except in Denmark where, to date, piracy is extremely limited. It will be recalled (see Chapter I, paragraph 3.2) that the total estimated retail value of pirate product sold in the EEC in 1982 (records and tapes) is US\$102 million, of which records account for US\$27 million and cassette tapes for US\$75 million. In retail value, this represents 3% of the total market in the EEC countries for records and tapes and, in unit sales, 1-2% of the record market and 14% of the cassette tape market (see Table 9).
























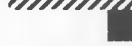





2.2 However, the reader need only glance at the figures which follow to see that the extent of piracy, both in units and retail value, in the eight EEC countries for which statistics are available varies enormously from country to country. The diagrams also show a comparison between the extent of piracy in 1978 and in 1982 and it is encouraging to note that piracy has by and large regressed in every country.

2.3 Figure I shows the number of units of pirate product sold in the EEC countries in 1978 and 1982 in millions of units. Since 1978, piracy has been brought under better control in all EEC countries. Even in Greece, where the number of pirate cassettes sold has slightly increased, as a proportion of the total market, piracy is showing a small decrease. As can be seen, the number of pirate tapes sold is usually much higher than pirate records. In Belgium, estimates for 1982 show that pirate records and tapes are sold in similar quantities, whereas in 1978 more records were being sold. This change of tendency is due to the fact that "pirate" (stricto sensu) and counterfeit records have practically been eradicated from the market and only a few bootleg records can now be found. In the Netherlands, there is still a higher number of pirate records which are mainly counterfeits and bootlegs. In the United Kingdom, figures for 1982 show that the number of pirate

records on the market has decreased substantially as compared to 1978. This is due to a reduction in the availability of bootleg records but, at the same time, the number of bootleg cassettes on the market increased noticeably as well as counterfeit tapes. Pirates tend to switch more and more to cassettes since their production is easier and requires a less costly establishment.

I. Millions of units of pirate product sold in the EEC countries in 1978 and 1982
































1978  1982 

	<i>Tapes</i>		<i>Discs (LPs)</i>	
Belgium	0.40m 	0.08m 	0.60m 	0.10m 
France	2.60m 	1.40m 	0.70m 	0.30m 
Germany	4.00m 	3.00m 	3.20m 	1.50m 
Greece	9.00m 	9.50m 	Very low	Very low
Ireland	0.15m 	0.02m 	0.05m 	Very low
Italy	7.00m 	5.50m 	2.80m 	1.00m 
Netherlands	0.50m 	0.18m 	2.50m 	0.90m 
United Kingdom	1.50m 	2.50m 	2.00m 	0.50m 

2.4 It is instructive to compare Figure I with Figure II, which shows the unit sales of pirate product as a percentage of the total market (pirate and legitimate). This illustrates the real impact of piracy on the individual markets in the EEC countries. Since 1978, piracy of both records and tapes has declined in most countries of the EEC. The figures for 1982 show that, except for Greece and Italy, piracy of phonograms is now under control and kept below 10% in the case of cassettes, and under 5% for records. In Greece, however, pirate cassettes represent as much as 75% of the total market and although pirate records are few this is no consolation since the large numbers of pirate cassettes and their attractive price maintain sales of legitimate albums at artificially low levels. In Italy, sales of pirate cassettes represent 30% of the total market and thus remain a serious problem. In 1978, however, sales of pirate cassettes held 40% of the Italian market and the new law passed in 1981, which imposed stiffer penalties for piracy, has played an important part in reducing piracy by 10% (see Chapter IV, G. paragraphs 7.2.6 to 7.2.7). In the United

Kingdom, there has been a noticeable increase in tape piracy, from 1.5 million to 2.5 million units, which, as a percentage of the total pre-recorded tape market, represents an increase of 0.5% compared with 1978. However, at the beginning of 1983 there was a sudden influx of pirate tapes on the market and, at that time, it was estimated that tape piracy amounted to 13% of the market. A swift reaction on the part of the British Phonographic Industry (BPI), resulting in seizures of pirate product and court actions, brought the level of piracy down again to around 7% at the end of the year. Thus, even in countries where piracy of cassettes is limited to 5-8% such as France, the Federal Republic of Germany and the United Kingdom, experience has shown that it can quickly rise again and that close vigilance must be maintained.

II. Unit sales of pirate product as a percentage of the total market (pirate and legitimate markets) in 1978 and 1982

	1978 		1982 	
	<i>Tapes</i>		<i>Discs (LPs)</i>	
Belgium	15.0%		3.0%	
	4.0%		1.0%	
France	12.0%		1.0%	
	5.0%		0.5%	
Germany	9.0%		2.5%	
	7.0%		1.5%	
Greece	78.0%		Very low	
	75.0%		Very low	
Ireland	20.0%		3.0%	
	3.0%		Very low	
Italy	*40.0%		6.5%	
	30.0%		5.0%	
Netherlands	10.0%		7.0%	
	5.0%		3.0%	
United Kingdom	7.0%		2.0%	
	7.5%		1.0%	

*revised percentage

2.5 Figure III shows the retail value in millions of US dollars of pirate product sold in the EEC in 1978 and 1982. The reduction in the level of piracy is naturally reflected in the turnover of pirate product. The reduction in value is particularly striking in Belgium. This is due to the fact that the major counterfeiting networks operating previously have been dismantled and increased competition between the remaining pirates has led to a lowering of the prices of pirate product (stricto sensu). In Greece, fierce competition between pirates has also led to a reduction in the value of pirate product

sold. In the United Kingdom, very cheap counterfeit tapes appeared on the market in 1982 and 1983. Although the level of piracy, when expressed as a percentage of the total number of units sold (Figure II), appears low in some of the major EEC markets (such as the Federal Republic of Germany, the United Kingdom and France) it should be noted that in terms of value these countries have a large turnover of pirate product. For instance, Germany has the largest turnover of pirate product in the EEC. Sales of illegitimate product in Germany were estimated at \$22 million in 1982 which is more than Greece, where piracy represents a turnover of \$19 million, and Italy, where sales of pirate product amounted to \$21 million in 1982.

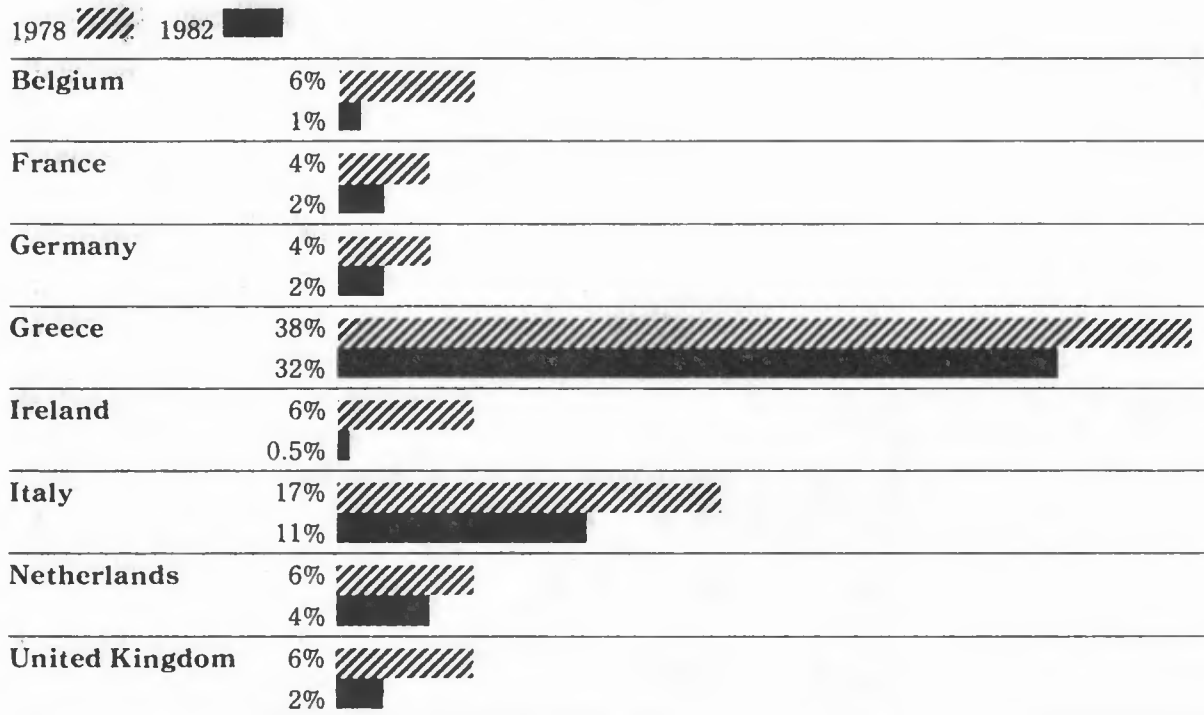
III. Retail value in millions of US \$ of pirate product sold in the EEC in 1978 and 1982

	1978	1982
Belgium	\$9.00m	\$0.88m
France	\$38.00m	\$14.70m
Germany	\$50.00m	\$22.50m
Greece	\$27.00m	\$19.00m
Ireland	\$1.40m	\$0.10m
Italy	\$30.00m	\$21.20m
Netherlands	\$20.00m	\$8.60m
United Kingdom	\$45.00m	\$15.00m

2.6 Figure IV pictures the retail value of all pirate product as a percentage of the total market (that is, the legitimate and pirate markets combined). Here again, in Greece and Italy, the highest levels of piracy are shown, 32% and 11% respectively. It is encouraging that the 1982 figures show a noticeable drop in the retail value of piracy in all countries. However, (as explained above in paragraph 2.5) it should be remembered that even in countries like the Federal Republic of Germany where piracy only represents 2% of the market in terms of value, the actual turnover of pirate product is the largest in the Community and as such should not be disregarded as insignificant. It is obvious that, in a country such as Greece, fighting piracy is a matter of immediate survival for the recording industry, whereas in countries like Germany, France or the United Kingdom, it is more a question of preventing

piracy from rising again and, if possible, bringing it even further under control.

IV. Retail value of pirate product as a percentage of the total market (pirate and legitimate markets) in 1978 and 1982

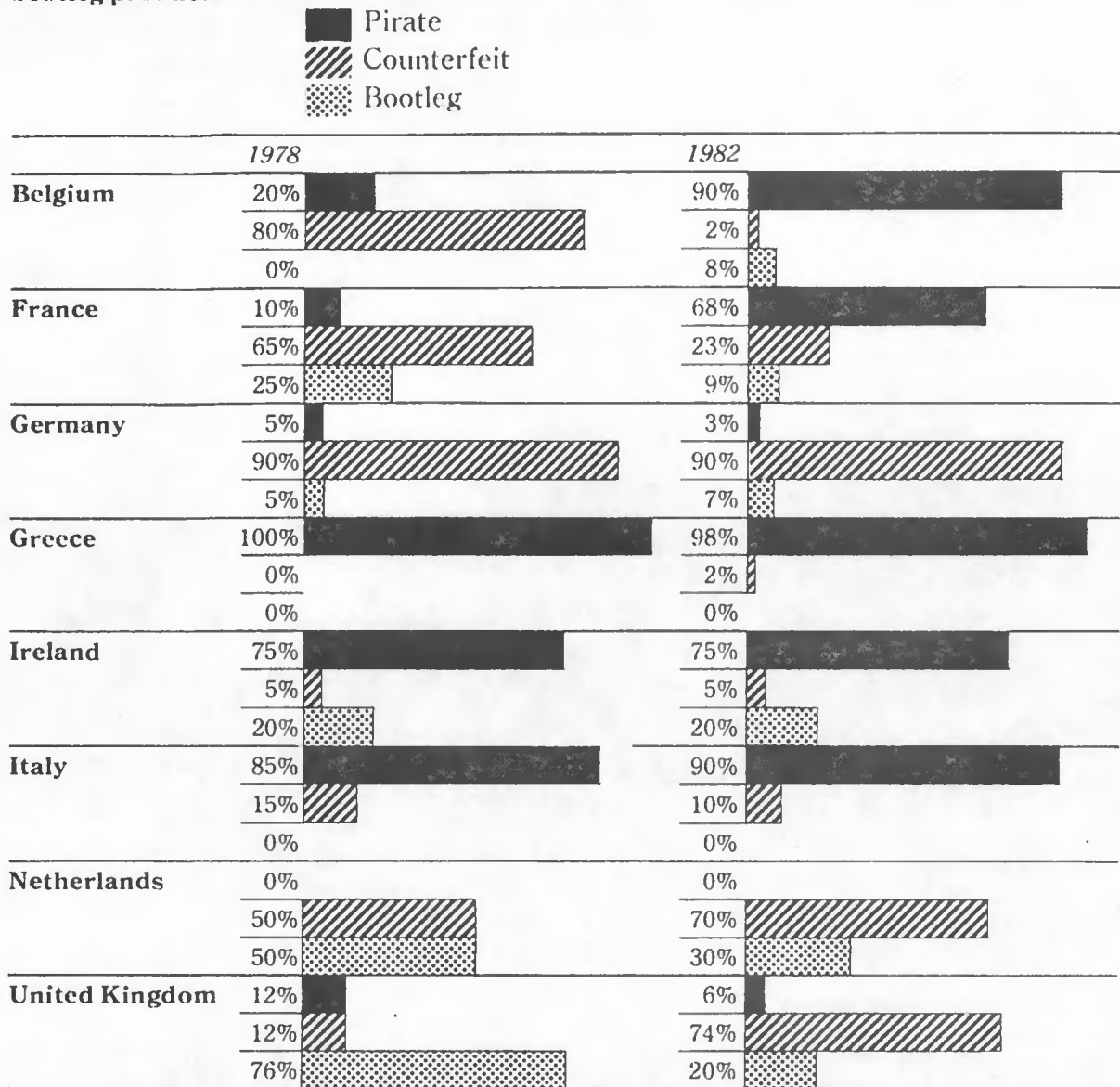


3 THE NATURE OF PIRACY IN THE EEC MEMBER STATES

3.1 A breakdown of pirate product according to its nature, distinguishing the percentages of the total pirate market represented by: (i) pirate product (stricto sensu), (ii) counterfeit product and (iii) bootleg product, is also instructive as will be seen in Figure V. Once more, each market has individual characteristics and the comparison between 1978 and 1982 shows an interesting change of tendencies in some countries.

V. The nature of piracy in EEC countries.

Breakdown (in percentages) of pirate market into pirate (*stricto sensu*), counterfeit and bootleg products.



3.2 In 1978, the illegitimate product found on the market in Belgium and France consisted mainly of counterfeited records and tapes, whereas pirate product (*stricto sensu*) represented a small proportion of all illegitimate product. Today, pirate product (*stricto sensu*) represents a much higher percentage of all illegitimate product sold in the two countries. This apparent change is due to the fact that recent investigations and legal actions have resulted in the dismantling of several major counterfeiting networks. This led to the drastic reduction of counterfeit product on the market and a noticeable decrease in the level of piracy generally.

3.3 In the Federal Republic of Germany, the nature of piracy remains the same. Counterfeit product represents nearly all the illegitimate product found on the market. This consists of sophisticated counterfeit records or tapes which are extremely difficult to detect but very profitable for pirates since counterfeits normally sell for more or less the same

price as the original products. In Ireland, also, the nature of piracy does not appear to have changed over the past four years but, contrary to the situation in Germany, piracy (stricto sensu) remains the most common form of illegitimate product.

3.4 In the United Kingdom, counterfeiting has now become the major form of piracy. As mentioned above (paragraphs 2.4 and 2.5), there has been a sudden influx on the market of cheap counterfeit tapes retailing at prices as low as £2. Piracy (stricto sensu), as before, represents a very low proportion of the illegitimate market.

3.5 Piracy (stricto sensu) is a very serious problem in Italy and Greece. As is shown in Figure I, large quantities of pirate cassettes were sold in 1982, 9.5 million units in Greece and 5.5 million in Italy. Pirates do not even make an effort to disguise their product to pass it off as the original but sell it quite openly at very low prices. Thus, the retail value of this vast illegal activity is not as significant as its extent in terms of unit sales (compare Figures I & III).

3.6 Bootlegging was a common form of piracy in 1978, particularly in the Netherlands and the United Kingdom where it represented 50% and 76% respectively of all illegitimate product. Between 1978 and 1982, bootlegging decreased in these two countries and, in 1982, represented 30% of all pirate product in the Netherlands and 20% in the United Kingdom. Bootleg recordings are traditionally sold in the form of records as collectors' items for very inflated prices. Since 1983, however, an increasing number of bootleg cassettes at very reasonable prices have appeared on the British market. This new development should be watched carefully since it is now leading to a new increase of bootleg recordings, particularly in the light of the legal set-back suffered recently by UK producers of phonograms in trying to control bootlegging (see Chapter IV, I, paragraphs 10.3.12 to 10.3.15).

3.7 As regards quality, in general it may be said that pirate (stricto sensu) and bootleg product is of low quality. The standard of counterfeit product is higher and has been improving with the help of new technology but it is generally inferior to the legitimate product.

4 TYPES OF MUSIC PIRATED AND SOLD IN THE EEC MEMBER STATES

4.1 The nine phonogram members of the Association of IFPI Affiliates in the EEC were asked to estimate what percentage of the total pirate product sold in their countries in 1982 consisted of the following four categories of music:

- classical music
- pop music (international repertoire)
- national repertoire
- ethnic repertoire (for example, Arab and Indian music)

4.2 This breakdown is shown in Figure VI. Very little has

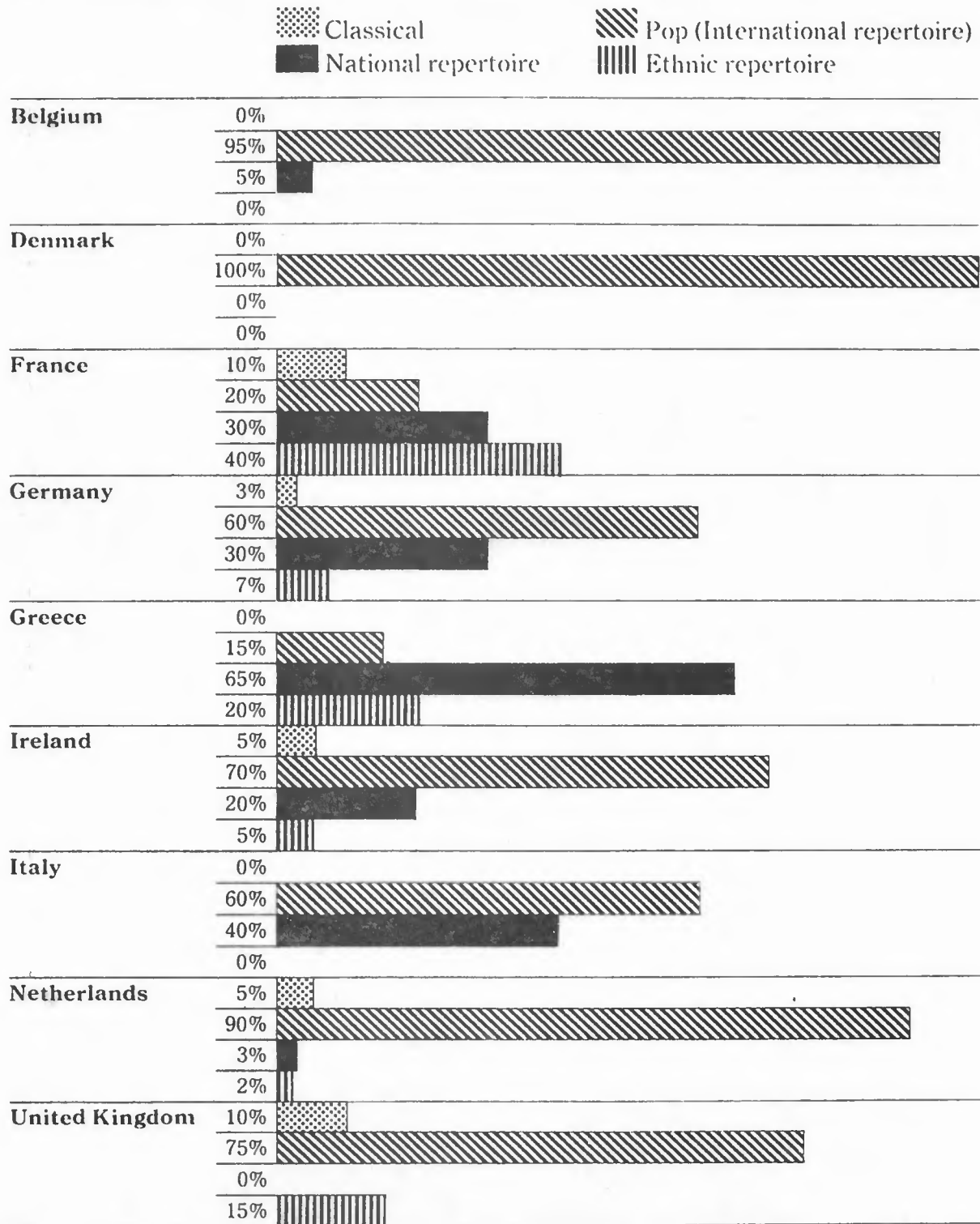
changed over the past few years. International repertoire remains by far the most pirated form of music in every country, except in France and Greece. This situation is not surprising since the pirates are after easy profits and only copy the most successful "hits" with the widest possible audience. Moreover, cassettes of international repertoire are easier to dispose of since they can be exported to any country as well as sold at home.

4.3 It should be noted that in France, the Federal Republic of Germany, Greece, Ireland and Italy, a significant proportion of pirate product consists also of recordings of national repertoire. In Greece, where piracy is so widespread, it is interesting to note that pirates mostly copy national repertoire (65%). The French pirate market is also very individual. More pirate product consists of national repertoire (30%) than international repertoire (20%). In France, the market share of phonograms of national repertoire has always been high and this preference on the part of the public is, to some extent, reflected in the kind of pirate product available on the market.

4.4 Although ethnic repertoire represents a small part of the total market in the various countries, it tends to be proportionately more pirated than other repertoires, particularly in France and the United Kingdom (mostly Arab and Indian music, respectively). The great majority of unauthorised recordings of ethnic repertoire are in the form of pirate product (stricto sensu) rather than counterfeit product. In France, Figure VI indicates that 40% of all music pirated consists of ethnic repertoire. The drop in piracy in the French market over the past few years has benefited mainly international and national repertoire and, as a result, pirated ethnic repertoire is now the most common illegal product. However, the recent seizure in Toulon of 30,000 counterfeited cassettes of Arab repertoire shows that SNEP (Syndicat National de l'Edition Phonographique - the national association of record producers) and SACEM (Société des Auteurs, Compositeurs et Editeurs de Musique - the authors' society) are beginning to stamp down successfully on piracy of ethnic repertoire. (2)

4.5 The proportion of classical music pirated is generally small and what piracy there is of classical music is mainly bootleg. In France and the United Kingdom, it accounts for 10% of the total pirate market; while this is a comparatively small percentage, it is the highest in the Community. In Italy, piracy of classical music represents less than 1% of the total but that, too, is bootleg.

VI. Percentage of types of music pirated and sold in EEC countries (1982).



4.6 Figure VI therefore demonstrates that any repertoire can be affected by piracy. Every producer, composer and performer, opera and pop singer alike should be aware that they face the probability of having their phonogram, work or performance pirated.

5 CIRCULATION OF PIRATE PRODUCT

5.1 The provenance of pirate product has not changed over the past few years.

5.2 Of all the pirate product sold on home markets in the EEC, a very large proportion is imported. Both the amount imported and its provenance vary considerably from country to country. Figure VII sets out the percentage of pirate product sold in each country which is imported and a short description of its provenance.

VII - HOME MARKET - PIRATE PRODUCT SOLD

COUNTRY	% IMPORTED INTO THE COUNTRY	PROVENANCE OF IMPORTED PRODUCT
Belgium	40%	Mainly EEC
Denmark	100%	EEC & ROW
France	over 50%	EEC & ROW
	Arab repertoire, other repertoire - low %	(in particular: Italy, Netherlands South East Asia)
Germany	40%	Mostly EEC (Belgium, Italy, Netherlands)
Greece	0%	
Ireland	85%	50/50 EEC/ROW
Italy	5% tapes 80% records	Non-EEC (USA, Singapore)
Netherlands	99%	50/50 EEC/ROW
United Kingdom	% very low	EEC/ROW

ROW = Rest of the world

5.3 It will be seen that, in France, imports are restricted to counterfeit material and pirate product containing Arab repertoire. In Italy, 80% of all pirate records are imported, whereas 95% of tapes are manufactured in Italy.

5.4 Imports come in significant quantities from other EEC countries into Belgium, France, the Federal Republic of Germany, Ireland and the Netherlands. In Italy, the majority of imports come from outside the EEC. Imports from outside the EEC come principally from South East Asia (particularly Singapore) and the United States of America.

5.5 Much pirate product is, of course, manufactured in EEC countries. All the pirate product sold in Greece is manufactured in the country. Figure VIII shows the percentages

of pirate product manufactured in each country which is exported abroad and a brief description of its destination.

VIII - HOME MARKET - PIRATE PRODUCT MANUFACTURED

COUNTRY	% EXPORTED ABROAD	DESTINATION OF EXPORTED PRODUCT
Belgium	30%	EEC
Denmark	0%	-
France	50% Arab repertoire, other repertoire - very low	EEC/mostly ROW (especially Africa, & Middle East)
Germany	30%	EEC/Austria and Switzerland
Greece	No information	
Ireland	5%	50/50 EEC/ROW
Italy	15%	EEC (especially France)
Netherlands	100%	Mainly EEC
United Kingdom	very low	Non-EEC

ROW = Rest of the World

5.6 If Figures VII and VIII are compared, it is noticeable that the pattern of imports and exports into and from each EEC country is often dissimilar. In three cases, the pattern is more or less identical. In Belgium and the Federal Republic of Germany, imports come mainly from other EEC countries and most exports go to the EEC. In Germany, however, some pirate products are also exported to Austria and Switzerland, particularly pirated German repertoire. In Ireland, both imports and exports are evenly divided between the EEC and other countries. In France, however, imports come from EEC countries and other countries in the same proportions but most exports go to non-EEC countries although the share of exports to other EEC countries, particularly Belgium, has increased slightly over the past few years. In Italy, imports come from outside the EEC but exports go to EEC countries and to France, in particular. In the United Kingdom, imports come from both EEC and non-EEC countries while exported product goes outside the EEC; for example, some pirate product manufactured in the United Kingdom has recently been found in South Africa. In the Netherlands, imported pirate product comes from EEC and non-EEC countries, whereas the great majority of exports go to the EEC. No pirate product is manufactured in Denmark. Such pirate product as there is on the market is imported and comes both from EEC countries and from outside.

5.7 There is considerable evidence of the circulation of all types of pirate product (pirate stricto sensu),

counterfeit and bootleg) within EEC borders. Much pirate product is manufactured in EEC countries and exported to other EEC countries, but it is also imported into the EEC and then circulated within the Community.

6 METHODS OF DISTRIBUTION OF PIRATE PRODUCT

6.1 The distribution network for pirate product has a variety of outlets. The most sophisticated pirates market good quality counterfeit product through the normal channels of distribution of records and tapes, via wholesalers and established retail outlets. In many instances, the wholesalers and retailers also deal with legitimate product and are aware of the illegal nature of the pirate product.

6.2 However the majority of pirate product is distributed through less conventional outlets such as street traders, stalls in fairs, local markets and sales by travelling agents out of the back of their vans. Small retail outlets which only sell records and tapes as a "side line" such as petrol stations and corner shops are also important outlets for pirate product.

6.3 Another way of distributing pirate product has recently emerged. Some disc jockeys who make compilations of phonograms for performance in discotheques and clubs have started to make additional copies of such compilations for sale to customers. This practice has recently become very widespread (Belgium, France, the Federal Republic of Germany, Netherlands) but is difficult to stop since the pirated copies do not reach the open market and evidence of such illegal activity is hard to obtain.

7 LOSS OF EARNINGS RESULTING FROM PIRACY

7.1 Whenever a pirate record or tape is sold, authors, composers, music publishers, performers, dealers and producers of phonograms suffer a loss. (The rights infringed by piracy are described in Chapter I, 5 and Chapter III.) The authors and composers do not receive the royalty to which they are entitled and which, by agreement, they share with their music publishers. Artists do not receive their royalties. Honest dealers lose the margin they receive on the sale of legitimate records and tapes and, finally, the legitimate producer suffers loss in a variety of ways. His original phonogram is copied without licence and without compensation. Furthermore, since pirates only duplicate successful recordings, the market for the legitimate product is undermined and the legitimate producer loses sales. He is deprived, therefore, of the contribution such lost sales would otherwise make towards his overheads and profits.

7.2 Seven phonogram members of the Association of IFPI Affiliates in the European Communities have estimated the annual loss of earnings suffered by each of the categories of right owners mentioned (see Figure IX). It should be emphasised that these are no more than estimates, but the figures give an idea of the magnitude of the damage done to the interests of those concerned by piracy. The loss of earnings

suffered by each of the categories of right owners and distributors has been estimated for some countries. The artist royalty has been assumed at 14% of retail price less VAT for most countries. In Greece, however, where the majority of pirate product consists of local repertoire, the artist royalty has been assumed at 10% of retail price less tax. The mechanical royalty received by the authors and publishers is based on retail price less tax and is 6½% in the UK, 5% in Ireland and has been estimated to be equivalent to 7% in other countries. The loss for the producer and distributor has been assumed at 30% of the retail price less tax (15% for each of them) which constitutes the average contribution towards overheads and profits.

IX ESTIMATED LOSS OF EARNING RESULTING FROM PIRACY - 1982
(In Millions of National Currency and US dollars)

COUNTRY	AUTHORS/ MUSIC PUBLISHERS	PERFORMERS	DISTRIBUTORS	PRODUCERS OF PHONOGRAMS
Belgium	BF 3.1 US\$ 0.06	BF 6.0 US\$ 0.12	BF 6.5 US\$ 0.13	BF 6.5 US\$ 0.13
France	FF 6.5 US\$ 1.0	FF 12.6 US\$ 1.8	FF 14.0 US\$ 2.0	FF 14.0 US\$ 2.0
Germany	DM 3.6 US\$ 1.5	DM 6.9 US\$ 2.8	DM 7.3 US\$ 3.0	DM 7.3 US\$ 3.0
Greece	Dr.145.0 US\$ 2.0	Dr.195.0 US\$ 2.7	Dr. 290.0 US\$ 4.0	Dr. 290.0 US\$ 4.0
Italy	L5,000.0 US\$ 3.6	L9,000.0 US\$ 6.4	L10,000.0 US\$ 7.1	L10,000.0 US\$ 7.1
Netherlands	Dfl 1.4 US\$ 0.5	Dfl 2.8 US 1.0	Dfl 2.9 US\$ 1.1	Dfl 2.9 US\$ 1.1
United Kingdom	£ 0.7 US\$ 1.1	£ 1.6 US\$ 2.6	£ 1.7 US\$ 2.7	£ 1.7 US\$ 2.7

8 PIRACY OF PHONOGRAMS AND VIDEOGRAMS TODAY

8.1 Piracy of phonograms is still low and well under control in most EEC countries with the serious exceptions of Italy and Greece. In Italy, however, as mentioned above (paragraph 2.4) tape piracy has regressed since the enactment of a new law in 1981 imposing stiffer penalties for piracy of phonograms and the active role played by AFI (Associazione dei Fonografici Italiani), the local IFPI group, in enforcing the law has also widely contributed to this. In Greece, successful

court actions in the course of 1983 by the Greek Group of IFPI have resulted in a drastic reduction of piracy in the Athens area. The Greek Group of IFPI is now planning similar actions in other parts of Greece. The last bastion of piracy in the EEC seems now to be shaken.

8.2 The situation however is not as simple as it first appears. Piracy has to be considered in the wider context of audio-visual works. As mentioned before (Chapter I, paragraph 3.2), the rapid expansion of the home video industry in the EEC has brought in its trail a sudden surge of video piracy. Indeed, there is evidence to prove that many pirates have switched from audio piracy to video piracy. Video piracy is much more profitable since the product itself can retail for a much higher price. Moreover, this young and vigorous industry is still in the process of organising itself in some Member States of the Community. In others, effective anti-piracy operations have been, or are in the course of being established: this is the case in Belgium, France, the Federal Republic of Germany, Ireland, the Netherlands and the United Kingdom. ⁽³⁾ Because of the relatively novel character of the industry it is not possible to estimate the extent of video piracy in terms of value for the whole of the EEC. However, in the United Kingdom alone, it has been estimated that, in 1982, pirate video cassettes had a retail turnover of at least £100 million which was equal to the estimated turnover of the legitimate industry. During that year, video piracy reached 70-75% in Belgium, the United Kingdom and the Netherlands, 60% in Ireland, 50% in the Federal Republic of Germany. London was nicknamed the "capital of video piracy" with vast amounts of pirate video cassettes being exported abroad. In the Netherlands, video pirates in the Hague threatened to burn down and vandalise a whole district were the police to dare to raid their shops. In the event, the police did not meet the challenge. The private investigators of the Dutch authors' society, STEMRA (Stichting tot exploitatie van mechanische reproductie rechten der auteurs), have to wear bullet-proof jackets constantly for their safety. These facts illustrate the fact that behind piracy there are well-organised criminal elements who will go to any lengths to protect their illegal profits. These facts also prove that audio-visual piracy taken as a whole has increased dramatically since the advent of the video industry. The video industry, however, is beginning to fight back; as mentioned above, the national video associations and film industries are organising against the pirates. In the United Kingdom, the Federation Against Copyright Theft (FACT), founded in 1982, has made a successful start in fighting video piracy and recently reported that its proportion of the total market has been reduced to around 40-50%. ⁽⁴⁾ In Denmark, video piracy is now down to 10% whereas it represented over 50% of the total market in 1981. Video piracy remains high, however, in all the other EEC countries and the video industry needs good legislation as well as co-operative law enforcement agencies in order to be able to stamp it out.

FOOTNOTES TO CHAPTER II

1. There is no IFPI National Group in Luxembourg.
2. Nice Matin, 4 January 1984.
3. Unless otherwise stated, the statistics on video piracy in paragraph 8.2 were provided by the video associations affiliated to IFPI in Belgium (SIBESA Video), France (Syndicat National de l'Edition Videographique (SNEV)), Germany (Deutsche Landesgruppe der IFPI, Fachgruppe Video), Ireland (Irish Videogram Association), Netherlands (NVPI Video) and the United Kingdom (British Videogram Association (BVA)).
4. Billboard, 10 March 1984.

CHAPTER III - THE INTERNATIONAL CONVENTIONS RELEVANT TO PIRACY IN FORCE IN EEC COUNTRIES

A. THE ROME CONVENTION, THE PHONOGRAMS CONVENTION AND THE BERNE CONVENTION

When a phonogram is pirated, two completely distinct rights are infringed: the rights of the producer of the phonogram and the rights of the author. In the case of bootlegging, the authors' and the performers' rights are infringed.

1 The Rights of Producers of Phonograms under the Rome and Phonograms Conventions

1.1 The producer of a phonogram is the person who, or the legal entity which, first fixes the sounds of a performance or other sounds. (1) The original producer's rights may, of course, be assigned and exercised by his successor in title or exclusive licensee. The "first fixation" is the total of the sounds embodied on the master tape used for the duplication of records or cassette tapes. The producer is the person or company for whom the recording is being made. This will be the record company where the artist has a recording contract with a record company and will be a production company in the case of an artist who is contracted to his own or a third-party production company. Such a production company (if not also a record company) will license a record company to duplicate and distribute records and cassette tapes incorporating the first fixation.

1.2 The rights of producers of phonograms are defined in and protected under the two international Conventions mentioned above, the Rome Convention, 1961, and the Phonograms Convention, 1971.

1.3 Under the Rome Convention, the producer is protected against the unauthorised duplication of his phonogram (that is, against piracy). The Convention also provides for payment of equitable remuneration either to the producer, or to the performers, or to both, in respect of the broadcasting and communication to the public of phonograms.

1.3.1 Article 10 of the Rome Convention provides that:

"Producers of phonograms shall enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms."

1.3.2 Article 12 provides that:

"If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of

phonograms, or to both."

The provisions of Article 12 are not the subject of this study. (2)

1.4 The Phonograms Convention was specifically established to combat piracy. Article 2 provides that:

"Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public."

The means by which the Phonograms Convention is to be implemented is left by its Article 3 to the domestic law of each Contracting State and shall include one or more of the following:

"Protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by penal sanctions."

1.5 The protection afforded to producers of phonograms against piracy under the Rome Convention, being a right to authorise or prohibit the direct or indirect reproduction of phonograms, must be by way of copyright or other specific related rights (such other rights are variously described in the national legislation of EEC Member States as related rights, neighbouring rights, Leistungsschutzrechte, etc.). The Phonograms Convention, however, permits lesser forms of protection by means of the law of unfair competition and penal sanctions.

1.6 The minimum term of protection provided for in both Conventions is twenty years. In the Rome Convention, the period is twenty years computed from the end of the year in which the fixation was made (Article 14). In the Phonograms Convention, the period is computed either from the end of the year of first fixation or of the year in which the phonogram was first published (Article 4).

1.7 The Rome Convention is based on the principle of national treatment. Each Contracting State extends the same protection to beneficiaries from other Contracting States as it does to its own nationals (Articles 4, 5 and 6). The Phonograms Convention, by contrast, (Article 2) imposes an obligation on Contracting States to protect producers of phonograms who are nationals of other Contracting States against certain acts by one or more of the means specified in Article 3. This obligation may have the result that foreign repertoire from another Contracting State of the Phonograms Convention enjoys a higher standard of protection than national repertoire.

1.8 The Rome Convention provides for certain exceptions to the protection it guarantees as regards private use, use of short excerpts in connection with the reporting of current events, ephemeral fixations by a broadcasting organisation by means of its own facilities, and for its own broadcasts, and use solely for the purposes of teaching or scientific research. Moreover, a Contracting State may provide for the same kind of limitations with regard to the beneficiaries of the Convention as it provides for in connection with the protection of copyright in literary and artistic works. The Phonograms Convention also provides that Contracting States may make the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works (Rome Convention, Article 15; Phonograms Convention, Article 6).

1.9 Both Conventions provide that where Contracting States require compliance with formalities as a condition of protection in relation to phonograms these shall be considered as fulfilled if all authorised duplicates of the phonogram or their containers bear a notice consisting of the symbol (P), accompanied by the year date of the first publication. The container or notice must also identify the producer, his successor in title or his exclusive licensee (Rome Convention, Article 11; Phonograms Convention, Article 5).

1.10 Six Member States of the EEC have adhered to the Rome Convention: Denmark, Federal Republic of Germany, Ireland, Italy, Luxembourg and the United Kingdom. Belgium and France signed the Rome Convention on its adoption in October, 1961, and the Netherlands took an active part in the Diplomatic Conference and signed the Final Act. (Table 19 shows the present state of ratifications of and accessions to the Convention as of 1 August 1984).

1.11 The Belgian Government has announced its intention of ratifying the Rome Convention, (3) and a Bill which will permit the French Government to ratify it was adopted by the National Assembly at its first reading on 19 June 1984. (4) It is expected that its passage through Parliament will be completed in 1984. The Government of the Netherlands has announced that it is considering introducing legislation for the protection of producers of phonograms and performers. However, as regards the possible accession of the Netherlands to the Rome Convention, the Government has reserved its position. The Greek Government stated that it intends in due course to accede to the Convention in response to a questionnaire sent, in May 1983, to States eligible to adhere to it by the Secretariat (5) of the Intergovernmental Committee of the Rome Convention.

1.12 Article 26 of the Rome Convention provides that, at the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of the Convention. At present, Belgium, France, Greece and the Netherlands do not provide the protection required by the Convention for performers, producers of phonograms and broadcasting organisations.

1.13 The Phonograms Convention has also been adhered to by six Member States of the EEC: Denmark, France, Federal Republic of Germany, Italy, Luxembourg and the United Kingdom. Of the remaining four States, Belgium, Greece and the Netherlands are in a position to adhere to it on the basis of their existing legislation and case law; the Irish Copyright Law is in conformity with it although enabling legislation is required. Belgium and the Netherlands have announced their intention of acceding to it.⁽⁶⁾ All four States participated in the Diplomatic Conference which adopted the Convention. (Table 20 shows the present state of ratifications of and accessions to the Convention as of 1 August 1984.)

1.14 Nine Member States afford some form of protection to producers of phonograms in their civil laws. Six do so by way of specific rights and three under the law of unfair competition. Ireland and the United Kingdom protect producers of phonograms against unauthorised duplication (piracy) by a copyright under their Copyright Acts. Denmark, the Federal Republic of Germany and Italy grant specific rights against such duplication to producers of phonograms in their Copyright Laws. The rights are dealt with in the latter three countries in Chapters of the Copyright Laws entitled respectively: in Denmark - "other rights"; in Germany - "Leistungsschutzrecht"; and, in Italy - "other rights connected with the exercise of copyright". Luxembourg protects producers of phonograms against unauthorised duplication by means of a specific law on the protection of performers, producers of phonograms and broadcasting organisations. In Greece, producers have to rely on the protection afforded by the Criminal Code.

1.15 Belgium, France, Greece and the Netherlands have no specific related or neighbouring rights legislation protecting performers, producers of phonograms or broadcasting organisations. (In Greece, although legislation protecting performers has been enacted it has not been brought into force (see Chapter IV, E. paragraphs 5.2.4 to 5.2.6, below.) In the fight against piracy, producers of phonograms must rely either on action by the authors or on the law of unfair competition or, in the case of Greece, on penal sanctions. France relies upon the law of unfair competition to fulfil its obligations under the Phonograms Convention.

1.16 Some general observations with regard to the respective efficacy of specific rights as opposed to the law of unfair competition may be appropriate here. The specific right, whether it is a copyright or a related right, gives the producer of phonograms the right to authorise or prohibit the direct or indirect duplication of his phonogram for a specified period of time. The protection afforded is analogous to that afforded to authors and has the advantage of being certain and bringing with it comparatively effective remedies especially when combined with penal sanctions.

1.17 The law of unfair competition, on the other hand, is not an effective means of protection, for a number of reasons. Firstly, effective protection must include a remedy against a dealer as well as against the manufacturer of illicit

duplicates, but it has been held that there is no competition between the producer of the legitimate recording and the dealer in, or importer of, an illicit duplicate. Secondly, to succeed in an action for unfair competition it is usually necessary to prove that the duplicate is liable to mislead the public. If the duplicate itself proclaims the fact that it is illicit, as it sometimes does, the public is not deceived. Thirdly, the remedy in an action based on unfair competition is an award of damages: the speedy remedies of an injunction and seizure and destruction are generally not available (although they are available in Belgium). In proceedings against illicit duplicators of phonograms any damages awarded will rarely be recoverable, and, in any event, an action merely for damages is too slow to be effective. Fourthly, the duration of the protection is uncertain: while in principle unlimited, it depends upon the discretion of the individual judge and the view he takes of the degree of protection required.

1.18 Detailed accounts of the protection afforded to producers of phonograms in each of the ten Member States of the EEC are contained in Chapter IV.

2 The Rights of Authors in Relation to Phonograms

Authors enjoy a second, distinct and entirely independent right in phonograms.

2.1 Phonograms are recordings of performances of literary and musical works and the authors of those works control the copyright in them, including the right to record or reproduce the work in any manner. Thus, it is an infringement of the authors' recording and reproduction rights to make a recording of his work and to reproduce it without permission. The producer of phonograms either chooses a work from existing repertoire or he commissions an author to write a work. The copyright in those works is usually assigned by the author (songwriter or composer) to a publishing company, who acquires the right to publish the work and the right to authorise producers of phonograms to record the work. These rights are nearly always exercised collectively by national societies representing the authors and publishers. There are two systems governing the licensing of works to producers of phonograms: statutory licensing systems established by legislation and contractual licensing systems. In both cases, the producer of phonograms does not obtain exclusive rights in the work for however brief a period.

2.2 Once an author or his publisher has consented to the recording of a work, under both licensing systems, any producer of phonograms may record that work. There is in effect a compulsory licensing system. The producer obtains the right to record the work, to duplicate the first fixation in the form of discs or pre-recorded tapes, whether in cassette or cartridge form, and to make such duplicates available for sale to the public for domestic use.

2.3 In Ireland and the United Kingdom, licence systems operate under the Copyright Acts. ⁽⁸⁾ A statutory royalty based

on a percentage of the retail price of the record or tape is paid on each record or tape sold. The statutory royalty rate is 6½% in the UK and 5% in Ireland.

2.4 In the other countries of the EEC, the authors' rights are exercised collectively by representative organisations in accordance with an international contract negotiated at regular intervals between BIEM (International Office of Societies Administering Rights of Recording and Mechanical Reproduction) and IFPI, the so-called BIEM contract. (9) An agreed royalty is payable to the national BIEM society on each record or tape sold.

2.5 Two parallel interests, therefore, subsist in every phonogram, that of the author and that of the producer of phonograms. Both suffer from piracy; the author loses his royalty and the producer the return on his investment.

2.6 The authors' moral rights are not affected by the licence he gives to record his work. Thus, no alterations to a work made by a producer for recording purposes may be such as to unduly alter the character of the work and, in any event, no alteration may be made to the musical or literary text of literary, dramatic, musico-dramatic and symphonic works.

2.7 The licensing systems referred to above permitting the producers of phonograms to record works once the consent of the author has been given for the recording of the work on one occasion are recognised by the Berne Convention for the Protection of Literary and Artistic Works (Brussels Act, 1948, and Paris Act, 1971), to which all ten Member States of the EEC are parties. Article 13 provides:

"Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorised by the latter, to authorise the sound recording of that musical work, together with such words, if any."

2.8 The co-existence of the authors' rights and those of producers of phonograms is recognised by both the Rome and Phonograms Conventions. Article 1 of the Rome Convention provides:

"Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection."

2.9 The preamble to the Phonograms Convention in its first paragraph states that the Contracting States are:

"concerned at the widespread and increasing unauthorised duplication of phonograms and the damage this is occasioning to the interests of authors,

performers and producers of phonograms".

2.10 In relation to piracy, there is one particular provision of the Berne Convention which may be of assistance to authors in combating piracy. Article 16 provides that infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection. This provision applies also to reproductions coming from a country where the work is not protected, or has ceased to be protected. Such seizure must take place in accordance with the legislation of each country.

2.11 Authors are protected in all ten EEC countries under the law of copyright or droit d'auteur. The minimum period of protection laid down by the Berne Convention is fifty years post mortem auctoris (p.m.a.) and this is the period generally applicable in the EEC, although in the Federal Republic of Germany the period is seventy years p.m.a. Generally speaking, the protection accorded to authors is stronger than that granted to producers of phonograms, except in Ireland and the United Kingdom.

2.12 Authors' rights in nine of the Member States of the EEC have been exhaustively described in Dr. Adolf Dietz' report, "Copyright Law in the European Community" published in 1976. ⁽¹⁰⁾ The description of the national situations governing protection against piracy in this report will be limited, therefore, to the protection afforded to producers of phonograms against piracy and counterfeiting and that afforded to performers against bootlegging, if any. Authors' rights will only be referred to insofar as, in those Member States of the Community where producers of phonograms do not enjoy specific rights, joint anti-piracy campaigns have been mounted by the national authors' societies and the national representatives of producers of phonograms. An account of the general protection afforded to producers of phonograms and performers against all the various uses of phonograms and performances is contained in another study "Challenges to Copyright and Related Rights in the European Community" by the author of the present study and Dr. Hans Hugo von Rauscher auf Weeg. ⁽¹¹⁾

3 The Rights of Performers in Relation to Phonograms and the Rome and Phonograms Conventions.

3.1 The Rome Convention in its Article 7 provides that performers shall have the possibility of preventing among other acts:

- (a) the fixation, without their consent, of their unfixed performance, and
 - (b) the reproduction, without their consent, of a fixation of their performance;
- if
- (i) the original fixation itself was made without their consent,
 - (ii) the reproduction is made for purposes different

from those for which the performers gave their consent.

'Performers' are defined in the Convention as "actors, singers, musicians, dancers and other persons, who act, sing, deliver, declaim, (12) play in or otherwise perform literary or artistic works".

3.2 Once the consent of the performer has been obtained for the fixation of his performance, for a stated purpose, the legitimate producer has fulfilled his obligations to the performer who, thereafter, has no right of his own in copies of the legitimately produced phonogram. However, as already mentioned in Chapter I, a performing artist has an interest in that phonogram because he receives a royalty on each record or tape sold.

3.3 In relation to piracy and counterfeiting, therefore, the rights of performers are dependent upon the rights afforded by national legislation and conventional law to producers of phonograms.

3.4 The situation is quite different where a performance is fixed without the performer's consent. The taping of an artist's live performance without his consent and the duplicating of records or tapes from that fixation is an infringement of the performer's rights under Article 7 of the Rome Convention and, as already stated, is described as bootlegging. Duplicates of any such fixation are illegal copies. It should be noted that it is also an infringement of the author's recording and reproduction rights to make an unauthorised recording of a live performance of his work and to duplicate it. Thus, authors are entitled to take action against bootlegging as well as performers.

3.5 Performers are protected by legislation which is in conformity with the Rome Convention in the six Member States of the EEC which are party to it. There is no specific protection of performers in force in Belgium, France, Greece and the Netherlands, but some protection is afforded to performers in France, by case law (see Chapter IV, C. paragraphs 3.3.1 to 3.3.3).

3.6 Although performers cannot take action themselves against pirate and counterfeit records and tapes containing recordings of their performances, the fact that performers suffer from piracy together with producers of phonograms and authors is recognised in the preamble to the Phonograms Convention. Its second paragraph states that the Contracting States are convinced:

"that the protection of producers of phonograms against such acts will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms".

B. THE INDUSTRIAL PROPERTY CONVENTIONS

Where piracy takes the form of counterfeiting, as we have seen,

the legitimate record producers' original label, art work, trade mark and packaging are copied as well as the sounds contained in the original legitimate phonogram. Counterfeiting involves, therefore, infringement not only of the producers' right to authorise or prohibit duplication of his phonogram but also infringement of his trade mark or trade name. Two of the international industrial property conventions are, therefore, of interest: the Paris Convention for the Protection of Industrial Property, 1883, and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891.

4 The Paris Convention

International protection of trade marks as well as international protection against unfair competition are provided for in the Convention for the Protection of Industrial Property, Paris 1883, (as revised at Stockholm, 1967), to which all EEC Member States are party.

4.1 Trade marks, service marks and trade names are protected by the Paris Convention (Article 1). The principle of protection under the Convention is national treatment. Every trade mark duly registered in the country of origin shall be accepted for filing and protected as it is in the other countries of the Union (Article 6 quinquies). Service marks and trade names are protected without the obligation of filing or registration (Articles 6 sexies and 8). Countries of the Union undertake (Article 10 ter) to assure to nationals of other Union countries appropriate legal remedies to effectively repress all the acts referred to in Articles 9, 10 and 10bis of the Convention. These are described below.

4.2 Article 9 deals with the seizure on importation of goods unlawfully bearing a trade mark or trade name. It provides for their seizure on importation into countries of the Union where they are entitled to protection and for seizure in the country where the "unlawful affixation occurred or (once imported) in the country into which the goods were imported" (Article 9(1) and (2)). If the legislation of the country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country (Article 9(5)).

4.3 Seizure takes place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country (Article 9(3)). The authorities are not bound, however, to seize goods in transit (Article 9(4)).

4.4 There is a major drawback to these provisions in that they do not impose an obligation on Contracting States. If the legislation of the country does not permit seizure in any of the circumstances described, then Article 9(6) provides that "these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such a country".

4.5 The seizure provisions of Article 9 also apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant (Article 10(1)). Moreover,

"Any producer, manufacturer or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party" (Article 10(2)).

4.6 The Convention also provides that countries of the Union are bound to ensure to nationals of such countries effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition (Article 10 bis). Prohibited offences include some particularly relevant in the context of piracy:

- (i) "all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor" (Article 10 bis (3)(1));
- (ii) "indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics ... of the goods" (Article 10 bis (3)(3)).

4.7 The limited information available to the author about the cooperation of the customs authorities in the EEC countries in the fight against piracy and, in particular, against counterfeit product indicates that the seizure provisions of Article 9 of the Paris Convention have not been implemented fully by national legislations and are not fully operative (see Chapter IV, below, regarding cooperation at national level with the customs authorities).

5 The Madrid Agreement

5.1 The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891 (as revised at Lisbon, 1958, and at Stockholm, 1967), also imposes obligations on Contracting States regarding seizure. It reiterates the seizure provisions of Article 9 of the Paris Convention, but adds to them slightly. For example, it provides that if the law of a country does not permit seizure on importation, such seizure shall be replaced by prohibition of importation (Article 1(3)). It also lays down that seizure shall be effected by the customs authorities on their own initiative or at the request of the "public prosecutor or any other competent

authority either at the request of the injured party or ex officio"(Article 2(1)).

5.2 Five Member States of the EEC are Contracting States of the Madrid Agreement: Federal Republic of Germany, France, Ireland, Italy and the United Kingdom.

C. THE DRAFT GATT AGREEMENT ON COUNTERFEIT GOODS

6 During 1979, the problem of counterfeiting goods was brought to the attention of the Multilateral Trade Negotiations held in connection with the General Agreement on Tariffs and Trade (GATT). A draft "Agreement on Measures to Discourage the Importation of Counterfeit Goods" was drawn up and approved by the European Commission and the Government of the United States of America.

6.1 The GATT Secretariat is currently making a study of the phenomenon of commercial counterfeiting throughout the world. Its report is expected to be published in the course of 1984, with a view to encouraging wider acceptance of the draft Agreement.

6.2 The draft Agreement provides that:

"The parties shall discourage international trade in counterfeit goods. To this end they agree that imported counterfeit goods should be dealt with in a manner that deprives the persons involved of the economic benefits of the transaction and provides an effective deterrent to international trade in such goods. They further agree that counterfeit goods should be prevented from reaching the commercial market.

Counterfeit goods are defined as:

"any goods bearing an unauthorised representation of a trade mark that is legally registered in respect of such goods in the country of importation". (13)

D. THE CUSTOMS CONVENTIONS

7 The Role of Customs Authorities

7.1 Piracy does not constitute a customs offence unless the national legislation protecting right owners in a particular country is expressly part of the general customs law. This would be the case where national legislation provides that articles which infringe copyright may be treated on importation as prohibited goods. Thus, in countries where the provisions of the Berne Convention (Article 16), the Paris Convention (Article 9) and the Madrid Agreement (Articles 1 and 2) have been implemented in domestic copyright and industrial property law, the customs authorities have powers of enforcement. However, for the customs to be able to exercise such powers, administrative arrangements have to be made to ensure collaboration between the customs, interested parties

and other competent authorities in order to determine the legitimacy or otherwise of goods.

7.2 The above situation is to be distinguished from the case where certain common practices associated with trade in pirated recordings may be themselves in breach of the customs law. Where, for instance, pirated pre-recorded cassettes are declared to customs as "blank cassettes", such a misdeclaration constitutes a customs offence. Similar customs offences may arise from misdeclaration of value, or of origin or from any other statement or act by which a person evades, wholly or partly, the payment of import or export duties and taxes or the application of prohibitions or restrictions laid down by customs law. Such offences fall squarely within the ordinary competence of customs administrations.

8 Customs Co-operation at International Level

8.1 In 1952, the Customs Co-operation Council ⁽¹⁴⁾ was set up to promote co-operation between governments in matters relating to customs technique and customs legislation.

8.2 It has drawn up various international instruments and has taken other practical measures in order to strengthen and harmonise the efforts of customs to counter smuggling and other kinds of customs fraud. The following instruments are relevant here ⁽¹⁵⁾ :-

...

(a) "Recommendation on Mutual Administration Assistance, 1953"

This Recommendation provides essentially for two categories of action: spontaneous action undertaken by customs administrations on their own initiative, and action undertaken at the request of another customs administration that has accepted the Recommendation. The assistance that administrations are required to furnish spontaneously is of two kinds: communication of information relating to new methods or means of customs fraud that have come to light in the country concerned; and communication of special reports or studies concerning particular kinds of fraud. The action taken at the express request of another State is essentially surveillance on behalf of that State: the maintenance of a special watch on particular consignments, on persons known to be engaged in smuggling, or in suspect vehicles.

...

(b) Recommendation on the Pooling of Information Concerning Customs Fraud, 1975

The Recommendation provides for the pooling of

information by the General Secretariat of the Customs Co-operation Council, for subsequent circulation to States that have accepted the Recommendation. The information communicated relates to:-

- (i) persons finally convicted of smuggling or customs fraud and, in some cases, suspects and persons apprehended in the act;
- (ii) methods of smuggling, including the places of concealment employed;
- (iii) vessels involved in smuggling.

The Council Secretariat is also required to use the information in its central index in order to prepare summaries and studies of new and recurring trends in the field of smuggling.

...

- (c) International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (the Nairobi Convention), 1977 ⁽¹⁶⁾

The text of this Convention consists of the body of the Convention and 11 Annexes, each of which may be adopted independently by the Contracting Parties. Each Annex deals with a different aspect of mutual assistance and, in fact, taken together with the body of the Convention, constitutes a separate Convention. One of these Annexes (Annex X) deals with action against the smuggling of narcotic drugs and psychotropic substances. Another (Annex XI) deals more particularly with action against the smuggling of works of art, antiques, and other cultural property with a view to helping to preserve the cultural heritage. In the areas covered by Annexes X and XI, where the customs is not the only administration involved, special provisions have been made for the customs to co-operate at national level with the competent national services and to maintain relations, at international level, with the bodies of the United Nations, Unesco and, if necessary, with other international organisations such as ICPO/Interpol."

8.3 A number of the functions of the Customs Co-operation Council are relevant to customs aspects of enforcing anti-piracy measures. Three are of particular relevance:

- to study all questions relating to co-operation in customs matters which members agree to promote;

- to co-operate with other intergovernmental organisations as regards matters within its competence;
- to prepare draft conventions and amendments to conventions and to recommend their adoption by interested governments.

8.4 In 1983, the Customs Co-operation Council embarked on a study of the role of the customs in implementing copyright and industrial property law. The aim of the study is to find out what the customs authorities in Member countries are doing in this area, what more could be done and to determine whether the efficacy of what the customs do could be improved through co-operation at the national and international levels. It is understood that, in the light of the study, it is intended to draw up guidelines and recommendations on the role that customs can play. (17)

8.5 The possibilities for action by the Council have been described by one of its officials as follows:

"It is apparent that the Council has all the facilities necessary for dealing with enforcement problems. In this connection, it is emphasised that Customs administrations which are responsible for enforcing anti-piracy measures can use the facilities already in existence within the Council. If the facilities are inadequate, they can establish additional facilities if they wish. It is possible for Council Members to establish an international instrument, for example, in the form of a Recommendation, which would deal specifically with the problem of Customs enforcement of anti-piracy measures." (18)

E. THE INTERPOL RESOLUTION

Finally, in considering all the intergovernmental agreements which have a bearing on the problem of piracy, the Resolution unanimously adopted by the 46th General Assembly of Interpol, in Stockholm, in September, 1977, should be quoted. The full text of the INTERPOL Resolution follows:

"Conscious of the fact that international traffic in stolen and unlawfully duplicated motion pictures and sound recordings has harmful effects on the economies of the countries affected,

"Aware of the loss of revenue legitimately accruing to the Governments of such countries and to persons engaged in the lawful production and dissemination of sound recordings and motion pictures, thus aggravating the problems of unemployment in the industries concerned,

"Noting that, as presently implemented, international agreements have not been fully effective in combating

this illicit traffic,

"Convinced that national enforcement of laws and international police co-operation are absolutely essential for the suppression of the traffic in pirated motion pictures and sound recordings,

"Believing that such police co-operation needs to be supplemented by judicial and diplomatic co-operation which should be expanded and facilitated,

"The ICPO-INTERPOL General Assembly, meeting in Stockholm from 1st to 8th September 1977 at its 46th session,

"Asks the National Central Bureaux to:

"(1) Cooperate as fully as possible with other NCBs who request assistance in investigating cases of traffic in stolen or unlawfully duplicated motion pictures and sound recordings,

"(2) Ensure that local police forces in their countries are aware of this problem and of the channels of communication to be used whenever such international traffic is suspected,

"(3) Heighten their Governments' awareness of the severe consequences resulting from the traffic in pirated motion pictures and sound recordings,

"(4) Draw their Governments' attention to:

(a) The advisability of becoming parties to existing multilateral agreements on copyright, where they have not already done so,

(b) The need to implement effectively the provisions of any such agreements which they are already party to, or in concurrence with,

(c) The desirability of adopting procedures and/or enacting legislation, where these do not already exist, to combat traffic in stolen and unlawfully duplicated motion pictures and sound recordings."

FOOTNOTES TO CHAPTER III

1. Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Rome, 1961 (Article 3(c)); Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms, Geneva, 1971 (Article 1(b)).
2. The terms of reference of this study were limited to the subject of piracy of phonograms.
3. See, for example, the following reports: Joint Meeting of the Executive Committee of the Berne Convention and of the Intergovernmental Copyright Committee, 28 November to 9 December 1977 (Doc. B/EC/XII/18, paragraphs 37 and 42). Intergovernmental Committee of the Rome Convention, 7 to 9 December 1977 (Doc. ILO/UNESCO/WIPO/ICR.6/12).
4. Projet de loi relatif aux droits d'auteur et aux droits des artistes-interprètes, des producteurs de phonogrammes et de videogrammes et des entreprises de communication audiovisuelle, Nos 2169 and 2235; 2^e Séance du 29 juin 1984, Journal Officiel de la République Française, Débats Parlementaires de l'Assemblée Nationale, 30 juin 1984.
5. Doc. ILO/UNESCO/WIPO/ICR.9/4 Annex 1 paragraphs 3(c) and 5.
6. Belgium: See footnote 3 above; Netherlands: Report of the Joint Meeting of the Executive Committee of the Berne Convention and of the Intergovernmental Copyright Committee, 12 to 16 December, 1983 (Doc IGC (1971)/V/23-(Part II), paragraph 10; Intergovernmental Committee of the Rome Convention, 8, 9 and 12 December 1983 (Doc. ILO/UNESCO/WIPO/ICR. 9/8.)
7. Denmark: Law No. 158, 1961, on Copyright in Literary and Artistic Works, Chapter V - "Other Rights". Germany: Copyright Law, 1965, Part II. Italy: Law No. 633, 1941, for the Protection of Copyright and Other Rights Connected with the Exercise thereof, Part II.
8. Ireland: Copyright Act, 1963, Section 13. United Kingdom: Copyright Act, 1956, Section 8.
9. BIEM/IFPI Standard Contract for the Phonographic Industry.

10. First published by the Commission of the European Communities in May 1976 in German as Document XII/125/76-D and entitled "Das Urheberrecht in der Europäischen Gemeinschaft", and subsequently in book form by Nomos Verlagsgesellschaft mbH, Baden-Baden, 1977. Copyright Law in the European Community, Alphen aan den Rijn (Netherlands), Sijthoff and Noordhoff, 1978 (European Aspects-Law Series, 20).
11. Gillian Davies and Hans Hugo von Rauscher auf Weeg: "Challenges to Copyright and Related Rights in the European Community", Oxford ESC Publishing Limited, 1983.
12. Rome Convention, Article 3(a) - Definition of performers.
13. Draft Agreement on Measures to Discourage the Importation of Counterfeit Goods, Article I(1) and (2).
14. The Convention establishing a Customs Co-operation Council signed in Brussels on 15 December 1950, came into force on 4 November 1952. 93 countries have ratified or adhered to the Convention. Dates of ratification or adherence by Member States of the EEC are as follows: Belgium - 11 December 1952, Denmark - 19 October 1952, France - 6 October 1952, Germany (Fed. Rep.) - 4 November 1952, Greece - 10 December 1951, Ireland - 23 September 1952, Italy - 20 November 1952, Luxembourg - 23 January 1953, Netherlands - 23 January 1953, United Kingdom - 12 September 1952.
15. LYIMO T. Statement on behalf of the Customs Co-operation Council. WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings. Geneva, 25 to 27 March 1981. Geneva, WIPO, 1981. (Doc. No. 640, p. FF/1/16).
16. International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, Nairobi, 9 June 1977. Entered into force on 21 May 1980.
17. Secretariat Note Doc. 31.236E of 31 January 1984 and Questionnaire attached thereto. 16 Countries have ratified or adhered to the Convention. Dates of ratification or adherence by Member States of the EEC are as follows: Ireland - 29 September 1983, Italy - 18 May 1983, United Kingdom - 18 March 1983.
18. LYIMO T. "Customs Enforcement: Prospects of International Co-operation". Article published in "Piracy and Counterfeiting of Industrial Property and Copyright", edited by Professor W.R. Cornish. London, Common Law Institute of Intellectual Property Ltd and British Institute of International and Comparative Law, 1983, p.133.

CHAPTER IV - NATIONAL LAWS AVAILABLE TO COMBAT PIRACY IN EACH OF THE TEN MEMBER STATES OF THE EEC

A. BELGIUM

1.1 Membership of Conventions

Belgium has not adhered to either the Rome or Phonograms Conventions and its national legislation contains no specific provisions regarding the protection of producers of phonograms or performers. It is, however, party to the Brussels Act, 1948, of the Berne Union and to the 1952 text of the Universal Copyright Convention.

1.2 National Legislation

1.2.1 The Copyright Law dates back to 1886 ⁽¹⁾ and only protects authors who enjoy civil and criminal remedies for infringement of copyright. Where such infringement is due to piracy of phonograms, the authors may file a claim for injunctive relief or damages in the Civil Courts. Civil proceedings may take two to three years before final judgement and are not, therefore, very effective against piracy. The authors may also start proceedings for a summary judgement before the presiding judge of the Civil Court, who may order an injunction in cases where a violation of copyright is beyond doubt and insofar as the case is urgent. Criminal remedies are also available to authors under certain circumstances of copyright infringement based on Articles 22 to 25 of the Copyright Law of 1886.

1.2.2 Although producers of phonograms enjoy no specific rights in Belgium, since 1977 they have sought protection against unauthorised duplication of their phonograms under the general provisions of the Civil Code and, in particular, under the Law of 14 July 1971, on Trade Practices. ⁽²⁾

1.2.3 Article 54 of this Law prohibits all acts contrary to honest commercial usage by which a trader harms or attempts to harm the professional interests of one or more other traders. Article 20 also prohibits all misleading advertising.

1.2.4 Producers of phonograms have successfully claimed that the manufacture and offer for sale of pirated phonograms (whether pirate, counterfeit or bootleg) is an act of unfair competition or, more particularly, an act ⁽³⁾ of "parasitic competition" (acte de concurrence parasitaire).

1.2.5 Traders engaged in this practice are considered to profit unduly from the fact that they do not bear the recording and promotion costs of the original phonogram or pay royalties to the authors.

1.2.6 Some twenty decisions of the Courts have been handed down on this subject and the fact that piracy is illegal is established case law. Producers of phonograms are able to

forbid the distribution and sale of bootleg product without the intervention of the performers concerned. They only have to show that the recording was not authorised by the authors and performers concerned and that the bootlegger obtains an illicit gain from the recording while honest producers suffer losses as a result.

1.2.7 Protection under the law of unfair competition is quite effective in Belgium for the following reasons:

- any act contrary to honest practice in commercial matters is sanctioned by injunctive relief;
- it is not necessary to prove bad faith or illicit gains on the part of the trader; proceedings may be instituted against any trader selling a pirate record even if he is bona fide; it is sufficient to point out that the sale of a pirate record or tape necessarily harms the interests of honest traders and upsets the balance of competition;
- proceedings may be brought by the professional body which represents the legitimate producers; they may also be instituted by a record retailer;
- failure to comply with an injunction constitutes a punishable offence;
- criminal sanctions are applied if the offence is repeated;
- the injunction may provide for publication of the order in newspapers and at the premises of the offender;
- the protection afforded is not limited as to duration.

1.2.8 The Law of 14 July 1971 on Trade Practices also contains penal provisions. Where an act of unfair competition is committed in bad faith, Article 61 applies and the offender is guilty of a punishable offence (délit) and is liable to heavy fines (from FB 40,000 to FB 200,000).

1.2.9 Wherever a punishable offence (délit) has been committed, the General Economic Inspectorate, the special police force responsible for fighting commercial crime, may intervene, obtain material proof of the offence and seize offending goods. The relevant information is then passed on to the police for use in the criminal courts.

1.2.10 Criminal remedies are also available in the case of falsification of trade marks under Article 8 of the Law of 1 April 1879. Moreover, Article 191 of the Penal Code stipulates that anybody who gives a false indication of the name of a manufacturer on a product and puts that product on sale or distributes it is liable to imprisonment for a period of from one to six months.

1.2.11 However, the producers and performers have no rights of their own and the remedies described are in fact those of common law and have been adapted by case law to meet the problem of piracy. Problems remain. Under the civil procedure, the judge granting the injunction may not make orders for inspection and discovery, so that producers are unable to find out the source of the pirate product available on the market or how many copies have been manufactured and sold. There is no procedure of "saisie-description" (seizure by description), a civil procedure, available in copyright cases, which enables the judge to order entry into the defendants' premises and seizure and description of infringing articles found there.

1.2.12 However a judge may now, by a law of 31st January 1980, impose an "astreinte", that is, a fine which applies if the offender does not comply with the judgement or injunction. Since 1981, most of the injunctions (ordres en cessation) have been imposed together with an astreinte. It should be noted that, when and if the astreinte becomes due, it is paid to the party in whose favour the order was made. The astreinte is not in lieu of damages and, if the injured party has also asked for damages, these will be paid in addition to the astreinte. The astreinte is a penalty designed to force the guilty party to comply with a mandatory or prohibitory injunction and can be a once and for all payment or calculated per day or per violation with a maximum limit set by the court. The astreinte can be requested for the first time in the proceedings at the appeal stage.

1.3 Case Law

1.3.1 Since 1975, a number of legal actions have been taken against pirates. Those of particular interest in that they established points of principle are cited here. In 1975, for the first time, three defendants were convicted of manufacturing and selling counterfeit records without the consent of the copyright owner, his distributor in Belgium and without payment of copyright royalties to the authors' society. The defendants had, respectively, manufactured the counterfeit records, printed the labels and distributed the counterfeit records. The court ordered confiscation of the records seized and publication of the judgement. (4)

1.3.2 In an early reported case where the defendant was accused of selling counterfeit records, the Court held that good faith was irrelevant and that the sale constituted an infringement of neighbouring rights and a violation of the law of unfair competition. (5)

1.3.3 In a case where cassettes were marketed containing recordings taped off the air from a radio broadcast, the Court found: "It is illegal and contrary to honest commercial practices to record musical works for commercial purposes from existing sound carriers or from radio or television broadcasts"; and "that such a practice deprives the producer of the original phonogram of a part of his market and of the profits from his efforts". (6)

1.3.4 In a case of counterfeiting, the Court found: "It is established that the defendant offered for sale pirate recordings of Elvis Presley; that this violation of neighbouring rights and copyright is contrary to honest commercial practices ... the defendant pleads his good faith and the fact that only a limited number of records were put on sale ... good faith is of no importance so far, (7) as the application of the law of 14 July 1971 is concerned".

1.3.5 In a case concerning bootlegs, the Court found: "The defendant is accused of marketing pirate phonograms, commonly known as bootlegs, that is, phonograms which are reproductions of sound recordings made clandestinely at public concerts, not only without the consent of the authors but, above all, without the consent of the performers ... this practice is without doubt contrary to honest commercial practices ... by commercialising pirate phonograms, the defendant procures illegally, by infringing the copyright law and the neighbouring right of the performer, and by failing to pay taxes, an economic advantage at the expense of those who abide by the terms of the law, namely, honest traders working in (8) the phonographic industry and, in particular, the plaintiffs".

1.3.6 The Supreme Court of Belgium confirmed in 1982 that the sale of pirated records may constitute a violation of 'fair trade practices' within the meaning of Article 54 of the Law on Trade Practices. In this case, the defendant, who had been convicted of selling pirated cassettes, argued, inter alia, that it was technically impossible for him to distinguish pirated records from legitimate products. The Supreme Court confirmed the decision of the Court of Appeal that an act contrary to fair trade practices can be committed by negligence or thoughtlessness or even in ignorance of the fact that it is being committed. Thus, it is not necessary that an act be performed in bad faith for it to be a faulty act. The fact that the defendant had admitted that he "acquired the cassettes on the parallel market where a large quantity of "pirated" cassettes are offered for sale" shifted the onus to prove good faith onto the purchaser. (9)

1.4 Customs Legislation or Regulations

1.4.1 Under the BLEU (Belgo-Luxembourg Economic Union), Belgium and Luxembourg operate a customs union. These two countries have a single balance of payment regime and combine their foreign trade statistics. Until 1978, the customs authorities in Belgium exercised control over the importation of all phonograms in order to check that recording royalties had been paid to the authors. This was done in co-operation with the Belgian authors' society SABAM (Société Belge des Auteurs, Compositeurs et Editeurs). (There is no authors' society in Luxembourg.) All importers had to produce a certificate from SABAM to the effect that authors' royalties had been paid.

1.4.2 However, during 1978, the customs authorities refused to co-operate any more and no such control now takes place.

1.4.3 Recently, a special service concerned with tax fraud, and which is also competent to deal with customs fraud, has begun to take an interest in piracy.

B. DENMARK

2.1 Membership of Conventions

Denmark has ratified both the Rome Convention (with effect from 23 September 1965) and the Phonograms Convention (with effect from 24 March 1977). It is also party to the Paris Act, 1971, of the Berne Union and to the 1971 text of the Universal Copyright Convention.

2.2 National Legislation

2.2.1 The Danish Copyright Law 1961⁽¹⁰⁾ provides protection by means of specific rights for both producers of phonograms and performers in Chapter V of the Law, entitled "other rights".

2.2.2 Producers of phonograms are given the right to authorise or prohibit the reproduction of their phonograms (Article 46) and are thus protected against piracy. Producers are also entitled to equitable remuneration for the broadcasting or public performance of their phonograms (Article 47).

2.2.3 The duration of protection of producers of phonograms is, at present, twenty-five years from the year in which the recording was made (Article 46). However, a Committee appointed by the Ministry of Cultural Affairs has made proposals for a revision of the Copyright Law and has recommended inter alia extending the protection period for both producers of phonograms and performers to fifty years.⁽¹¹⁾ The Danish Government has endorsed this recommendation and a Bill revising the Copyright Law has been drafted and is expected to be introduced to the Danish Parliament before the end of 1984.

2.2.4 Performers are granted overall control of their performances under Article 45 of the Copyright Law. The performer's consent is required for (i) the fixation of his performance, (ii) its reproduction and (iii) its communication to the public whether by broadcasting or other means. The performer is also entitled to equitable remuneration for the broadcasting or communication to the public of phonograms containing a fixation of his performance (Article 47).

2.2.5 Specific civil and penal sanctions are provided for by the Copyright Law in Chapter VII. The civil remedies provide that the injured party whose rights have been infringed may claim damages for losses incurred as well as compensation for "mental suffering and other injury" (Article 56). This latter provision relates to non-economic damage suffered as a result of injury to a person's reputation. However, there is no provision for punitive damages to be awarded in addition to ordinary compensation. The Court may also order the seizure,

destruction or delivery up to the injured party of infringing copies or materials (Article 57). At present, the criminal penalties are that anybody infringing the provisions of the law is liable to a fine and, in aggravating circumstances, to imprisonment of up to three months (Article 55). It should be noted, however, that the Bill for the revision of the Copyright Law referred to in paragraph 2.2.3, above, proposes that the normal criminal penalty for infringement of the Copyright Law should be a fine. In serious cases, where there are aggravating circumstances, the infringer is to be liable to imprisonment of up to one year. Aggravating circumstances are characterised by: the economic impact of the infringement; a high degree of professionalism on the part of the infringer; large quantities of illegal product and bad faith (deliberate engagement in illegal activities) on the part of the infringer.

2.2.6 Under the present law, the remedies applicable to infringements of the rights of authors and composers and those available to producers of phonograms and performers are the same, with one important exception; producers and performers are only protected against illegal copying, but not against the mere distribution of illegal copies, whereas authors have a distribution right (Article 2). This poses a problem in Denmark because, as most piracy in the country concerns imported records and tapes, the Danish legitimate producers are unable to take action against the pirate manufacturers direct but only against distributors. This anomaly will be rectified when the Bill for the revision of the Copyright Law is enacted.

2.2.7 No implementing regulations have been made under Article 55 and the amount of the fine is not fixed. In the copyright field, to date the Danish courts have been reluctant to impose severe penalties on infringers and fines have tended to be very lenient. In general, criminal remedies are not available even against commercial pirates. In copyright cases, the police will not intervene unless an element of fraud can be shown prima facie to exist. Actions for infringement of copyright have to be brought by private parties and, if criminal remedies are sought, by private prosecution.

2.2.8 At the ninth ordinary session of the Intergovernmental Committee of the Rome Convention held in Geneva, in December 1983, the Danish delegation "indicated that its Government intended to strengthen the protection of performers and producers of phonograms. A draft law, which would probably be submitted to the Parliament early in 1984, would make unlawful the renting of recordings of musical works without the agreement of its authors, thus indirectly improving the situation of both producers and performers; it was also hoped that it would extend the duration of protection to fifty years and strengthen penal sanctions with a view to facilitating the fight against piracy".⁽¹²⁾ The relevance of some of the improvements proposed in the Bill to the protection of producers and performers have been mentioned above. Other important procedural improvements are proposed in serious cases where criminal remedies are sought. In cases where there are aggravating circumstances, the police will be obliged to intervene at the request of the injured party. The Bill gives

police the power to investigate cases of piracy and to seize stocks of pirate product. Moreover, actions for infringement in serious cases where the maximum penalty of one year's imprisonment is applicable, are to be brought by public prosecution.

2.3 Case Law

There have been no significant judgements and none in the Courts of Appeal as regards piracy of phonograms. A few actions have been taken against small backstreet pirates who have pleaded ignorance of the copyright law and been discharged with a warning.

2.4 Customs Legislation or Regulations

There are no provisions in the copyright law or the trade mark law enabling the customs authorities to intervene to prevent the importation of pirate product. It is understood that the Copyright Commission of the Ministry of Cultural Affairs is considering requesting the Government to establish some kind of control at the borders.

C. FRANCE

3.1 Membership of Conventions

France has ratified the Phonograms Convention (with effect from 18 April 1973), but has not yet ratified the Rome Convention. France is party to the Paris Act, 1971, of the Berne Union and to the 1971 text of the Universal Copyright Convention.

3.2 National Legislation

3.2.1 Producers of phonograms do not benefit from the protection of a specific right to authorise or prohibit the unauthorised duplication of their phonograms. Producers are obliged, therefore, to defend themselves against piracy by one or more of the following methods:

- action based on the law of unfair competition;
- action for infringement of trade marks;
- associating themselves with actions brought by the authors under the Law No. 57-298 of 11 March 1957 on Literary and Artistic Property;
- action under the law of consumer protection.

3.2.2 France ratified the Phonograms Convention on the basis that the law of unfair competition provides protection for producers. By virtue of the ratification (convention law becoming part of the national law on ratification), France is under an obligation to protect producers of phonograms against the unauthorised manufacture, importation and distribution to

the public of copies of their phonograms. This protection is mainly to be found under Article 1382 of the Civil Code on civil liability on which the courts have built up the elaborate law of unfair competition.

3.2.3 Since the ratification of the Phonograms Convention in April 1973, it appeared that actions based on the law of unfair competition provided better protection and that no fault, within the meaning of Article 1382 of the Civil Code, had to be proved which had not previously been the case. It was established case law that slavishly copying all or part of a phonogram represented an act of unfair competition until a 1977 decision of the Court of Appeal of Paris. The producers simply had to show that they ⁽¹³⁾ did not authorise the manufacture of the infringing phonograms.

3.2.4 According to the Court of Appeal decision referred to, the decree ratifying the Phonograms Convention only affords protection to producers of phonograms who are nationals of other Contracting States and has no bearing on the protection of French nationals. Thus, in piracy actions concerning two French parties and French repertoire, the plaintiff must prove the fault of the defendant, within the meaning of Article 1382 of the Civil Code, and the damage he has suffered. ⁽¹⁴⁾

3.2.5 In practice, however, since those decisions, it would appear that judicial requirements as to the amount of evidence required to establish the existence of "fault" have been relaxed, French judges being disinclined to discriminate against French plaintiffs. ⁽¹⁵⁾

3.2.6 In all cases of counterfeiting, where the trade marks have been infringed, producers may invoke the criminal remedies provided by trade mark legislation.

3.2.7 Infringement of the authors' rights also gives rise to criminal remedies. Authors whose rights under the 1957 Law on Literary and Artistic Property have been infringed by piracy may bring actions based on Articles 425 to 429 of the Penal Code which provide for fines (from FF 360 to 20,000) and imprisonment of from three months to two years. In these cases, the producer has to depend on the vigilance of the authors' societies, SACEM/SDRM (Société des Auteurs, Compositeurs et Editeurs de Musique/Société pour l'Administration du Droit de Reproduction Mécanique des Auteurs, Compositeurs et Editeurs), to take action against pirates.

3.2.8 Some protection is afforded to producers by the law on consumer protection. For example, Article 4 of the Law on Misleading Advertising of 27 December 1973, and Article 1 of the Law on the Repression of Fraud in the Sale of Goods of 1 August 1905, have recently been applied to cases concerning cover versions found to ⁽¹⁶⁾ mislead the public and damages were awarded to the producers.

3.2.9 The ratification by France of the Phonograms Convention has not facilitated the fight against piracy where

actions concern French nationals, and, even where the protection of the Convention is available, the remedies provided by the common civil law are insufficient to provide effective protection against piracy. All the remedies outlined above have procedural drawbacks and none provide for prompt and automatic repression of piracy. Trade mark protection is adequate, but is not a remedy for the unauthorised duplication of phonograms.

3.2.10 A Government Bill providing for a comprehensive reform of the present copyright law was adopted by the National Assembly at its first reading on 29 June 1984.⁽¹⁷⁾ It is expected that its passage through Parliament will be completed in 1984. Under the Bill, producers of phonograms have the right to authorise the reproduction and distribution of their phonograms and performers are granted the right to control the fixation and communication to the public of their performances. Both producers and performers are granted the right to receive an equitable remuneration for the broadcasting, cable distribution and public performance of phonograms. The penalties for infringement of these rights are a fine of from FF 6,000 to FF 120,000 and/or imprisonment for a period of from three months to two years. If the Bill completes its passage through Parliament without significant amendments, it is anticipated that France will ratify the Rome Convention without too much delay.

3.3 Case Law

3.3.1 The performers enjoy some kind of protection by virtue of jurisprudence also based on Article 1382 of the Civil Code on civil liability.⁽¹⁸⁾ In a series of cases, beginning with the Fürtwangler case⁽¹⁸⁾ the Courts decided that performing artists not only have a moral right over their performances but also have the right to forbid any unauthorised use of their performances. This was most recently confirmed in the SNEPA v. Radio France case.⁽¹⁹⁾

3.3.2 The SPEDIDAME case⁽²⁰⁾ appears to have restricted the general principle laid down by the Fürtwangler case by ruling that the use of commercial phonograms by the broadcasting stations was not an unauthorised use of the artists' performance unless the performer had made a stipulation to that effect in a contract or collective agreement, because such use was common practice and constant.

3.3.3 The main decisions of the Courts in piracy cases are cited above (paragraphs 3.2.3 et seq.)

3.4 Customs Legislation or Regulations

3.4.1 The French Penal Code provides, in Articles 425 and 426, that any publication of writings, musical composition or other work, printed, engraved or reproduced by whatever method, contrary to the laws and regulations relating to the property of authors, is an infringement. Infringement on French territory of works published in France or abroad and the importation of infringing articles is a punishable offence

under Articles 425 and 427 onwards of the Penal Code.

3.4.2 Customs may therefore intervene to make sure that sufficient recording royalties have been paid to the French authors' society, SDRM, or to the foreign authors' society in the exporting country in respect of imported phonograms. The question whether the rights of producers of phonograms have been infringed does not arise. It is only the authors' rights which give rise to the possibility of intervention.

3.4.3 The French customs administration has exercised a degree of control over imported phonograms, pursuant to these provisions of the Penal Code, since May 1977, when a series of directives on the subject were drawn up. Phonograms bearing an emblem of one of the national authors' societies which collect recording royalties in the various countries are a priori considered to have been authorised by the authors. In the absence of such an emblem, customs invite the importer to prove that he has paid copyright within a certain period. If he is unable to do so, the customs administration establishes a report and refers the matter to the police.

D. FEDERAL REPUBLIC OF GERMANY

4.1 Membership of Conventions

The Federal Republic of Germany has ratified both the Rome Convention (with effect from 21 October 1966) and the Phonograms Convention (with effect from 18 May 1974). Germany is also party to the Paris Act, 1971, of the Berne Union and to the 1971 text of the Universal Copyright Convention.

4.2 National Legislation

4.2.1 The rights of producers of phonograms and performers are laid down in the Law on Copyright and Related Rights of 9 September 1965, as amended up to 2 March 1974. (21)

4.2.2 The rights of producers are the subject of Section IV of the Law. Article 85(1) grants producers of original phonograms the exclusive right to authorise or prohibit the reproduction and distribution of their phonograms. Producers also enjoy a right to equitable remuneration for the broadcasting (including cable distribution) and public performance of phonograms which have been published (erscheinen) within the meaning of the Law (Articles 6(2) and 86). The duration of protection provided for in Article 85(2) for producers is twenty-five years calculated from the end of the year in which the phonogram was first published or twenty-five years from the end of the year in which the phonogram was first fixed in the case of non-publication.

4.2.3 The rights of performers are defined in Section III of the Law. Performers have the right to authorise or prohibit any use of their performances (fixation, reproduction, public performance, broadcasting or any other communication to the public) (Articles 75 and 76(1)). Performers also enjoy moral rights (Article 83(1)). The law also contains provisions

regarding the complex problem of consent for the use of joint performances such as choral, orchestral and stage performances. Article 80 stipulates that in such cases the activities envisaged by Articles 75 (fixation and reproduction) and 76 (broadcasting) are subject to the consent not only of the soloist, conductor and producer as individuals in the exercise of their individual rights but also of an elected representative or, in the absence of an elected representative, of the leader of each participating performers' group. Such representative or leader is empowered to take action alone in the name of the group in defence of their rights. This power may be transferred to a collecting society (Article 80(2)). Finally, Articles 76(2) and 77 provide that, where a performance has been lawfully fixed on a phonogram or videogram, it can then be broadcast or otherwise publicly performed without the performers' consent. Such use must, however, be compensated by equitable remuneration.

4.2.4 The duration of protection of performers' rights provided for by Article 82 is twenty-five years from the date of publication (erscheinen) if the performance is fixed on a phonogram or videogram or from the date of performance if publication has not taken place within a period of twenty-five years from the date of the performance.

4.2.5 With regard to the duration of protection of both performers and producers the situation is more complicated in the case of phonograms in existence prior to the entry into force on 1 January 1966, of the Copyright Law, 1965, and which were protected for a period of fifty years under the previous copyright legislation. ⁽²²⁾ The German Constitutional Court, whose decisions have the rank of law, declared in a decision of 8 July 1971 ⁽²³⁾ that Article 135 of the Copyright Law was unconstitutional to the extent that the shorter term of twenty-five years accorded to producers of phonograms and performers under the new Law was retroactive and applied to phonograms made before 1 January 1966. Following that decision, a new special provision was introduced to the Copyright Law in 1972 as Article 135(a) of the Copyright Law, 1965. According to this, either the performers or their heirs may proceed against the manufacture and distribution of copies of recordings made without the consent of the performer for a period of up to fifty years after the death of the performer until 31 December 1990.

4.2.6 Article 75 does not give performers a distribution right whereas, as mentioned above, the producers enjoy such a right under Article 85(i). This was not considered necessary because in Part IV of the Copyright Law it is provided that no unlawfully manufactured reproductions may be distributed or publicly performed (Article 96(1)).

4.2.7 Part IV of the Copyright Law provides for both civil and criminal remedies for infringement of all rights granted by the Law. Civil remedies include action for injunctive relief and action for damages if the infringement was intentional or the result of negligence. In lieu of damages, the injured party may recover the profits derived by the infringer from the acts

of infringement, together with detailed accounts of profits. Exemplary damages are also available (Article 97). Destruction or delivery up of infringing copies and equipment such as plates, matrices, etc., is also provided for (Articles 98 and 99). The criminal penalties imposed for infringement of the Copyright Law are in practice not sufficient. The offender is liable to a fine or imprisonment of up to twelve months (Article 108) and destruction or delivery up of infringing copies or plates is also provided for under penal sanctions (Article 110). All these criminal remedies are available only upon prosecution by the injured party (Article 109). The amount of fines depends on the financial situation of the accused and on the gravity of the offence. The defendant is obliged to disclose the number of copies he has sold and additional damages are imposed in cases of fraud and bad quality which might damage a company's reputation. The Ministry of Justice of the Federal Republic of Germany is currently considering increasing the severity of these remedies and the adequacy of these procedures in connection with a revision of the Copyright Law.

4.2.8 In the case of bootlegs, both performers and producers may take action against the bootleggers. The producer may take action without the express authority of the artist if the performer has transferred his rights under Article 75 to authorise or prohibit the fixation and reproduction of his performance to the producer by virtue of a contract or assignment of his rights (Article 78). Under Article 75(1), read in conjunction with Articles 34 and 53(4), the recording of public concerts is only permissible with the consent of the performer or his exclusive assignee.

4.2.9 In cases of counterfeiting, civil actions may be brought for infringement of trade marks and criminal proceedings on the basis of fraud.

4.2.10 German producers use both criminal and civil proceedings. Whereas, in criminal cases, the prosecution agencies have powers of investigation, there are no civil procedures regarding disclosure of the name of suppliers or inspection of stocks. It is, therefore, often more practical to start criminal proceedings.

4.3 Case Law

4.3.1 In 1975/1976, action was taken in two cases of importance in establishing piracy both as infringement of copyright and as an offence under the general criminal law.

4.3.2 In both cases, the manufacture and distribution of counterfeit cassettes was concerned: in one case, the cassettes were seized from the manufacturer; in the other, the cassettes were seized when the defendants offered them to a wholesaler. The defendants in each case were arrested and given suspended sentences of nine months' imprisonment and fined. Subsequently, appeals from sentence in each case were dismissed.

4.3.3 Judgement in both cases was based on infringement of the copyright of producers of phonograms and on fraud against dealers under paragraph 263 of the Penal Code. (24)

4.4 Customs Legislation or Regulations

4.4.1 Article 28 of the Trade Mark Law of 5 May 1936 (Warenzeichengesetz), as revised to 2 January 1968, and Article 2 of the Law ratifying the Madrid Agreement for the Prevention of False or Misleading Indications of Source on Goods provide for seizure in cases of importation of goods with false indications of the source or the identity of products or which bear trade marks without the permission of the right owner. These provisions are applicable to counterfeit, bootleg and pirate records and tapes. Article 28 of the Trade Mark Law obliges the customs authorities to act at the request of the right owners, whereas Article 2 of the Law concerning the Madrid Agreement provides that they should take action ex officio.

4.4.2 The customs regulations of the Federal Republic enable the customs authorities to intervene to ensure that recording royalties have been paid to the German authors' society, GEMA (Gesellschaft für Musikalische Aufführungs-und Mechanische Vervielfältigungsrechte), or to the authors' society in the exporting country. Copyright royalties paid or payable must be declared in order for the customs value of the records or tapes to be established. If they are not declared, the customs authorities can intervene and seize them. In practice, customs do co-operate with the police in anti-piracy activities.

E. GREECE

On 1 January 1981, Greece became the tenth member of the European Community. A transitional period of five years terminating on 1 January 1986 has been granted in order for restrictions to internal Community trade to be progressively abolished and the Common Customs Tariff to be adopted. Nevertheless, Greece is a full member of the Community and participates in all institutional activities on this basis. No information on Greece was contained in the 1980 edition of this study. In the interim, in 1982, the Commission of the European Communities published a study on the subject of piracy of phonograms in Greece by Messrs. Anestis Papastefanou and Christos Rekas. (25)

5.1 Membership of Conventions

Greece is party to the Paris Act, 1971 of the Berne Union and the 1952 Text of the Universal Copyright Convention.

5.2 National Legislation

5.2.1 The Greek Copyright Statute 1920, which took its current form from the amendments of 23 November - 7 December 1944, (26) was itself indirectly amended by Decree 4264 of 1962 which entitled Greek authors to enjoy the benefit of the level of protection granted under the Berne Convention. Under Article

1, copyright vests in "writers, composers, painters, authors of drawings, sculptors, turners and engravers of original works, arrangements or translations" for a duration of fifty years from the death of the author. From the foregoing it can be seen that no direct copyright protection is enjoyed by producers of phonograms.

5.2.2 Since the Copyright Law contains no specific protection for producers of phonograms, Greek producers have sought protection against unauthorised duplication of their phonograms by virtue of the rights enjoyed by authors under the Copyright Law. Article 1 accords to authors the exclusive right of publication, multiplication by reproduction, or copying by any means and specifies that these rights may be transferred to others. The exclusive right of public performance is also granted.

5.2.3 The Greek courts have accepted the view that the protection enjoyed by authors under the 1920 Copyright Law has been transferred to phonogram producers by means of their contracts for mechanical reproduction with the authors' society. This has enabled producers to take action against illegal reproductions, and to confiscate unlawful copies.

5.2.4 However, the penalties provided by the 1920 law are inadequate as a deterrent, providing for a maximum of three months' imprisonment. To remedy this situation, the Greek Parliament passed Law No.1064/1980 on 18 July 1980. (27) This law has never come into force as the required Presidential Decree has not been issued. It is not a copyright law as such, but rather of an administrative nature, seeking to control dealing in blank cassettes and the duplication and sale of pre-recorded cassettes. A committee, on which representatives of interested non-profit-making bodies would sit, would in effect license these activities. The law does, however, contain harsh penalties for illegal dealing in both blank and pre-recorded cassettes. Infringement of the law as regards dealing in blank tapes is punishable by imprisonment of at least one year, and fines ranging from 300,000 to 800,000 drachmas. For illegal dealing in pre-recorded material, so far as manufacturers, importers and exporters are concerned, these penalties are doubled and for distributors, they are halved (Article 4). Thus, the maximum punishment for a manufacturer of pirate product is two years' imprisonment and a fine of 1.6 million drachmas. It gives legitimate phonogram producers a locus standi, recognising the local producers' association (the Greek Group - IFPI) as an "injured party" in piracy offences. Criminal action envisaged by the law may, therefore, be complemented by civil litigation.

5.2.5 In addition, it may be assumed that Law 146/1914 on Unfair Competition, which forbids acts of a commercial nature contrary to fair dealing, would certainly cover acts of phonogram piracy; however the sanctions available, under Articles 13 to 15 of the Law, are relatively weak. The maximum term of imprisonment is six months and the maximum fine only 10,000 drachmas.

5.2.6 On 23 September 1980, legislation was passed (Law No.1075/1980)⁽²⁸⁾ providing, inter alia, that performers should have the right to authorise or prohibit the recording or use of their performance in any manner. However, as with the anti-piracy legislation, the necessary Presidential Decree has not been issued and the law is not in force.

5.3 Case Law

5.3.1 Despite the inadequacy of Greek copyright law, successful anti-piracy action has been taken in the courts. This action has been based on remedies available under criminal law.

5.3.2 In a judgement delivered by a Corfu court the possession of illegal tapes was equated with receiving and dealing in stolen property.⁽²⁹⁾ Penalties laid down by the criminal courts are significantly higher than those available under the copyright law. Under Article 394 of the Greek Penal Code, the crime of receiving and dealing in stolen property is punishable by imprisonment. Repeated offences or dealings with valuable property attract a minimum sentence of six months' imprisonment.

5.3.3 More significant progress was made in 1983. On 11 January 1983, the Greek Supreme Court, in Case No.462, equated piracy with the crime of forgery and fraud against the public as defined in Law No. 1608/1950. This law provides for high penalties: a minimum of six months' imprisonment if the gain to the infringer or loss to the public does not exceed 1,000,000 drachmas. If it does exceed this amount, the infringer is liable to a prison sentence of from five to twenty years. In case No. 462, the Supreme Court held that forgery was constituted by the production of cassettes which were marketed with counterfeit labels and forged copyright stamps in an attempt to mislead the public into believing that the pirate cassettes were genuine, legitimately produced cassettes. This was analogous, the Court stated, to forging documents. The offering of these for sale to the public, who would consequently mistake them for legitimate product, was held to be a fraud. This interpretation has been publicly endorsed subsequently by the Minister of Justice.

5.3.4 This precedent was followed with impressive results in a decision in October, 1983 (No. 752 of 17 October 1983), when a five-man Appeal Court affirmed that piracy was "tantamount to the crimes of forgery and fraud against the public" and sentenced the offender to six years' imprisonment, the heaviest sentence yet imposed for piracy anywhere in the world. It is expected that these decisions will have a wide-reaching deterrent effect.

5.3.5 The courts have also been prepared to equate the trading of illegal tapes with receiving and dealing in stolen property.

5.4 Customs Legislation or Regulations

5.4.1 There are no specific provisions in the Copyright Law or the Trade Mark Law enabling the customs authorities to intervene to prevent the importation of pirated goods. However, the Berne Convention is part of the national law of Greece. Article 16 of the Berne Convention, as mentioned in Chapter III, provides that infringing copies of a work shall be liable to seizure on importation in accordance with national legislation.

5.4.2 However, in practice, it is understood that the Customs Investigative Service has intervened in piracy cases to seize smuggled pirated records and cassettes and has cooperated with the authors and producers of phonograms in taking action against the pirates.

F. IRELAND

6.1 Membership of Conventions

Ireland has ratified the Rome Convention (with effect from 19 September 1979) and its present copyright legislation is in conformity with the Phonograms Convention. However, Ireland would need to extend the protection granted by its copyright legislation to countries party to that Convention by Statutory Instrument. At present, such protection has only been extended to countries party to the Rome Convention, the Berne Convention and the Universal Copyright Convention and it is possible for states not party to any of these Conventions to adhere to the Phonograms Convention. Ireland is party to the Brussels Act, 1948, of the Berne Union and to the 1952 text of the Universal Copyright Convention.

6.2 National Legislation

6.2.1 The Copyright Act of 1963 ⁽³⁰⁾ provides protection to producers of phonograms, whereas performers' rights are protected ⁽³¹⁾ by virtue of the Performers' Protection Act, 1968.

6.2.2 The producers' rights include the exclusive right to authorise or prohibit the reproduction of a phonogram, and the broadcasting, cable distribution and the public performance of an unpublished phonogram (Section 17). If the phonogram has been published, the producer is entitled to an equitable remuneration for its broadcast, cable distribution or public performance (Section 17(4)), subject to an exception when cable distribution is of a Radio Eireann broadcast..

6.2.3 The duration of protection for producers is fifty years from the end of the year in which the phonogram was first published.

6.2.4 Both civil and criminal remedies are available to producers. The producer (or his exclusive licensee) has a right of civil action against any person infringing his copyright. The civil remedies include injunctions, damages,

accounts of profits and "any other reliefs available in any corresponding proceedings in respect of infringements of other proprietary rights" (Section 22). Actions for conversion or detention are also available (Section 24). Such civil actions are independent of any criminal proceedings initiated by the police.

6.2.5 Criminal proceedings may be brought against persons carrying out certain specified acts (including the manufacturing, selling and importation of infringing copies). The penalties include destruction or delivery up of infringing copies or plates and seizure (Section 27). Procedures are available by which the police can raid premises either with or without a warrant and seize infringing copies. Penalties are rather light. On a first offence, the infringer will be liable to a fine of up to £5 per infringing copy (with a maximum fine of £100) and, on a subsequent offence, to the same fine or imprisonment for up to six months. A Copyright (Amendment) Bill published on 31 January 1984 is proposing to increase the present penalties. The Bill, if enacted, would increase the fine per infringing copy from £5 to £100 (with a maximum fine of £1,000). However, the prison sentence which may be imposed on subsequent offences is not being increased.

6.2.6 The Performers' Protection Act, 1968, gives a performer the right to prevent the fixation, reproduction and communication to the public of his performance (through broadcasting or any other means) without his consent (Section 2). Once such consent has been given, performers have no further rights. For example, they are not entitled, by law, either to prevent public performance or broadcasting of phonograms containing their performances or to receive remuneration for such use.

6.2.7 Infringement of the performer's rights leads to penal sanctions. The offender is liable to a fine not exceeding £100 and the court may order the destruction or delivery up of infringing copies or plates (Section 8).

6.2.8 Although both producers and performers are protected against piracy, the penalties are very low and insufficient to deter professional pirates.

6.2.9 In cases of counterfeiting, actions for infringement of trade marks may be brought by the producers under the Trade Marks Act, 1963. Criminal penalties for infringement of trade marks are also imposed under Section 2 of the Merchandise Marks Act, 1887 (as amended), whereby a person on summary conviction may be imprisoned for a term not exceeding six months or fined an amount not exceeding £100.

6.3 Case Law

While the Irish and United Kingdom copyright laws are closely related and identical in many respects, the Irish Courts are not bound by UK precedents (and vice versa). It is of interest to note, therefore, that the Irish High Court has made an Anton Piller form of order in a case of copyright

infringement. (32)

6.4 Customs Legislation or Regulations

6.4.1 Section 28 of the Copyright Act enables the owner of the copyright in a sound recording to give notice to the Customs and Excise to the effect that he is the owner of the copyright in that sound recording and to require them to treat copies of the recording as pirated goods. This provision enables Customs and Excise to prevent the importation of infringing copies of phonograms provided notice is given by the producers in accordance with the regulations made under Section 28. The Revenue Commissioners may destroy copies of phonograms which have become prohibited goods by virtue of Section 28.

6.4.2 Agreement has been reached with the Customs and Excise in Ireland that although, in theory, they could be required to examine every consignment of records which enters the country, to see if it contained any prohibited goods, in practice the Customs would only examine consignments where the consignee is not a member of the national association of producers of phonograms, or where they have received information that a particular consignment contained infringing copies.

6.4.3 Similar provisions exist for treating goods as prohibited goods under the Irish Trade Marks Act and the Merchandise Marks Act.

G. ITALY

7.1 Membership of Conventions

Italy has ratified both the Rome Convention (with effect from 8 April 1975) and the Phonograms Convention (with effect from 24 March 1977). Italy is party to the Paris Act, 1971, of the Berne Union and to the 1971 text of the Universal Copyright Convention.

7.2 National Legislation

7.2.1 The rights of producers of phonograms and those of performers are laid down in the Copyright Law of 22 April 1941.⁽³³⁾ Both producers and performers are granted moral rights (Articles 74, 81 and 83). The creativity in the production of an original phonogram and its artistic value is thus recognised.

7.2.2 Producers of phonograms enjoy the exclusive right to reproduce a phonogram and to put it into commercial circulation (Article 72). The producer is also entitled to receive equitable remuneration in respect of the broadcasting or public performance of his phonograms (Article 73). The duration of the producers' protection is thirty years from the date of deposit, (the Copyright Law provides that the rights of producers may be exercised only if one copy of the phonogram for which protection is claimed has been deposited with the competent authority)⁽³⁴⁾ and not more than forty years from the making of the "original plate" (Article 75).

7.2.3 The consent of a performer is required for the fixation and reproduction of his performance and for the communication to the public of his live performance (whether by broadcasting or any other means). He has the right to oppose any use of his performance "if it might be prejudicial to his honour or reputation". The performer is entitled to remuneration for all uses of his performance. In particular, he is entitled to equitable remuneration for the broadcasting and public performance of his lawfully recorded performance (Article 80).

7.2.4 The remuneration payable to producers and performers under Articles 73 and 80, however, is not freely negotiated through contracts, but is determined and settled in accordance with procedures laid down by implementing regulations. (35)

7.2.5 The duration of the protection afforded to performers is twenty years from the date on which the performance took place (Article 85).

7.2.6 Civil remedies and penal sanctions are available in both cases for infringements. The remedies are the same as those available to authors. Civil remedies are injunctions (Article 156), damages or destruction of infringing materials (Article 158) and seizure (Articles 160-161). Prior to 1981, penal sanctions were inadequate to deter the widespread piracy which exists in Italy. However, the 1981 Law amends Article 171 of the 1941 Law, increasing penalties for the piracy of phonograms. (36) The law provides that:

"Any person who unlawfully reproduces for profit-making purposes, by any copying or reproduction process, discs, magnetic tapes or similar carriers, or who, without being involved in the reproduction, places them on the market, stocks them with a view to sale or introduces them into the territory of the State for profit-making purposes, shall be punished with imprisonment of from three months to three years and with a fine of 500,000 to 6 million lire. The penalty of imprisonment shall not be less than six months and the fine not less than 1 million lire if the facts of the case are particularly serious."

The law also provides for publication of the sentence in at least one daily newspaper and a specialised journal.

7.2.7 This new law is very much welcomed by the producers of phonograms since it not only substantially increases the fines but also, and most important of all, imposes heavy prison sentences on the offenders. The publication of the sentence is a useful provision which will make it difficult for an offender to carry on trading after being convicted.

7.2.8 In Italy, the fight against piracy is led jointly by the authors' society, SIAE (Società Italiana degli Autor ed Editori), and the producers of phonograms. This is because, in addition to the protection afforded to authors under the copyright law, forgery of the SIAE stamp (applied to all

legitimately produced and imported phonograms as proof that the authors' copyright royalty has been paid) results in additional penalties. A special security ink is used in the printing of the stamp which can be readily identified by SIAE. Forgeries are, therefore, easy to verify.

7.2.9 Any record or tape for sale without the stamp is assumed to be pirate and attracts criminal proceedings initiated by the financial or urban police following complaints from SIAE. Once the police have acted, and a raid has taken place, civil proceedings in the penal cases brought by SIAE in which individual record companies may join, follow.

7.2.10 In the case of counterfeit product, forgery of the SIAE stamp results in additional penalties as well as penalties for infringement of the record companies' trade marks. In the case of all pirate product, retailers found to be in possession of illegal records and tapes are also charged with receipt of stolen goods.

7.2.11 A number of other legal remedies are available either to the authors' society or to producers of phonograms.

7.2.12 Civil remedies include:

(i) confiscation of pirate material in favour of anybody having a motivated reason to fear that, during the period necessary for him to assert his rights through the ordinary civil procedure, he is threatened by an irreparable prejudice (Article 700 of the Code of Civil Procedure). A date is fixed for the start of the ordinary civil proceedings and, if it is not respected, reparation must be made; this remedy is open to the authors' society and to producers of phonograms;

(ii) action for damages for unfair competition for infringement of trade names, patents, markings or distinctive emblems (Article 2043 of the Civil Code); this action is open to the producer;

(iii) action for damages for unfair competition for acts which prejudice the entire industry (Article 2601 of the Civil Code); this action is open to the authors' society and the association of producers of phonograms.

7.2.13 However, these remedies are rarely invoked because of the dilatory character of civil proceedings, which may take up to ten years to reach a conclusion.

7.2.14 Criminal procedure is more effective in the case of piracy and, in accordance with the Penal Code, the criminal police take action against the pirates (Article 221 of the Penal Code). The police may confiscate pirate product found in retail outlets or in warehouses, and the equipment used for duplicating it, and place such material at the disposal of the

judicial authorities (Article 222 of the Penal Code). The police may carry out house searches (Article 224 of the Penal Code) with a warrant from a competent judge, or without, in cases of flagrante delicto. The police may ask for technical assistance from the authors' society and from the producers (Article 223 of the Penal Code).

7.2.15 In order for these criminal procedures to be invoked, the pirate product must be shown to be an illicit product (that is, bearing no trade mark or an invented mark; lacking a SIAE stamp; sold at a suspiciously low price) or a counterfeit (copying of the original trade mark; bearing a false SIAE stamp, etc.).

7.2.16 In the case of counterfeits, a number of additional offences against the Penal Code may be charged; fraud against national industries (Article 514); counterfeiting; altering or use without consent of distinctive marks on works of the mind or industrial products (Article 473); counterfeiting of public seals (Articles 468, 469 and 470), etc. In certain cases, pirates may be held guilty of fraud (Article 640) and of receipt of stolen goods (Article 648).

7.2.17 1980 saw a major turnaround in judicial appreciation of piracy, recognising in such cases the crime of receiving stolen property (Article 648 of the Penal Code). This can be used against anyone receiving copies of phonograms, not only through the trade but also privately, provided that knowledge of the unlawful origin of the material can be established. A logical preliminary to the crime of receiving stolen goods is the existence of a crime and, in the case of piracy of phonograms, case law has recognised this in the infringement of Article 171 of the Copyright Law. The offence of receiving is punishable by custodial sentences.

7.2.18 This line of authority, first established by the courts of Naples and Genoa, has been followed by the appeal courts of Milan, Rome, Palermo, Florence, Rorigo and Pau, and has recently been confirmed by the Court of Cassation.

7.3 Case Law

7.3.1 As in most EEC countries, legal history concerning piracy of phonograms is still recent in Italy. The first judgements date from 1975. Moreover, the general amnesty declared by the Italian Government in 1978 resulted in two-thirds of all pending piracy actions being annulled. Over one thousand piracy actions are pending at the time of writing this revised study.

7.3.2 Since 1975, many judgements have been handed down which permit the conclusion that piracy of phonograms has become a well-defined offence. Every act of piracy is considered an infringement of the authors' and producers' rights punishable under Article 171 of the Copyright Law, 1941, as amended. Offenders are fined and, to date, have been imprisoned for periods of between one and sixteen months. Even before the passage of the new Law No. 406 in 1981, the courts frequently ordered publication of the judgements in the daily

press and ordered the defendant to pay damages to the plaintiffs as well as their legal costs. (37)

7.3.3 In cases of counterfeiting, infringers have been condemned to the payment of fines under Article 171 and have also been found guilty of a number of additional offences:

- counterfeiting of distinctive marks on works of the mind and industrial products (Article 473, Penal Code). (38)

- sale or purchase of goods bearing a counterfeited public authentication or certification (Article 470, Penal Code). (39)

- sale of counterfeit industrial products with forged seals (Article 517, Penal Code). (40)

- introduction into the Italian State and commerce of industrial products with false markings (Articles 474 and 517, Penal Code). (41)

- counterfeiting of other public seals or instruments for public authentication or certification and use thereof (Article 468, Penal Code). (42)

- receipt of stolen goods (Article 648, Penal Code). (43)

7.3.4 The judgement of the Court of Naples referred to in the preceding paragraph in which the defendants were found guilty under Article 648 of the Penal Code of receiving stolen goods was the subject of the first piracy case to reach the court. The Court of Appeal confirmed the sentence of each appellant to three months' and fifteen days' imprisonment and to a fine of 100,000 lire and ordered the appellants to pay an additional 264,000 lire to cover the costs of the proceedings and the costs incurred by the civil parties. The Court of Appeal said inter alia that the proof of the existence of the necessary criminal intent to establish the crime of receiving could be clearly inferred from the nature of the goods sold, the kind of persons who sold them and the very low price and lack of invoices; the appellants must have been well aware that the cassettes had been illegally recorded, contrary to Article 171 of the Copyright Law, 1941.

7.3.5 In two cases of piracy, the offenders were condemned to the payment of fines for infringement of Article 171 of the copyright law and also prohibited from carrying out any form of commercial activity for a period of two months, in accordance with Articles 30, 31 and 37 of the Penal Code. (44) In these two cases, the court also ordered the payment of damages and legal expenses by the defendants and confiscation of the equipment used.

7.3.6 In a recent case where the offender was charged under the 1981 law with possessing pirate cassettes, the court sentenced the defendant to four months' and fifteen days'

imprisonment and a fine of 1.5 million lire. An order for destruction of the pirate cassettes was made and damages and costs were awarded against the defendant. In this case, the right of the Italian association of phonogram producers, AFI, to take action on behalf of its members was confirmed. (45)

7.4 Customs Legislation or Regulations

Articles 282, 285 and 340 of the Italian Customs Law (No. 43 of 23 January 1973) permit the customs authorities to intervene to prevent the importation of smuggled goods. There are no similar provisions regarding control of importation of pirate product. As in most countries, phonograms imported into Italy must be accompanied by a customs value declaration showing that authors' copyright royalties have been paid. However, the customs authorities have the power to intervene to prevent the importation of goods which have been deliberately misdescribed (Article 57 of the Customs Law). In addition, the customs authorities and the police have the power to seize and destroy counterfeit goods (goods bearing false trademarks). (46)

H. LUXEMBOURG

8.1 Membership of Conventions

Luxembourg has acceded to the Rome Convention (with effect from 25 February 1976) and has ratified the Phonograms Convention (with effect from 8 March 1976). Luxembourg is party to the Paris Act, 1971, of the Berne Union and to the 1952 text of the Universal Copyright Convention.

8.2 National Legislation

8.2.1 Producers of phonograms and performers are protected by special legislation on neighbouring rights enacted in order to enable Luxembourg to accede to the Rome Convention. (47)

8.2.2 The copyright legislation of Luxembourg is very similar to the French law, and it is therefore not surprising that it should have chosen not to incorporate the protection of producers of phonograms, performers and broadcasting organisations into its existing copyright legislation. Authors are protected under the Copyright Law of 29 March 1972.

8.2.3 Producers of phonograms are given the right to authorise or prohibit the reproduction of their phonograms and the importation and distribution to the public of duplicates made without their consent (Article 8). Producers are given no right to control or receive remuneration for the broadcasting or public performance of their phonograms.

8.2.4 The duration of the protection granted to producers is twenty years from the end of the year in which fixation took place (Article 12).

8.2.5 Performers enjoy the right to authorise or prohibit the broadcasting or communication to the public of their

performance, the fixation of their performance and its reproduction "if made for a purpose different from those for which the performer gave his consent". However, once the performer has consented to the fixation of his performance and its reproduction on record, he has no right to control, or to equitable remuneration, in respect of the broadcasting and public performance of the phonogram containing his performance.

8.2.6 The Law provides for identical criminal penalties for infringement of the rights of the producers and performers. Infringers are liable to a fine of from LF 5,000 to LF 100,000 and/or imprisonment from one to six months (Article 15). If the offence is repeated within five years the penalties may be doubled (Article 15(3)).

8.3 Case Law

So far as the author is aware, there have been no anti-piracy actions brought in Luxembourg.

8.4 Customs Legislation or Regulations

Customs matters for Luxembourg and Belgium are dealt with by the Belgo-Luxembourg Economic Union (see Chapter IV, A, 4, above).

I. NETHERLANDS

9.1 Membership of Conventions

The Netherlands has not adhered to either the Rome Convention or to the Phonograms Convention. It is a party to the Brussels Act, 1948, of the Berne Union and to the 1952 text of the Universal Copyright Convention.

9.2 National Legislation

9.2.1 Dutch law does not grant a copyright or any other specific right to producers of phonograms or to performers. For lack of specific protection, producers and performers have to rely on the general protection afforded by common law, and, in particular, on the law pertaining to negligence, infringement of trade marks, unfair competition and fraud.

9.2.2 In practice, producers have joined forces with STEMRA, the authors' society, in order to combat piracy more effectively. Authors are protected against unauthorised reproduction of their works by virtue of the Copyright Law, which dates from 1912. To succeed in an action for infringement of copyright, the authors not only have to prove title, but also the wilful purpose to infringe copyright. However, the protection available to producers and performers imposes an even heavier burden of proof and is highly unsatisfactory.

9.2.3 Actions brought under the law of unfair competition are based on Article 1401 of the Civil Code. Since 1970, when producers began to take action against piracy, both the

unauthorised duplication of phonograms and bootleg recordings have been judged illegal by the courts in civil proceedings based on the law of unfair competition.

9.2.4 However, the burden of proof is heavy. In addition to providing proof of the illegal act, that is, the manufacture of and/or dealing in pirate, counterfeit or bootleg products, the producer and performer have to prove that the pirate acted in bad faith and knew or at least should have known that his dealings were illegal. Moreover, the actual prejudice suffered by the plaintiff must be proven and quantified, as well as the fact that that prejudice resulted from the actions of the defendant. Bad faith is especially difficult to prove in the case of counterfeits because the wholesale price is seldom exceptionally low, the source is often unknown and the exterior of the counterfeit usually differs only in minor details from the legal product. It is easier to prove bad faith in the case of a professional manufacturer, wholesaler or retailer who is deemed to have sufficient expertise to tell the difference between legal and illegal product.

9.2.5 As a result of these difficulties, producers and performers have until now tended to use injunctions rather than bring actions for damages. Judges are more easily able to presume the general threat of damage than to establish exact figures as to loss of profit for the producer or loss of royalty for the performer. Dutch law does not provide for general or punitive damages, and it is often difficult to assess precise damage suffered, especially when the price of pirate product is lower than that of legal product and no exact sales figures are obtainable, and to prove that for every pirate or bootleg product sold a legal product would have been sold. Moreover, there is no general procedure for discovery.

9.2.6 The authors' society, STEMRA, and the producers therefore usually only seek injunctions which prohibit future infringements and failure to comply with which gives rise to penalties. Another reason for not claiming damages is that, in cases where a criminal prosecution is pending, such criminal proceedings might be discontinued on the ground that the interests of the parties have been sufficiently looked after in civil proceedings.

9.2.7 In civil cases, orders for seizure may be obtained by producers, performers and authors, but only the latter can obtain a subsequent order for destruction of the pirate material according to the Copyright Law.

9.2.8 Producers and performers have also sought protection by way of criminal remedies. Due to the fact that they do not enjoy specific rights, producers and performers are not specifically protected by the criminal law. In the past, they have lodged complaints with the police on grounds of fraud, trade mark infringement and unfair competition, but these actions proved unsuccessful due to the fact that either the burden of proof of the prosecution was too heavy or the infringements were not considered sufficiently serious.

9.2.9 However, infringement of the authors' copyright is a felony and, since February 1978, when the authors' society and the producers joined forces to fight piracy, no such complaints have been lodged and prosecution takes place based on the Copyright Law. (48) The penalties under that law amount to a maximum fine of D.fl. 25,000 or six months' imprisonment for the manufacturer and a maximum fine of D.fl. 10,000 for the retailer.

9.2.10 An advantage of the criminal remedies provided by the copyright law is that investigators acting on behalf of the authors' society, STEMRA, have the right of access to any place for the investigation of facts associated with copyright infringement and to seize objects associated with such infringement. If access is denied them, they may gain entry, if necessary, with the assistance of the police. This is of great importance because the crime of copyright infringement does not allow the arrest of a person other than in 'flagrante delicto'. In order to overcome this problem, public prosecutors have charged people dealing in pirated material with the crime of receiving (that is, dealing in goods originating from a criminal offence). The crime of receiving is punishable by up to three years' imprisonment or a fine of up to D.fl. 12,000.

9.2.11 In August 1984, an Interdepartmental Working Group, established by the Dutch Government and in which the Ministries of Justice, Culture, Economic Affairs and Finance were represented, submitted an interim report to the relevant Ministers on piracy in the Netherlands. The report made a series of recommendations for government action to combat piracy and called for new legislation to protect producers of phonograms and videograms as well as performers, revision of the Copyright Law to improve civil remedies and criminal sanctions against piracy and the appointment of public attorneys to investigate and prosecute in copyright infringement cases. The final report of the Working Group is expected to be published before the end of 1984.

9.3 Case Law

9.3.1 All actions against pirates brought by producers have been based on the law of unfair competition, which forms part of the general law on tort. The unfair competition law does not always provide an effective protection against piracy, as the following cases will show.

9.3.2 In two cases against the same defendant, a large retail organisation was found to be engaged in selling records containing bootleg and pirate material. On the basis of unfair competition, the court granted injunctions to the artists concerned restraining the sale of records containing bootleg or pirate material of their performances and also injunctions to the record producers concerned restraining the sale of records containing any material copied from their repertoire in the Netherlands. (49)

9.3.3 In a case concerning counterfeit cassettes of supposed UK origin, the Court ruled that, as the defendant was on social

security and was not a regular dealer, the plaintiffs had not given sufficient proof of the criminal intent of the defendant. Furthermore, the Court decided that a dealer cannot be forced to have samples of cassettes, which he has not acquired through legitimate channels, verified by the record companies to determine their origin. The fact that the cassettes were offered for sale in Belgium was not thought to be suspicious on the ground that free circulation of goods allows free import and export of all goods manufactured in EEC countries. (50)

9.3.4 In a case concerning bootleg records, the Court acknowledged the act of tort, and, indeed, the infringement of copyright, but it ruled that the extent of the tortious act was too limited and that the records, being the remainder of a large quantity of bootlegs already sold, did not prove that the defendant would be involved in dealing in pirate or bootleg material in future. (51)

9.3.5 In a case brought jointly by the authors' society, the national association of record producers (NVPI - Nederlandse Vereniging van Producenten en Importeurs van Beeld- en Geluidsdragers) and two record companies concerning pirate, counterfeit and bootleg records and tapes, the defendants did not accept the technical verification of the counterfeit records concerned, whereupon the court ordered verification by TNO - the Dutch Institute for technical and natural scientific research - which delayed the hearing of the case from April to December, 1979. Finally, in December 1979, injunctions were granted to STEMRA and the complaining companies in respect of sales of bootleg, pirate and counterfeit recordings on the basis of copyright infringement and unfair competition. However, the claim of NVPI as the national association of record companies was turned down. (52)

9.3.6 (53) In the period 1980 to mid-1981, five piracy cases were settled by the so-called thousand-guilder deed, that is, a voluntary declaration to abstain from piracy on penalty of a fine of D.fl.1000 per infringement. Such a declaration must be signed before a notary public.

9.3.7 In two cases injunctions were obtained; one case concerned the Euro Cassette Company Ltd of Huizen, which offered pirated cassettes manufactured in Singapore for sale in England, Liberia, Nigeria, Dominican Republic and El Salvador; the other case concerned the import and sale of pirated disco-mixes claimed to have been imported from Canada. (54)

9.3.8 One case was lost: the Court ruled that criminal investigations and a pending criminal court case against the defendant with regard to his dealings in counterfeits in the past were no proof that the defendant knew or should have known that he was again dealing in bootlegs and counterfeits. (55) Both STEMRA and NVPI appealed against the verdict.

9.3.9 In January 1982, two cases came to court. One was before the Appeal Court of 's-Hertogenbosch, which ruled that piracy infringes the rights of both producers and authors. (56) Only in cases of counterfeit product is the bad faith of the

retailer not automatically presumed, if he can prove that he bought the product from a reputable wholesaler. In the case of bootleg and pirate product a presumption of bad faith is automatic. The claims of STEMRA and NVPI to stop the retailer dealing in pirate product, with a penalty on infringement, were admitted by the Appeal Court.

9.3.10 The other case concerned disco-mixes sold by a major chain of retail stores.⁽⁵⁷⁾ Although WEA's and EMI's claims against the retailer were admitted by the Court, the NVPI's claim was dismissed. The NVPI has appealed against the decision.

9.4 Customs Legislation or Regulations

9.4.1 Article 28 of the Copyright Law, as amended to October 1972, gives authors the power to seize "unlawful reproductions ... and to demand that they be destroyed or rendered unusable" on the order of the court. However, apart from police duties assigned by special laws, such as the law on crimes against the economic order (Wet op de economische delicten), the duty of the customs authorities concerns the control of fulfilment of import and export formalities only.

9.4.2 With regard to goods coming from other EEC or EFTA countries, these formalities consist of an oral declaration for import and the presentation of the invoice of the goods for payment of VAT.

9.4.3 Import or excise duties due on goods imported from countries outside the EEC and EFTA countries are based on the customs value of the goods; in the case of records and tapes, these are pressing costs and copyright royalties. Under the GATT Agreement, customs value means the price actually paid or payable for the imported goods.

9.4.4 The customs authorities are authorised to inspect the goods at all times, but may only intervene if there are grounds for doubting the declared customs value; and, provided all documents concerning the goods are correctly filled in regarding payments of VAT and import or excise duties, the customs authorities cannot detain or delay shipments. Article 220 of the General Customs and Excise Law enjoins secrecy upon the customs, and therefore in principle limits their possibilities to request information from authorities outside the customs. Thus co-operation of the customs authorities in the Netherlands regarding information or verification of pirate product imported into the country is voluntary, and not based on any law or regulation. On a few occasions, the Dutch authors' society, STEMRA, which is very active in fighting piracy in co-operation with the producers of phonograms, was able to seize counterfeit and bootleg product under Article 28 of the Copyright Law, after having been notified of the arrival of suspicious shipments.

J UNITED KINGDOM

10.1 Membership of Conventions

The United Kingdom has ratified both the Rome Convention ⁽⁵⁸⁾ (with effect from 18 May 1964) and the Phonograms Convention ⁽⁵⁹⁾ (with effect from 18 April 1973). It is party to the Brussels Act, 1948, of the Berne Union and to the 1971 text of the Universal Copyright Convention.

10.2 National Legislation

10.2.1 Protection for authors and producers ⁽⁶⁰⁾ of phonograms is provided for in the Copyright Act, 1956, and performers are protected under the Performers' Protection Acts, 1958-1972. The producers' rights are sufficiently strong to enable them to combat piracy (stricto sensu) and counterfeiting without recourse to the additional protection afforded to authors.

10.2.2 Under the Copyright Act, 1956, the producer of a phonogram has the exclusive right to authorise or prohibit the reproduction of his phonogram and the broadcasting, cable distribution and the public performance of his phonogram (Section 12, paragraph 5). The United Kingdom is the only country in the EEC which gives producers the right to prohibit the broadcasting, cable distribution and public performance of their phonograms (subject only to an exception when cable distribution is of a BBC or ITV broadcast).

10.2.3 The duration of the protection of producers is fifty years from the end of the calendar year in which the phonogram is first published (Section 12, paragraph 3).

10.2.4 Civil remedies available to the producer are effective: the injured party may be granted injunctions, (that is, orders directing the defendant to refrain from infringing his copyright), awarded damages, accounts of profits or other monetary reliefs (Section 17). He may also obtain inspection orders based on the law of inspection and discovery and is entitled to remedies for conversion or detention of infringing copies (Section 18).

10.2.5 The law of inspection and discovery is of great assistance in combating piracy. The plaintiff may apply ex parte (that is, without the presence or knowledge of the defendant) to a High Court Judge for an order for inspection, photographing and delivery up of infringing materials in the defendant's possession or control. The defendant is ordered to permit named persons (always including the plaintiff's solicitor) to enter and inspect his premises and to remove for safe keeping documents or articles, including the apparatus used or intended to be used for making the infringing copies. If the defendant refuses to comply with the order he may be fined or committed to prison for defying the court ("contempt of court"). These orders are known as Anton Piller orders, having first been sanctioned by the Court of Appeal in 1975 in the case of Anton Piller KG v. Manufacturing Processes Limited and Others. ⁽⁶¹⁾ This area of the law has been considerably

developed by case law since 1975 for the express purpose of dealing with piracy cases (see paragraphs 10.3.1 et seq, below).

10.2.6 Moreover, in all civil actions in the United Kingdom, both parties are obliged at a certain stage of the proceedings to give discovery of all relevant documents in the possession of the other (including invoices and other documents showing where goods came from and went to)⁽⁶²⁾ and both parties have the right to ask interrogatories of the other side⁽⁶³⁾.

10.2.7 The criminal penalties (as opposed to the civil remedies referred to in paragraph 10.2.4, above) for offences relating to infringement of copyright in phonograms and cinematographic films, which were previously very mild, have been strengthened by the Copyright (Amendment) Act, 1983.⁽⁶⁴⁾ Thus, the law now provides on summary conviction for prison sentences of up to two months or a fine of up to £2,000 per copy (for offences committed after 1 May 1984) of the pirate product. The fine is fixed by reference to a standard scale of fines for criminal offences which may be altered by order of the Secretary of State if it appears to him that there has been a change in the value of monies (Sections 37 and 48 of the Criminal Justice Act, 1982). On conviction on indictment of manufacturing, importing and distributing infringing copies, the penalty is an unlimited fine, or imprisonment for up to two years, or both. The Act also provides for the police to be issued with warrants to enter and search premises, with the power of seizure. The police may seize material which they reasonably believe to be evidence of the manufacture, sale, hire (including the exposure for sale or hire), importation or distribution of pirated material. Seizure of pirated material which is exhibited in public by way of trade is also permitted (Section 2). Destruction or delivery up of infringing copies and plates is still available under the 1956 Act (Section 18).

10.2.8 Under the Performers' Protection Acts it is an offence, without the consent in writing of the performer(s) knowingly (i) to make a record or film of his live performance (directly or indirectly), that is, at the place the performance takes place or off the air, (ii) to sell or hire or offer to sell or hire records so made or to use them for the purpose of public performance, (iii) to broadcast a live performance.⁽⁶⁵⁾ Performers have no right to control or receive remuneration for the broadcasting or public performance of phonograms containing their performances.

10.2.9 Only penal sanctions are provided for by the Acts. In 1972, the penalties for offences under the Acts were increased in an effort to assist in combating bootlegging. Those who infringe the rights of performers are liable to a fine of up to £400. Moreover, on conviction of the offender, the court may decide on the destruction of any infringing "records, plates or similar contrivances (in the possession of the offender) ...".⁽⁶⁶⁾

10.2.10 Other legislation which is of assistance in combating counterfeiting includes the Theft Act, 1968, and consumer protection legislation, notably the Trade Descriptions Act,

1968. The latter provides an administrative remedy against piracy; action may be taken by trading standards officers to enforce this law against counterfeit product on the ground that the manufacturer or the product itself is falsely described.

10.3 Case Law

10.3.1 Many legal actions have been taken against record pirates in recent years and this has resulted in developments in the law, which are discussed below.

10.3.2 The "inspection order" has become an important weapon in the armoury of those who are combating the piracy and counterfeiting of phonograms. The effect of the Anton Piller order, which is applied for ex parte (i.e. without notice to the suspected pirate/counterfeiter) at the very beginning of the legal process, or at any other time subsequently, is to empower the plaintiff's legal representatives to enter onto the premises of the suspected offender and then to look for and remove any infringing articles (that is, those made in breach of the copyright owner's rights), any machinery being used for the reproduction of such articles and any relevant documentary evidence of the illegal activities. Such order may be granted only by a Judge of the High Court (sitting in camera), the very essence of the order being secrecy, for if the suspected offender were to be put on notice he would most likely attempt to remove or destroy all evidence of his illegal activities. However, the Judges have made it clear that such orders should only be granted in extreme cases where there is in fact a grave danger of property being removed, destroyed and/or concealed or of vital evidence being destroyed. The plaintiff must produce overwhelming evidence on his behalf to establish a strong prima facie case that the premises to be inspected are those of the pirate and to establish the identity of the suspected offender. Much investigation is obviously needed before the order may be applied for.

10.3.3 An associated order, often granted in conjunction with an Anton Piller order, is now part of the law since the case of EMI Limited and another v. Sarwar and Haidar⁽⁶⁷⁾ which held that the defendant may be compelled forthwith to reveal all relevant information to the plaintiffs and, in particular, to reveal the names and addresses of all persons from whom the infringing articles have been obtained and to whom they have subsequently been distributed. Such information is of great importance as it enables further investigations to be carried out and may lead eventually through all the links in the chain to the source of the counterfeit goods in the United Kingdom and, if they originated from abroad, to the original source wherever that may be in the world.

10.3.4 In an important development, the House of Lords has held that even completely innocent handlers of counterfeit articles - persons into whose hands such goods have come (in the course of trade or otherwise) without their knowing of the nature of the goods - are under the same duty to disclose fully all information which could assist in the suppression of the counterfeiting/piracy of the goods in question, in the same way

as if they were not innocent. In the relevant decision, the duty was held by the Court to fall on the Customs and Excise authorities, so it would seem that nobody is exempt. (68)

10.3.5 A further, extremely potent weapon in the fight against piracy is the combining of Anton Piller and Sarwar orders with a Mareva injunction. This is now common practice. A Mareva injunction may be obtained in a proper case to restrain the sale, (69) assignment or alienation of property or other assets. In 1982, the Court of Appeal empowered the British Phonographic Industry (BPI), at an interlocutory stage in the proceedings, to seize certain motor vehicles of the accused which he had acquired with the profits from his pirate activities. The Court held that a Mareva order for delivery up of chattels may be made if there is clear evidence that the defendant is likely, unless restrained by the order, to dispose or otherwise deal with his chattels in order to deprive the plaintiff of the fruits of any judgement he may obtain. (70)

10.3.6 The jurisdiction of the High Court to grant Mareva injunctions is now statutory under Section 37(1) and (3) of the Supreme Court Act, 1981.

10.3.7 The effectiveness of injunctions (see paragraph 10.2.4, above) has very recently been further extended. In 1983, the BPI obtained a 'class injunction', effective against any dealer in certain named pirate product, even though the said dealers were not named in the original order. (71)

10.3.8 It has also been established that the BPI as a representative body may recover damages. In a case where one BPI member was suing on behalf of itself and all other members of the BPI, the court decided that damages should be awarded to the BPI; the court considered it would be an unnecessary complication if all members of the BPI were to be required to join in the action or start individual actions. (72)

10.3.9 To underline the importance of the above variety of orders, it is essential to realise that they are applied for (and granted) at the very beginning of proceedings against the suspected offender, long before the actual trial takes place. And, indeed, the evidence which arises as a result of such orders is usually so powerful and overwhelming that a quick settlement results between the parties at an early stage, involving an agreed sum of compensation and permanent injunctions prohibiting the counterfeiter from indulging in any further illegal activities.

10.3.10 The Anton Piller order was called in question, with regard to interrogations and discovery, by the Court of Appeal in February 1980, and the case was referred to the House of Lords. In April 1981, the House of Lords delivered judgement, holding that, where there was a realistic possibility of more than trivial criminal charges being brought, a defendant in civil proceedings was entitled to rely on his privilege against self-incrimination in resisting an Anton Piller order requiring the disclosure of incriminating information. As a result, the scope of such orders was restricted to requiring the defendants

to allow access to premises for the purpose of looking for illicit copies and to allow these to be removed and held in custody. This was the original and fundamental purpose of the Anton Piller order. The House of Lords held, with regret, that the defendants were entitled to avail themselves of the privilege against self-incrimination to the extent that such an order related to the supply of information. It could not be invoked, however, to avoid producing documents. (73)

10.3.11 However, subsequently, this restriction has been removed by Section 72 of the Supreme Court Act, 1981, which provides that a defendant may not be excused from supplying information by reason only that to do so would tend to incriminate the defendant or his spouse. The privilege against self-incrimination is however preserved intact by the provision that any information supplied in terms of this Section may not be used in evidence in any prosecution for an offence related to the infringement which is the subject of the "Anton Piller" application. Consequently, the weapon of the Anton Piller order has been restored to its former level of effectiveness as developed by case law prior to the Rank Film decision.

10.3.12 The above remedies are not available to assist performers and producers of phonograms to combat bootlegging. In a bootlegging case in which performers' rights were concerned, Ex parte Island Records, (74) the Court of Appeal decided that both performers and the record companies with whom the performers have contracts have sufficient special interest in the prevention of the offences that the Performers' Protection Acts cover, to enable both performers and record companies to obtain all these civil remedies against bootleggers. This decision has not been followed, however, in subsequent cases and without a decision of the House of Lords the law remains obscure and unsatisfactory.

10.3.13 The Court of Appeal, in the case of RCA Corporation v. Pollard, (75) decided that while the Performers' Protection Acts make it a criminal offence to make or distribute unauthorised recordings of a performance, no civil right of action was thereby conferred on phonogram producers or on the performers themselves. In another case, Shelley v. Cunane, (76) it was further decided that the Performers' Protection Acts do not confer a civil right of action on which performers may rely to bring an action for breach of statutory duty. It was also held that the Acts do not confer a right of property.

10.3.14 As a result of these cases, neither performers nor phonogram producers can take civil action against bootlegging. Performers must rely on the criminal sanctions of the Performers' Protection Acts for protection.

10.3.15 In conclusion, the law does not provide adequate protection against bootlegging. However, the UK Government has made it clear that, in respect of performers' rights, new legislation will specify that civil remedies will be available in addition to the present criminal sanctions. (77) It is to be expected, therefore, that the Government will take the opportunity to overturn the decisions in RCA v. Pollard and

Shelley v. Cunane.

10.4 Customs Legislation or Regulations

10.4.1 There are three main headings under which the UK Customs and Excise authorities can take action against the importation of sound recordings:

(i) Importation without payment of duty. Section 44(a) of the Customs and Excise Act, 1952, provides that it is an offence for a person to import goods which are liable to the payment of a duty (or VAT) without the payment of that duty. The person importing in contravention of Section 44(a) is liable to have the goods forfeited and to a fine of three times the value of the goods or to imprisonment for two years or both.

(ii) Importation in contravention of the Trades Description Act, 1968. Section 16 of the Trades Description Act provides that goods may not be imported into the United Kingdom if they bear false trade descriptions such as incorrect statements as to the place of manufacture, production, processing or reconditioning.

(iii) Importation of prohibited goods. Section 44(b) of the Customs and Excise Act, 1952, makes it unlawful for persons to import prohibited goods. Records and tapes may become prohibited goods if they fall within the provisions of either Section 22 of the Copyright Act, 1956, or Section 64(a) of the Trade Marks Act, 1938, as amended by Section 17 of the Trades Description Act, 1968.

(a) Section 22 of the Copyright Act, 1956, provides that the owner of the copyright of any published literary, dramatic or musical work may give notice in writing to the Commissioners of the Customs and Excise that he is the owner of the copyright and that he requests that the Commissioners during a specified period treat as prohibited goods copies of the work. Section 22 does not apply to the owner of a copyright of a sound recording. However, in so far as a musical work may be printed on the sleeve of a record or on any inserts, the copyright owner may give notice to the Commissioners of the Customs and Excise to treat such copies as prohibited goods. In practice, this does not happen very often.

Both the Whitford Committee in 1977 and the Government, in its green paper on copyright law reform published in 1981,⁽¹⁸⁾ have recommended that the import restrictions contained in Section 22 should be extended to include sound recordings.

(b) Section 64(a) of the Trade Marks Act, 1938, provides that the proprietor or registered user of a trade mark may, by giving notice -

(i) that he is the registered user of that trade mark,

(ii) that goods bearing the trade mark are expected to arrive in the United Kingdom at a specified time and place,

(iii) that the use in the United Kingdom of such goods would infringe his rights in the trade mark,

require the Customs and Excise to treat such goods as prohibited.

This provision can be more effectively used to the advantage of record producers than the provision relating to prohibited goods under the Copyright Act. This is because the producer of the record is often the owner of the trade mark in question, whereas the owner of the copyright in a work in relation to Section 22 of the Copyright Act will probably not be the same person as the producer of the sound recording incorporating that work. Consequently the record company will need to request the copyright owner to take action.

10.4.2 Section 274 of the Customs and Excise Act, 1952, allows the Customs and Excise authorities to detain persons in cases where they suspect that an offence under the Act has been committed. Section 296 gives the Customs authorities power to search premises in circumstances where they suspect that anything liable to forfeiture under the Act is in those premises.

10.4.3 In practice, there is limited co-operation between producers of phonograms and the UK customs authorities and, following the decision of the House of Lords referred to in paragraph 10.3.4 above, the customs authorities are under a duty to make full disclosure of information which could assist in the suppression of piracy. However, the efficacy of Section 64(a) is much reduced by the fact that it is extremely rare for a producer to be in a position to notify Customs and Excise of the imminent arrival of counterfeit product. The onus is on the owner of the trade mark to alert Customs and Excise, whereas what is needed is continuous information regarding the importation of suspect phonograms.

FOOTNOTES TO CHAPTER IV

1. Law on Copyright of 22 March 1886 as amended up to 11 March 1958.
2. Belgian Trade Practices Act of 14 July 1971.
3. Tribunal de Commerce, Brussels, 26 March 1979.
4. Inelco N.V., SABAM and RCA v. Smits, Smits and Fredericks, Tribunal Correctionnel, Louvain, 5 December 1975.
5. EMI v. Supra Center, President of the Tribunal de Commerce of Courtrai, 5 May 1977, *Jurisprudence Commerciale de Belgique*, 1978, 578.
6. SIBESA/Labiau, President of the Tribunal de Commerce, Brussels, 17 March 1978.
7. President of the Tribunal de Commerce, Brussels, 11 January 1979.
8. SIBESA/International Elvis Presley Fan Club, President of the Tribunal de Commerce, Brussels, 30 May 1979.
9. SIBESA/Heremans, Cour de Cassation, 28 January 1982, *Jurisprudence Commerciale de Belgique*, 1982, 240.
10. Act No.158 on Copyright and Literary and Artistic Works, of 31 May 1961, as amended on 21 March 1973 (Act. No.174) and 8 June 1977 (Act No.240).
11. Report of the Copyright Committee to the Ministry of Cultural Affairs.
12. Report of Meeting of the Intergovernmental Committee of the Rome Convention. Geneva, 8-12 December 1983 (Doc. ILO/Unesco/WIPO/ICR 9/8 paragraph 16).
13. Tribunal Commercial, Paris, 12 January 1976, *CBS Disques v. Metro, FNAC and Others*, and Tribunal de Grande Instance, Paris, 1977; *Sté Barclay v. Paul Lederman and Others* (*Revue Internationale du Droit D'Auteur*, January 1979, p.182 et seq.)
14. Cour d'Appel, Paris, 6 October 1978, *Société Française du Son and Allaume v. Société Pacific Vogue Compagnie Générale du Disque and Roche* (*Revue Internationale du Droit D'Auteur*, April 1980, p.156) and Cour d'Appel, Paris, 19 January 1979, *SA Pickwick France v. SA Vogue*.
15. Tribunal de Grande Instance, Paris, 19 March 1980, *Sociétés Sonodisc and SNEPA v. Rezzoug, Negadi and El Madjouli* (*Revue Internationale du Droit D'Auteur*, October

- 1980, p. 133).
16. Cour d'Appel, Versailles, 25 January 1979, Guy Volant v. SNEPA.
 17. Projet de loi relatif aux droits d'auteur et aux droits des artistes-interprètes, des producteurs de phonogrammes et de videogrammes et des entreprises de communication audiovisuelle, Nos 2169 and 2235; 2^e Séance du 29 Juin 1984, Journal Officiel de la République Française, Débats Parlementaires de l'Assemblée Nationale, 30 juin 1984.
 18. Cour d'Appel, Paris, 13 February 1957, and Cour de Cassation, 4 January 1964, Sté Urania Records and Sté Thalia Disques v. Consorts Fürtwangler, (Revue Internationale du Droit D'Auteur , January 1965, p.194).
 19. Cour de Cassation, 30 January 1974, Orane Demazis v. Compagnie Méditerranéenne du film, Bull. Civ. I, No 33, p. 28, J.C.P. 1974 IV, 92; Cour de Cassation, 29 April 1976, Spycret Dame Rivière v. Sté Disc A2 (Revue Internationale du Droit D'Auteur, October 1976, p.166); Cour de Cassation, 5 November 1980, SNEPA v. Radio France (Revue Internationale du Droit D'Auteur , April 1981, p.158).
 20. Cour de Cassation, 15 March 1977, SPEDIDAME and Others v. ORTF (Revue Internationale du Droit D'Auteur , July 1977, p.141).
 21. Act dealing with Copyright and Related Rights (Copyright Act) of 9 September 1965, as amended up to 2 March 1974.
 22. Law concerning Copyright in Literary and Musical Works, 19 June 1901, as amended to 22 May 1910, and the Act extending the terms of copyright protection of 13 December 1934.
 23. Decision of the Federal Constitutional Court of 8 July 1971, BVerfGE, Bd.31, at 229 (official law report).
 24. State v. Jurgen Niemeyer, Magistrates Court, Hamburg, 4 August 1977, and upheld in the District Court, Hamburg, 12 October 1978; State v. Thomas Dunker and Friedrich Plog, Magistrates Court, Hamburg, 25 October 1977, and upheld in the District Court, Hamburg, 16 June 1978.
 25. A. PAPASTEFANOU. The Piracy of Phonograms in Greece. Study written in collaboration with C. Redas, Brussels, Commission of the European Communities, 1982.
 26. Law on Literary Property, No. 2387, of 29 June 1920, as amended up to 23 November - 7 December 1944.
 27. Law No. 1064/1980 on the ratification of the Legislative Act of the President of the Republic, dated 31 March 1980, concerning the procedure applicable to the production and sale by third parties of tracings, copies, imitations, etc., of any work forming part of the

- property of State museums and archaeological sites, and certain other provisions (of 15 July 1980).
28. Law No. 1075/1980 on the permanence of employment of musicians of the State orchestras of Athens and Thessalonica, on the calculation of the royalties payable to Greek playwrights, on the transfer of all jurisdiction for cinema to the Ministry of Culture and Science, on the protection of performers and on job creation in State theaters (of 23 September 1980).
 29. Case No. 312 of 26 March 1981, the Three Members' Magistrates' Court of Corfu.
 30. Copyright Act, No.10, of 1963.
 31. Performers' Protection Act, 1968 (No. 19 of 2 July 1968).
 32. House of Spring Gardens Ltd. and others v. Point Blank Ltd. and others, 9 June 1980 (FSR) (1980) 359.
 33. Law for the Protection of Copyright and other Rights connected with the exercise thereof, No. 633, of 22 April 1941, as amended up to 29 July 1981 (Law No. 406).
 34. Copyright Law No. 633, of 22 April 1941 (as amended); Decree No.1369, 1942, implementing regulations (as amended); Articles 8 and Articles 30-43).
 35. Articles 23 and 25 of the Regulations for the Application of the Law No. 633 of 22 April 1941. The remuneration is fixed by two Decrees of 20 September 1975, and 31 July 1976. The former relates to private users and the latter to the public broadcasting organisation, RAI.
 36. Law concerning urgent measures against the unlawful copying, reproduction, import, distribution and sale of unauthorised phonographic products (No. 406, of 29 July 1981).
 37. Court of Appeal, Milan, 4 May 1977, confirmation of Judgement of Criminal Court of Como, of 25 November 1974, against Bialetti and Others.
 38. Supreme Court, Judgement of 10 April 1978 against Bialetti and Others.
 39. District Court of Venice, Judgement of 20 March 1978, against Santo di Miaggio; Court of Imperia, Judgement of 17 July 1979, against Francesco Maiello; Court of Ferrara, Judgement of 9 October 1979, against Natalino Cinti; Court of Rome, Judgement of 14 January 1980, against Giuseppe Lo Verso).
 40. Tribunal of Milan, Judgement of 12 April 1978, against Aurora Pecis.

41. Tribunal of Venice, Judgement of 10 January 1978, against Sergio Covis.
42. Tribunal of Palermo, Judgement of 20 September 1979, against Ludovico Bonfanti.
43. Court of Naples, Judgement of 25 September 1979, against Salvatore Molinaro and Antonio Moccia; Court of Genoa, Judgement of 20 October 1979, against Giacinto Agosto.
44. Almenno S. Salvatore Court (BG), Judgements of 19 April 1978, against (i) Angelo Musto and Bruno Perucchini, and (ii) Moioli Gaetano.
45. Court of First Instance of Bergamo, Judgement of 15 February 1983, against Francesco Maffioletti.
46. Law No. 1322 of 15 December 1954, concerning the Paris Convention and the Madrid Agreement (See Chapter III B 1 and 2); See also Article 303 of the Customs Law, No. 43 of 23 January 1973 and Article 483 of the Penal Code.
47. Law on the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 23 September 1975.
48. Law concerning the New Regulation of Copyright, of 23 September 1912, as amended up to 27 October 1972.
49. District Court of Amsterdam 19 July 1976, Phonogram B.V. and Ten CC v. Elpee; District Court of Arnhem, 12 November 1976, WEA B.V. and the Rolling Stones v. Elpee.
50. District Court of Breda, 4 December 1978, STEMRA/NVPI and Polydor B.V. v. Van Loon.
51. District Court of Breda, 1 June 1979, STEMRA/NVPI and EMI B.V. and WEA B.V. v. Luiten.
52. District Court of 's-Hertogenbosch, 4 December 1979, STEMRA/NVPI, EMI B.V. and Polydor B.V. v. Le Pantalon and Van Gestel.
53. Boertien/Rec Track/Capilux/Free Record Shop Pathefoon.
54. Ramshorn, Haarlem.
55. P.J.A.M. de Vogt (Music Man), Breda.
56. Jan van Leest, Eindhoven.
57. Jan van Leest, Eindhoven.
58. The UK declared by notifications addressed to the Secretary-General of the United Nations that the Convention is applicable to Bermuda (with effect from 10 June 1970) and Gibraltar (with effect from 20 March

- 1967).
59. The UK declared by notification addressed to the Secretary-General of the United Nations, which took effect on 4 March 1975, that the Convention is applicable to the following territories: Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Isle of Man, Hong Kong, Montserrat, St. Lucia and the Seychelles.
 60. Copyright Act 1956, as amended up to 26 July 1984.
 61. Anton Piller KG v. Manufacturing Processes Ltd and Others (1976) 2 WLR 162.
 62. Rules of the Supreme Court, Order 24.
 63. Rules of the Supreme Court, Order 26.
 64. Copyright (Amendment) Act 1983 of 13 May 1983, amending Section 21 of the Copyright Act, 1956.
 65. 1958 Act Sections 1-3.
 66. 1958 Act Section 5.
 67. (1977) FSR 146.
 68. Norwich Pharmacal Company v. Commissioners of Customs and Excise (1973) 2 All E.R. 943.
 69. Mareva Compania Naviera SA of Panama v. International Bulkcarriers SA (1975) 2 Lloyd's Rep. 509, CA.
 70. CBS United Kingdom Ltd. v. Lambert and Another (1983), FSR 127.
 71. EMI v. Kudhail and Others (The Times, 28 June 1983).
 72. EMI v Riley (1981) FSR 503.
 73. Rank Film Distributors Ltd v. Video Information Centre and Others (1980) FSR 242 - House of Lords (1981) FSR 363.
 74. Ex parte Island Records Ltd (1983) WLR 23.
 75. (1983) FSR 9.
 76. (1983) FSR 390.
 77. Reform of the Law relating to Copyright, Designs and Performers' Protection. A Consultative Document, London, HMSO, July 1981, (Cmnd. 8302).
 78. Whitford Report, Copyright and Design Law. Report of the Committee to Consider the Law on Copyright and Designs. Chairman: the Honourable Mr. Justice Whitford. London, HMSO, March 1977 (Cmnd. 6732 and Chapter 14, paragraph 14 of Cmnd. 8302, op. cit.).

CHAPTER V - INTERGOVERNMENTAL RECOMMENDATIONS

1 Introduction

1.1 Since the first edition of this study was written in early 1980, the problem of piracy of phonograms, and ways and means of combating it, has continued to be the subject of regular discussion at the intergovernmental level. It has been on the agenda of the Executive Committee of the Berne Union, the Intergovernmental Committees of the Universal Copyright Convention and of the Rome Convention and was the subject of a worldwide forum on piracy organised by WIPO in 1981. It has also been discussed in forums of the Council of Europe, in the European Parliament, by the Councils of Ministers of both the Council of Europe and the European Communities and by the Commission of the European Communities.

1.2 These intergovernmental discussions have resulted in a series of decisions and recommendations to national governments on the subject of piracy. In view of the relevance of these decisions and recommendations to the subject matter of this study, the author has thought it appropriate to refer to, and quote extensively from, these declarations of policy so as to illustrate the high degree of concern felt by governments faced with the continuing problem of piracy. Recommendations of institutions of the European Communities are referred to in the conclusions to this study (Chapter VI). Those of regional meetings of non-European States and organisations have not been included.

2 Meetings Convened by United Nations' Agencies (WIPO, Unesco, ILO)

Intergovernmental Committee of the Rome Convention

2.1 At its seventh ordinary session in October 1979, the Intergovernmental Committee adopted a recommendation to all Member States of the United Nations and its specialised agencies concerning the relevance of the Rome and Phonograms Conventions to piracy. This recommendation was transmitted to States in February 1980. The text of the recommendation is as follows:

"The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), meeting at its seventh ordinary session in Paris on 22 and 30 October 1979, Draws attention to the widespread and increasing unauthorised duplication of phonograms and the prejudice it brings to the interests of authors, performers and producers of phonograms, Stresses that as the International Convention for the Protection of Performers, Producers of Phonograms and

Broadcasting Organisations (Rome 1961) provides protection against the unauthorised duplication of phonograms, as well as a balanced protection of the rights of the three beneficiaries, the adherence to this Convention should be widely promoted, Recognises however that wide adherence may not be immediately possible, Recommends strongly that, pending adherence to the Rome Convention, if compliance with the provisions of the Phonograms Convention can be more rapidly achieved, countries not having ratified or acceded to the Phonograms Convention, should do so as soon as possible." (1)

Subsequently, at its eighth Ordinary Session in November, 1981, the Intergovernmental Committee directed its Secretariat to renew the above recommendation to States and to draw their attention "to the fact that commercial piracy stifles efforts undertaken to safeguard and promote national cultures, and that it constitutes a grave prejudice to the economy and to employment in the countries affected by it". (2)

3 WIPO Worldwide Forum

3.1 The WIPO Worldwide Forum on the Piracy of Sound and Audio-visual Recordings was held in March 1981. The objective of the Forum, as stated by WIPO, was "to make public opinion and the competent governmental authorities aware of the extent of commercial piracy ... and its harmful effects on the creators, performers and distributors whose rights are pirated as well as on the consumers". (3) The discussions concentrated on three main topics: the nature, extent and effects of commercial piracy, the relevant laws and international treaties, and the enforcement of anti-piracy measures from the viewpoints of the producers and of law enforcement authorities.

3.2 The following resolution was adopted by the participants at the conclusion of the Forum:

"The participants in the WIPO Worldwide Forum on the Piracy of Sound and Audio-Visual Recordings held at Geneva from March 25 to 27, 1981, express their great appreciation of the initiative taken by WIPO in organising this Forum to discuss the nature, extent and the effects of commercial piracy and to exchange information and opinions on the matter.

The participants affirm the unanimous view that:

(1) the enormous growth of commercial piracy of sound and audio-visual recordings and of films all over the world is posing dangers to national creativity, to cultural development and to the industry, seriously affecting the economic interests of authors, performers, producers of phonograms, videograms and films, and broadcasting organisations;

(2) commercial piracy stifles efforts undertaken to

safeguard and promote national cultures;

(3) commercial piracy constitutes a grave prejudice to the economy and to employment in the countries affected by it;

(4) possible inadequacies of, or inadequate use of, existing legislations do not effectively prevent acts of commercial piracy, which are facilitated by continual technological progress of the means of reproduction and communication.

The participants express the wish that, both in developed and developing countries, steps may be taken as necessary, as a matter of urgency, to combat and eliminate commercial piracy of sound and audio-visual recordings and films and, in particular:

- to bring into force appropriate legislation, where such legislation does not already exist, which guarantees the specific rights of those affected by such piracy to prevent the unauthorised fixation and/or reproduction of the products of their creative efforts; and
- to ensure the application of such legislation, civil and criminal, by the establishment of speedy and efficient procedures which would put an immediate stop to the production, distribution, import and export of pirate product and by imposing penalties of sufficient severity to act as a deterrent;
- an increasing number of countries should adhere to the appropriate intellectual property Conventions.

The participants suggest that WIPO should continue to intensify its activities in the fight against commercial piracy of sound and audio-visual recordings and films by adopting the following measures among others:

- to alert Governments and public opinion to the need to fight such piracy;
- to give emphasis in all its technical co-operation activities to education and legal advice in this field;
- to make available to States and owners of rights information concerning all legislation and jurisprudence on the subject of intellectual property which may be made use of in the fight against such piracy;
- to co-ordinate research and take initiatives for the purpose of improving such legislations as

well as their more effective application in collaboration with the intergovernmental and international non-governmental organisations concerned;

- to give priority to undertaking an interdisciplinary study of all relevant international Conventions on intellectual property administered by WIPO." (4)

3.3 Subsequently, the Governing Bodies of WIPO in 1983 called for the above Resolution to be circulated to all Member States as a recommendation for the implementation of appropriate anti-piracy measures at the national level.

4 Piracy Enquiry Undertaken by Unesco

4.1 In October 1983, the Director General of Unesco initiated a study of the implications of piracy "for the endogenous creation of intellectual works, and on the social, economic and cultural situation of creators". (5)

4.2 In his letter to Member States requesting the co-operation of governments in replying to a questionnaire on the extent of piracy and means of combating it, the Director General said:

"The investigation of world communication problems has shown that, in recent years, the advent of new forms of printing and recording technology, in particular, has led in many regions to an extension of the practice of pirating works made available either in printed form (books, periodicals) or in the form of sound and audio-visual recordings (discs, cassettes, films and radio and television programmes).

This illicit activity is detrimental to the material and moral interests of authors, composers, performers, producers of phonograms and videograms and radio and television organisations."

4.3 Unesco will use the results of the survey (not yet available at the time of writing) to continue its study of piracy and to identify ways and means of eliminating it. (6)

5 Meetings Convened by the Council of Europe

5.1 Conference of European Ministers

5.1.1 The fourth Conference of European Ministers Responsible for Cultural Affairs, held in May 1984, adopted a Resolution on culture and communications technology (7) containing the following recommendations for Member States to be invited to:

" - apply and if necessary adapt international and national legal instruments concerning copyright and related rights, bearing in mind the novel situation

brought about by the new communication technologies;

- organise, at national and European level, action to repress audio-visual piracy."

5.2 Meetings on the State's Role vis-à-vis the Culture Industries

5.2.1 The Council for Cultural Co-operation of the Council of Europe has held a series of meetings "to explore the present state of the European culture industries (8) and the role of public intervention in their development".

5.2.2 A provisional version of the first edition of this study, published in March 1980, was made available by the Commission of the European Communities to participants in the first of this series of conferences, that on "The State's Role vis-à-vis the Culture Industries" held in April 1980. The subject of piracy was raised in the context of a session devoted to the music industry. There was consensus on the need for government action to provide for better protection against piracy of phonograms and for all States Members of the Council of Europe to adhere to the Rome Convention and the Phonograms Convention.

5.2.3 It was suggested that the Council of Europe should take initiatives on this matter, among others, in consultation with the Commission of the European Communities. The Conference had no mandate to make specific recommendations but the following extract from the final report of the Conference is relevant to this study:

"Increasing importance of copyright problems: much of the debates focused on problems of copyright and on the necessity to reform copyright legislations and systems. It was indicated that the new technological means favour home copying and illegal copying which both may infringe authors' rights and deprive creators and performers of their rightful income...."

Strict public action against piracy, (9) counterfeiting and bootlegging was also stressed...."

5.2.4 More recently, the need for vigorous action to be taken against piracy has been recognised in three follow-up meetings to the Conference referred to above, in the context of the Council for Cultural Co-operation's project "Promotion of Creativity, taking into account the development of the Culture Industries" (Project No. 11).

5.2.5 The first such meeting, held in November 1982, on "Creative Artists and the Industrialisation of Culture: Music", recognised that piracy posed a serious threat to right owners and the suggestion was made that the Council of Europe's work on the subject should lead to a recommendation to Member States. (10)

5.2.6 In November 1983, a symposium was held on "Technological Development and New Challenges of Cultural Policy". The need for solutions to be found to the problem of piracy, among other copyright problems posed by new technology, was recognised and one of the conclusions of the meeting was that political authorities should intervene to provide adequate protection for copyrights.

5.2.7 Piracy was again one of the major topics of debate at the latest Project 11 Symposium, that on "Copyright and Cultural Policy - The Gap Between Copyright and Related Rights Legislation and Technological Development", held in June 1984. ⁽¹¹⁾ The meeting ended with the adoption of a Resolution ⁽¹²⁾ addressed to the competent bodies of the Council of Europe, proposing that governments should take urgent steps to revise their copyright and related rights legislation in a number of respects. As regards piracy, the Resolution stated:

"The participants ...

...

Considering that piracy (i.e. unauthorised reproduction, distribution and importation of protected works, performances and sound and audio-visual recordings for commercial purposes) has assumed alarming proportions and is to be regarded as a serious offence prejudicial to culture and to the economy

...

Recommend:

I. That governments should consider, where appropriate, accession to the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961), the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (Geneva, 29 October 1971) ...

...

III. That governments should without delay take appropriate measures, including the provision of effective sanctions, to permit rapid and dissuasive deterrent action against all acts of piracy.

..."

The participants further recommended that measures taken to combat piracy should be harmonised as far as possible at the appropriate international level.

European Music Year

5.2.8 European Music Year is to be celebrated in 1985. Its European Organising Committee, in co-operation with the Secretariat General of the Council of Europe and the Commission of the European Communities, has requested an extension of the present study to cover ⁽¹³⁾ all twenty-three countries supporting European Music Year. The extended study will be published in 1985 as a contribution to the European Music Year.

FOOTNOTES TO CHAPTER V

1. Doc. ILO/UNESCO/WIPO/ICR.7/11, paragraph 24.
2. Doc. ILO/UNESCO/WIPO/ICR.8/7, paragraph 22.
3. WIPO Press Release No 12, Geneva, 30 March 1981.
4. WIPO Forum on Piracy of Sound and Audio-Visual Recordings, Geneva, 25 to 27 March 1981. Geneva, WIPO, 1981 (No. 640). (Also available in French and Spanish).
5. Letter from the Director General of Unesco to Member States dated 14 October 1983, (Ref. DG/0.1/286/290).
6. Unesco Draft Programme and Budget for 1984-1985, Doc. No 22 C/5, paragraph 15132.
7. Council of Europe Document CMC(84)6.
8. Council for Cultural Co-operation (CDCC) Report of the 34th Session. Doc. CDCC (78) 22, p.10.
9. Council of Europe Conference on the State's role vis-à-vis the Culture Industries. Strasbourg, 28 to 30 April 1980. Council for Cultural Co-operation, Cultural Affairs, 1980 (Education and Culture Series) (CC-CONF-1C5-E) pp 211 paragraph 11 and 212 paragraph 14.
10. Report and Conclusions of the Symposium by J. Coenen-Huther. (Doc. CC-GP11 (82) 26; Appendix II (proposals submitted by IFPI in agreement with some other participants).
11. Brussels, 26-27 June 1984. Final Report prepared by Pekka Gronow and Resolution adopted Doc. CC-GP11(84)20.
12. Doc. No CC-GP 11 (84) 16.
13. Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Holy See, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom.

CHAPTER VI - CONCLUSIONS AND NEED FOR ACTION BY THE COMMUNITY

A. CONCLUSIONS

1 Gravity of the Problem of Piracy of Phonograms in the EEC

It is hoped that this study has clearly shown that piracy of phonograms is a totally illegal activity, which has serious economic and social effects in the Community, in both the private and public sectors. It is causing severe damage to the rights and interests of producers of phonograms, authors, composers and performers and all those directly or indirectly employed in the music industry who derive income from phonograms: people employed in the recording studios, in the manufacture of records and tapes, in pressing and tape duplication plants, in the wholesale and retail trades, in the printing of record sleeves and cassette inlay cards and in music publishing (to name only the most directly affected).

2 Need for Governmental Concern

2.1 Without doubt, piracy is damaging to the interests of the Member States of the Community. This criminal activity is undermining the development of the music industry, which gives employment to the creative talents of large numbers of people in the Community and makes a significant contribution to the national economies and budgets of Member States. Moreover, piracy is directly harmful to the budgets of Member States. Those who engage in it pay no taxes or duties, whereas legitimate producers of phonograms, through VAT, corporation tax and so on, are major contributors to the Member States' financial resources. One of the conclusions of the 1980 edition of this study was that there was a need, in the first place, for recognition that piracy was damaging the interests of legitimate producers of phonograms throughout the Community and that such producers needed the sympathetic co-operation of Governments and legislative bodies to provide them with the means to combat piracy effectively. In the intervening years, as is shown clearly in Chapter V, this recognition has been forthcoming not only at the European level and from Community institutions but also at the intergovernmental level. Italy and the United Kingdom within the Community have legislated to provide stronger criminal sanctions against piracy. Much remains to be achieved, however, if piracy of phonograms in the Member States of the EEC is to be stamped out altogether.

2.2 Private initiative alone is insufficient to stamp out piracy. Even where legislation exists and provides strong and effective protection for producers of phonograms by way of a specific right backed up by civil and penal remedies which appear adequate, in principle and on paper, the active involvement of the police, customs and other enforcement agencies, coupled with an understanding of the problems by government agencies and the judiciary, is of paramount importance. In many instances, the courts have tended to treat pirates very leniently. The co-operation of the police varies

from country to country but, as a general rule and with one or two honourable exceptions, it may be said that the police take an interest in piracy only when it can be shown that the pirates are also engaged in other criminal activities, such as drug trafficking, forgery, smuggling, etc. This is in spite of the fact that pirates are by definition always guilty of tax evasion, and those who counterfeit of fraud as well. Customs authorities have to date been very reluctant to become involved in controlling imports of pirate product. Such co-operation with customs as there is results from their obligation in some countries to check that copyright royalties have been paid to authors. They have not wished to concern themselves with whether records and tapes have been duplicated with the consent of the original producer. It would appear that the provisions of the Berne and Paris Conventions and of the Madrid Agreement concerning seizure on importation of counterfeit goods are either not adequately implemented in national copyright and customs legislation or not enforced in EEC countries. It is hoped that the current initiatives of the Customs Co-operation Council described in Chapter III, D will bear fruit and, in the long term, solve this problem.

3 Requirements for an Effective Anti-Piracy Campaign

3.1 Piracy may never be wholly eradicated but, given the basic requirements with which to fight it, it may be controlled. The only effective legislation is that which grants a specific right to producers of phonograms to authorise or prohibit the reproduction of their phonograms and which also forbids the importation and distribution of unauthorised copies. Licensees should have the same rights of action, and be entitled to the same remedies, as the licensor producer. Protection must include remedies which are effective against all who handle illicit duplicates by way of trade, including a dealer (importer, wholesaler or retailer), as well as against the manufacturer of illicit duplicates.

3.2 If pirates are to be prevented from reaping the benefits of their illegal activities, civil remedies need to be speedy and to include the possibility of obtaining interlocutory injunctions and orders for inspection and discovery, enabling the defendants' premises to be searched and their records examined. The law should also provide for infringing material and machinery to be delivered up and confiscated. Civil and criminal sanctions are required to back up such orders if the defendant fails to comply with them. There should be procedures for contempt of court, cumulative fines (astreinte), freezing of assets acquired with the proceeds of piracy, and so on.

3.3 Criminal remedies require the active co-operation of the police and adequate fines. In many instances, the fines provided for by present legislation are still inadequate and provide no deterrent to the pirates in the view of the enormous profits they make from their illegal activities. Such remedies should also provide for imprisonment for serious offenders and in the case of recidivism.

3.4 In all cases, destruction of infringing copies and of the equipment used to duplicate them should be ordered by the court. Otherwise, the pirate may pay his fine and start up in business again immediately afterwards, or sell his equipment to a fellow rogue.

3.5 Strong national legislation must be backed up by reciprocal protection for foreign phonograms. Pirates do not discriminate between the national repertoire of their own country of origin and the repertoire of other countries; they seek to earn easy money from all successful recordings, whatever their origin. Where piracy flourishes, both national and international repertoire are copied and the producers, authors and artists of all such repertoire suffer as legitimate sales are undermined. Much so-called "international" repertoire originates in the EEC, especially in the Netherlands and the United Kingdom. In the EEC context, it is submitted that all repertoire originating in Community countries should be regarded as national and protected accordingly and that foreign repertoire from outside the Community should be protected also.

B. THE NEED FOR ACTION BY THE COMMISSION

4.1 Since 1980, when the first edition of this study was published, the need for action at Community level has been recognised on a number of occasions by Community institutions. Indeed, it is submitted that the intentions and political will of the Community as regards the need for approximation of copyright and related rights legislation and for steps to be taken by the Community inter alia to enable more effective action to be taken against piracy have been clearly and publicly stated in the various documents and instruments referred to below.

4.2 The concern of the Community with the piracy problem has been demonstrated most recently during the summer of 1984. This has been the occasion of important declarations on the part of Community institutions on the subject of piracy.

4.3 In June 1984, the Commission put forward a proposal for a Recommendation on action against audio-visual piracy. In the Commission's proposal to the Council for adoption of the Resolution, the Commission declared that :

"It will consider what steps can be taken at Community level to make for more effective action against piracy, and will submit appropriate proposals to the Council, possibly in the form of binding legal instruments."⁽¹⁾

4.4 Subsequently, on 24 July 1984, the Council unanimously adopted the following Resolution:

RESOLUTION⁽²⁾ ON MEASURES TO COMBAT AUDIO-VISUAL PIRATING

"The Representatives of the Governments of the Member States,

Whereas the phenomenon of audio-visual pirating and of trade in illicitly reproduced works is on the increase;

Whereas this causes harm to authors and other creative artists, interpreting and performing artists, producers of sound and audio-visual works, in particular films, and radio and television organisations and, more generally, to all the theatrical and audio-visual professions as also to national treasuries;

Whereas such harm includes defrauding of their income those who have invested in the production of sound or audio-visual works, which jeopardizes the production of new works of quality, in particular works where high production costs make it necessary to reach a very large audience;

Whereas, furthermore, acts of audio-visual pirating entail for consumers the great danger of a fall in the quality of the products available to them;

Whereas the detrimental effects of such acts overstep national frontiers and whereas, therefore, the problem of pirating has both a Community and an international dimension;

Whereas the need to find suitable solutions has been recognised repeatedly at international level, in particular by the international Copyright Committees of the Berne Convention and the Universal Convention and at the Colloquia of 25 to 27 March 1981 and 16 to 18 March 1983; whereas adoption of the Rome Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Geneva Convention of 29 October 1971 for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms and the Brussels Convention of 21 May 1974 relating to the distribution of programme-carrying signals transmitted by satellite testifies to this same concern;

Whereas, nevertheless, the phenomenon of pirating has become more and more widespread, and this may partly be attributed to the lack of procedures and penalties which can be effectively applied to pirates and traders in copied material;

HAVING ADOPTED THIS RESOLUTION:

The Member States

1. will endeavour to ratify, quickly, if they have not yet done so, those international Conventions which they consider likely, by the reciprocal

provisions which they contain, to facilitate the initiation of procedures against acts of audio-visual pirating;

2. will, under the international conventions to which they have acceded or will accede, strengthen where necessary their national legislation, and in particular criminal law legislation, so as to provide the competent services with all the means necessary to seek out and prove acts of counterfeit and provide the judicial authorities with the legal weapons that are essential for the dissuasive and effective repression of such acts;
3. will consider at the level of the authorities concerned any measures the situation demands to ensure that close co-operation between them in combating audio-visual pirating is instituted and developed;
4. will implement a systematic policy of co-operation between authorities and members of the professions concerned with a view to following developments in the phenomenon of pirating and constantly adapting to that development the techniques of prevention, detection and repression of acts of fraud;
5. will, in collaboration with the international intellectual property organisations, pursue a policy of making available to States and copyright holders any information on laws and case law concerning audio-visual pirating;
6. agree to the examination, in the context of current discussions on copyright and in the appropriate framework, of any proposal of a contractual, legislative or other nature which could help to provide an adequate solution to the problems, and in particular any possibility of improving the effectiveness of the procedures and penalties applicable to pirates and traders in copied material."

4.5 This Resolution is the latest and most important expression of the concern of the Community with the problem of piracy. That concern has been made public on a number of previous occasions in the context of the Commission's work in the cultural sector. These are briefly reviewed below.

4.6 The original initiative for Community action to harmonise copyright legislation in Member States came from the European Parliament in the context of measures designed to protect the European cultural heritage. In its Resolution of 13 May 1974, the Parliament "called on the Commission to propose measures for adoption by the Council for the approximation of national laws on the protection of the cultural heritage,

royalties and other related intellectual property rights". (3)

4.7 The Commission's first response was a Communication to the Council entitled "Community Action in the Cultural Sector", dated 22 November 1977, (4) which dealt with a variety of measures designed to protect the European heritage.

4.8 A programme for harmonisation of laws on copyright and related rights was already envisaged at that time and the document referred, in particular, to the need in the future for the Commission to consider measures to be taken as regards "the campaign against (5) pirate editions of disc and tape recordings...". Subsequently, in 1979, the Commission requested the preparation of the first edition of this study, which was published in 1980 and contained a number of proposals for action.

4.9 On 5 March 1982, Commissioner Narjes, on behalf of the Commission, in reply to a Written Question in the European Parliament by Mr Beyer de Ryke, (6) stated:

"The Commission departments are currently looking into the problems of copyright and associated rights arising from advances of technology, and notably those relating to audio-visual reproduction.

The aim of this study is to establish, in the form of a memorandum, the Commission's position on the measures which should be taken by the Community to counter the problems created by the development of audio-visual reproduction techniques."

4.10 In its Communication of 16 October 1982 to the Parliament and Council entitled "Stronger Community Action in the Cultural Sector", of 18 November 1983, (7) the Commission refers to its programme for harmonisation of laws on copyright and related rights and announced the forthcoming publication of a "Green Paper", a consultative document on the subject. As regards piracy, the Communication stated that:

"Good care will be taken not to overlook one particular practice which undeniably constitutes a criminal offence - pirating. The Community is duty bound to take action to counter what amounts to theft of the remuneration that authors and interpreters should get from the legitimate use of records, films and books in which they have invested their labour. It goes without saying that any such measures must surely fail if they are applied by each country on a purely national scale." (8)

4.11 The European Parliament, in its Resolution on "Stronger Community Action in the Cultural Sector" of 18 November 1983, called upon the Commission to propose directives aimed :

"... at adjusting legislation on authors' and performers' rights to developments in the reproduction

and transmission of sound, vision and the written word, so that the agents of cultural development do not become the victims of these trends but are associated with them in their employment and remuneration".⁽⁹⁾

4.12 The need for Community action in this field was also voiced in the "Solemn Declaration on European Union"⁽¹⁰⁾ agreed by the Heads of State of Community Members at Stuttgart on 19 June 1983. Under heading 3.3 of this Declaration, "Cultural Cooperation", they agreed inter alia to examine the advisability of undertaking joint action to protect, promote and safeguard the cultural heritage. Under heading 3.4, entitled "Approximation of Laws", it was stressed that special attention should be given inter alia to further approximation of laws in the field of the protection of industrial and commercial property.

4.13 The Green Paper to which reference is made in several of the statements of the Commission referred to above is due to be published before the end of 1984. Its publication is awaited with keen anticipation by the interested parties and it is hoped that it will propose binding legal instruments which will, in the words of the above Resolution of the Council:

"provide the competent services with all the means necessary to seek out and prove acts of counterfeit and provide the judicial authorities with the legal weapons that are essential for the dissuasive and effective repression of such acts".

FOOTNOTES TO CHAPTER VI

1. Proposal for a Council Recommendation on action against audio-visual piracy (presented by the Commission to the Council) 6 June 1984 (Com (84) 290 final).
2. Council Resolution of the Representatives of the Governments of the Member States of 24 July 1984 (84/C 204/01), on measures to combat audio-visual pirating. Official Journal of the European Communities, No. C204, 3.8.84, p.1.
3. Resolution of the European Parliament on the motion for a resolution submitted on behalf of the Liberal and Allies Group on measures to protect the European cultural heritage. No. C62/5, 30.5.74.
4. Commission Communication to the Council, sent on 22 November 1977. Bulletin of the European Communities. Supplement 6/77. Luxembourg, Office for Official Publications of the European Communities, 1977.
5. Loc. cit., paragraph 20, p.12.
6. Written Question No. 1683/81 of 1 February 1982. Subject : International Protection of Copyright and Royalties in the Audiovisual Field. The Commission's stance. Official Journal of the European Communities No. C92, 13.4.82, pp.40-41.
7. Com (82) 590 final, 16 October 1982.
8. Ibid. - Annex II, p.1, item 3.
9. Resolution on Stronger Community Action in the Cultural Sector of 18 November 1983, Official Journal of the European Communities, No. C342, 19.12.83, p.127.
10. Bulletin of the European Communities, No. 6, 1983, pp.24-29.

CHAPTER VII - PROPOSALS FOR ACTION

INTRODUCTION

The Resolution of the Council on measures to combat audio-visual pirating, referred to above, contains a number of specific undertakings on the part of Member States to take action at the national level. It also envisages taking measures at Community level to ensure that close co-operation between Member States in combating audio-visual pirating is instituted and developed. Given that these general intentions of the Member States and of the Commission have been made public, the following proposals for action are made with a view to contributing to the debate as to the best means of achieving the objectives set by the Resolution.

A. LEGAL BASIS FOR COMMUNITY LEGISLATION

1.1 The EEC Treaty contains no special provisions expressly mentioning copyright or related rights. Nevertheless, it is clear from the jurisprudence of the European Court of Justice that the provisions of the Treaty relating to the free movement of goods (Articles 30-36), the freedom to provide services (in particular Article 59) and the rules of competition (Articles 85 and 86) apply to goods and services which are protected by copyright in the same way as to other goods and services. ⁽¹⁾

1.2 The general competence of the Community is not laid down in the Treaty by means of an exhaustive list of fields of operation but is rather more widely determined by the Community tasks, objectives and activities which are laid down as binding by the Treaty, particularly in Articles 2 and 3. ⁽²⁾

1.3 Of these objectives, the most relevant may be summarised as:

- the establishment of a common market (Article 2);
- the harmonious development of economic activities (Article 2);
- the abolition of obstacles to freedom of movement for goods and services (Articles 3(a) and (c));
- the institution of a system ensuring that competition in the Common Market is not distorted. (Article 3(f));
- the approximation of the laws of Member States to the extent required for the proper functioning of the Common Market (Article 3(h)).

1.4 The legislative powers of the Community institutions are laid down in Article 189 of the Treaty and include the

power to "make regulations, issue directives, take decisions, make recommendations or deliver opinions".

1.5 Three of these powers may be relevant in the context of adopting measures at Community level to combat piracy: Regulations, Directives and Recommendations. The legal nature and effect of each of these instruments differs:

A Regulation is binding in its entirety and directly applicable in all Member States. Regulations are used in cases where there is a need for directly applicable Community Law.

A Directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. The Directive is generally the instrument used to effect approximation of the national laws of Member States pursuant to Article 100 of the Treaty. Indeed, ⁽³⁾ representatives of the Commission have stated that the most appropriate basis for harmonisation measures in the field of copyright and related rights would be Article 100.

A Recommendation has no binding force but may be used to exhort Member States to adopt a certain course of action.

1.6 Where there is a need for directly applicable Community law or rules, this may be achieved by making a Regulation under Article 235 of the Treaty. To combat piracy effectively, there may be a case for Community institutions to have direct powers conferred upon them with respect to legal procedures for the enforcement of customs controls.

1.7 In making the following proposals for action, these wide legislative powers have been taken into account. The means by which Community measures to combat piracy may be adopted are diverse and give considerable flexibility to the Commission in its task of submitting proposals to the Council.

1.8 It is noted, however, that the Commission has stated that it will possibly make proposals in the form of binding legal instruments. Such binding legal instruments may only be Regulations or Directives.

B. PROPOSALS FOR COMMUNITY LEGISLATION

(a) Policy Objectives

2.1 In order to enable producers of phonograms and performers to combat piracy effectively, it is submitted that the Commission should adopt measures to ensure that all Member States afford the following protection against piracy:

(i) Producers of phonograms should have the right to

authorise or prohibit the reproduction, distribution and importation of their phonograms.

(ii) Performers should have the right to authorise or prohibit the first fixation of their performances.

(iii) The period for which phonograms are protected in Community countries should be fifty years from the end of the year in which the phonogram is first published.

(iv) Civil and/or criminal remedies for infringement of the rights of producers of phonograms and performers should be sufficient to ensure the speedy application of the law and to represent a serious deterrent to infringers. Penalties should include substantial fines and prison sentences for serious offenders and recidivists.

(v) All Member States should adhere to :

- (a) the Rome Convention, 1961,
- (b) the Phonograms Convention, 1971,
- (c) the Madrid Agreement, 1891.

(vi) Member States should declare pirate product to be prohibited goods for customs purposes and their customs authorities should be given adequate powers to enable the importation of pirate product to be prevented. The customs authorities of Member States should also be given powers to co-operate in detecting and controlling intercommunity trade in pirate product.

(vii) All Member States should ensure the active involvement in the fight against piracy of the police, customs and other enforcement agencies. It must be emphasised that, even where the protection afforded by legislation appears adequate, without the effective co-operation of the national enforcement agencies it is impossible to eradicate piracy.

2.2 It is proposed that the Commission should issue Directives to approximate the copyright and related rights legislation of Member States in order to achieve some of the above policy objectives. Other objectives may be fulfilled by means of Recommendations.

(b) Directives For Approximation Of Laws On Copyright And Related Rights

3.1 Specific Rights for Producers of Phonograms

3.1.1 It is proposed that the Commission should issue a Directive, under Article 100 of the Treaty of Rome, to ensure the approximation of national laws of Member States, by the introduction of the specific rights required to combat piracy in favour of producers of phonograms.

3.1.2 The producer of phonograms should be granted specific rights to authorise or prohibit:

- the direct or indirect reproduction of his phonograms;
- the importation of unauthorised copies of his phonograms for distribution to the public;
- the distribution of unauthorised copies of his phonograms to the public.

3.1.3 As has been pointed out in Chapter IV, the national laws of Belgium, France, Greece and the Netherlands do not at present grant these rights. In their absence, a gap in protection is left which enables illegal copies of phonograms to enter the Community. For example, evidence is available to show that companies have been set up in the Netherlands in order to import and distribute illegal copies of records. Elsewhere in the Community, such importation could be prevented by producers by virtue of their right to control the distribution of their phonograms. Once illegal copies of phonograms have been imported into the Community, it is difficult to trace trans-shipments to other Member States where legal action could be taken.

3.1.4 National legislation incorporating these specific rights for producers of phonograms will comply with both Article 10 of the Rome Convention and Article 2 of the Phonograms Convention.

3.2 Performers' Rights

3.2.1 It is proposed that the Commission should issue a Directive, under Article 100 of the Treaty of Rome, to grant to performers the rights afforded to them by Article 7 of the Rome Convention, 1961. 'Performers' are defined in the Convention as 'actors, singers, musicians, dancers, and other persons, who act, sing, deliver, declaim,⁽⁴⁾ play in or otherwise perform literary or artistic works'.

Article 7 of the Convention reads as follows:

"1. The protection provided for performers by this Convention shall include the possibility of preventing:

(a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

(b) the fixation, without their consent, of their unfixed performance;

(c) the reproduction, without their consent, of a fixation of their performance;

(i) if the original fixation itself was made without

their consent;

(ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

(iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.

2. (1) If broadcasting was consented to by the performers, it shall be a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes and the reproduction of such fixation for broadcasting purposes.

(2) The terms and conditions governing the use by broadcasting organisations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the Contracting State where protection is claimed.

(3) However, the domestic law referred to in subparagraphs (1) and (2) of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organisations."

3.2.2 Paragraph (1), above, grants protection to performers against bootlegging. Article 7 as a whole, however, contains the minimum rights which must be granted to performers in order for a State to be in a position under its domestic legislation to adhere to the Rome Convention. (5)

3.2.3 At present, as explained in Chapter IV, the national laws of Belgium, France, Greece and the Netherlands do not grant performers these minimum rights.

3.3 Duration of Protection

3.3.1 It is proposed that a Directive be issued, under Article 100 of the Treaty of Rome, to approximate the period of protection for which phonograms are protected in Community countries at fifty years from the end of the year in which the phonogram is first published.

3.3.2 At present, the periods of protection afforded to phonograms in Community countries vary. The copyright laws of the United Kingdom and Ireland grant protection to producers of phonograms for fifty years from the end of the calendar year in which the phonogram is first published. Denmark grants protection for a period of twenty-five years from the year in which the recording was made; the Federal Republic of Germany for a period of twenty-five years calculated either from the end of the year in which the phonogram was first fixed or from

the end of the year in which it was first published; Italy for a period of thirty years from deposit (the Law provides that the rights of producers may be exercised only if one copy of the phonogram for which protection is claimed has been deposited with the competent authority); and Luxembourg for twenty years from the end of the year in which fixation took place.

3.3.3 Belgium, France, Greece and the Netherlands do not grant specific rights to phonogram producers in their copyright legislation.

3.3.4 The negative effects of different terms of protection in relation to copyright were described in the Commission's document, 'Community Action in the Cultural Sector':

"The different durations of copyright have negative effects on the free movement of literary, musical and artistic works. Whereas a work may be exploited freely in a country in which it no longer benefits from protection, this is not the case in another country in which it is still protected."⁽⁶⁾

Exactly the same negative effects arise in the case of phonograms, to the detriment not only of producers but also of the performers whose performances are recorded in the phonogram.

3.3.5 The minimum term of protection under the Rome and Phonograms Conventions is twenty years. In the Rome Convention, the period is twenty years from the end of the year in which the fixation was made. In the Phonograms Convention, the period is computed either from the end of the year of first fixation or of the year in which the phonogram was first published. The basis of protection for phonograms first fixed or published in territories party to the Rome Convention is national treatment. As a result, phonograms benefit from different protection periods in different EEC Member States.

3.3.6 It is suggested that fifty years would be the appropriate period for harmonisation for three reasons:

(i) to provide for a lesser period would conflict with existing rights in Ireland and the United Kingdom.

(ii) the authors of the literary and artistic works recorded in the phonogram are protected throughout the Community for at least fifty years from the death of the author; thus the periods of protection of the authors' and producers' parallel rights in phonograms would co-exist for a longer, more comparable period;

(iii) the quality of recording today is such that the acceptable listening life of phonograms may well extend up to fifty years; recordings made in the 1930s and 1940s are being reproduced even now, and these are without protection in many countries, although the

performers involved are often still alive.

Moreover, viewed from a comparative law standpoint, fifty years is justified. The United States of America, whose record market is on a par with that of the EEC, provides for a protection period of seventy-five years, from publication. Indeed, of the 88 countries which on 1 January 1984 protected producers of phonograms against unauthorised reproduction, 38 gave protection for a period of fifty years or more, and 21 for a period of between twenty-five and fifty years.

3.4 Customs Control

3.4.1 It is proposed that a Directive be issued, under Article 100 of the Treaty of Rome, in order to oblige Member States to adopt uniform measures in their national legislation to impose a prohibition on the importation into EEC countries of all pirate product. The Directive should also provide for national legislation to give effect to the provisions of the Berne and Paris Conventions, to which all Member States are party, and of the Madrid Agreement concerning seizure on importation of counterfeit goods. Five Member States are not yet party to the latter agreement: Belgium, Denmark, Greece, Luxembourg and the Netherlands.

3.4.2 It is understood that Community legislation of the kind proposed would be in conformity with the general duties of the customs authorities which include the obligation to ensure compliance with all measures concerning the national economies and the prevention and repression of fraud.

3.4.3 Measures may also be envisaged at Community level to back up national legislation on customs control of pirate product. For example, it may be appropriate to lay down Community rules according to which the administrative authorities of the Member States must mutually provide each other with assistance and co-operate with the Commission so as to ensure the proper application of the law on customs in relation to prohibited goods, including pirate product. Such rules would ensure co-operation in the prevention and detection of infringements of such law and detection of any activity which is or seems to be contrary thereto. It is suggested that the 'Council Regulation of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and co-operation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters' (7) provides a precedent for the establishment of Community rules governing co-operation between the national authorities and the Commission on customs matters.

3.4.4 It is further suggested that Member States should be required to inform the governments of countries which are a major source of pirate recordings of the action being taken within the Community to prevent the importation and distribution of pirate product and to ask them to take adequate measures within their respective territories with a view to preventing its manufacture in, and exportation from, their territories.

C. RECOMMENDATIONS FOR ADHERENCE TO CONVENTIONS

4.1 Adherence to the Rome and Phonograms Conventions

4.1.1 It is proposed that a Recommendation be issued under Article 155 of the Treaty of Rome to those Member States of the Community that have not already done so to adhere to the Rome Convention and to the Phonograms Convention, as soon as possible, adopting legislation if necessary as proposed above.

4.1.2 The need for all Member States to become parties to both Conventions is of particular relevance in so far as the protection of producers of phonograms (sole beneficiaries of the Phonograms Convention) is concerned, although, as already mentioned (see Chapter III, paragraph 3 et seq), performers indirectly benefit from the application of the Phonograms Convention.

4.1.3 At present, in the Member States of the Community which have not adhered to these Conventions, there is no international obligation to afford national treatment to producers of phonograms from either other EEC countries or other Member States of the Conventions. Thus, within the EEC, different repertoires are protected in different countries. Moreover, some EEC countries do not protect the repertoires of producers of phonograms of other Member States of the Community. Failure of some Member States to adhere to either of the two Conventions perpetuates possible discrimination on the grounds of nationality within the EEC, contrary to Article 7 of the EEC Treaty, due to the lack of reciprocal protection for the nationals of certain Member States.

4.1.4 So far as producers of phonograms from non-EEC countries party to the Conventions are concerned, it is submitted that it distorts the market within the EEC if the same foreign repertoire is not protected throughout the Community. Differences in protected repertoire give rise to particular difficulties as regards piracy and parallel imports. It is submitted that all EEC Member States should become parties to both the Rome and the Phonograms Conventions in order to achieve full identity of protected repertoire throughout the Community; this would not be achieved if EEC countries were to adhere to only one or the other of the two Conventions because the membership of each is different.

4.2 Extension of Protection to Phonograms Originating in Countries Party to the Berne Convention and the Universal Copyright Convention

4.2.1 In connection with the need for identity of protected repertoire throughout the Community, it is suggested that, in any Recommendation to Member States to adhere to the Rome and Phonograms Conventions, the Commission could suggest that Member States extend protection to all phonograms originating in countries party to the Berne Convention and the Universal Copyright Convention. It should be noted that all ten Member States of the EEC are members of both the Berne Convention and

the Universal Copyright Convention, and therefore are under an obligation to protect the works of authors and composers reproduced in phonograms originating in countries party to those Conventions. It is more difficult to provide effective protection for those authors and composers if the phonograms themselves are not protected. The United Kingdom and Ireland accord national treatment to phonograms originating in both Berne Convention and Universal Copyright Convention Member States. (8) Moreover, when a measure of protection is afforded to phonograms under the law of unfair competition, it is customary for no discrimination to be made with regard to the origin of the phonogram. To extend protection in the way suggested would thus be in line with current practice in several Member States of the Community and would ensure that the same repertoire was fully protected throughout the Community. It is recognised, however, that this would represent a concession on the part of those countries which at present insist on reciprocity.

4.2.2 Nevertheless, it is desirable that all Member States of the Community afford the same protection to all foreign phonograms from EEC and non-EEC countries, so as to avoid the situation where phonograms which would be illegal in some countries of the Community could be freely imported into other countries of the Community.

4.3 Adherence to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

4.3.1 It is proposed that a Recommendation be issued under Article 155 of the Treaty of Rome to those Member States of the Community which have not already done so, to adhere to the Madrid Agreement, as soon as possible, adopting legislation, if necessary, as proposed above.

4.3.2 With regard to the imperative need for exchange of information and improved co-operation with regard to intercommunity trade in pirate product, in the absence of Community rules on the subject, it is suggested that the Recommendation should require Member States to apply the provisions of the Convention Between Belgium, Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands On The Provision Of Mutual Assistance by Their Customs Authorities (9) to piracy of phonograms. It has since been adhered to by the other four Member States of the EEC. This Convention, if applied to piracy, would facilitate the exchange of information between the administrations concerned with respect to the existence and circulation in the Community of pirate product and to the persons engaged in this illegal traffic and would make it possible for the customs authorities to intervene at all stages in the process of manufacture and distribution of pirate product within the Member States.

FOOTNOTES TO CHAPTER VII

1. Judgement of the Court of Justice of the European Communities, of 20 January 1981, Musik-Vertrieb Membran GmbH and K-Tel International v. GEMA. Joined cases 55 and 57/80, [1981] ECR 147.
2. See Commission Working Paper on the Community Trade Mark (Doc III/D/1294/79) issued in October 1979 by the Commission of the European Communities and published in two parts, IIC Vol II, No. 1 and No. 2, 1980, pp. 58 to 82 and 174 to 201.
3. Inter alia at the meeting of 24 October 1980 on the subject of the harmonisation of copyright laws, report of the first hearing of the non-governmental organisations on the harmonisation of the duration of copyright protection, Brussels, 24 October 1980 (Document III/D/1430/80).
4. Rome Convention, Article 3(a).
5. Rome Convention, Article 26.
6. Bulletin of the European Communities, Supplement 6/77, p.14.
7. Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and Co-operation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters. Official Journal of the European Communities, No. L 144, 2 June 1981, pp. 1 - 5.
8. See United Kingdom Copyright (International Conventions) Order, 1979 (SI. 1979 No. 1715), as amended to April 1984 and Schedule 3. In 'Copinger and Skone James on Copyright', Twelfth Edition. London, Sweet and Maxwell, 1980, p. 1025. The United Kingdom, however, does limit the right to authorise or prohibit broadcasting and public performance of phonograms to nationals of states which grant similar protection to UK nationals (see Schedule 3 of the above Order). See also for Ireland - Copyright (Foreign Countries) (No.2) Order, 1978 (No.133 of 1978). Ireland, however, limits the right to equitable remuneration for broadcasting and public performance to cases where: "... that right or a right giving rise to a claim for remuneration subsists in the country in which the sound recording was first published" (Section 5). In 'Copyright', October 1978, p.313.
9. Also known as the "Naples Convention", signed in Rome, 7 September 1967.

RETAIL VALUE OF SALES OF LEGITIMATE RECORDS AND PRE-RECORDED
TAPES IN THE EEC (1978 - 1980 - 1982)

(figures in millions)

COUNTRY	Currency	1978	1980	1982
Belgium	US\$ (BF)	145.3 (4,200.0)	125.0 (3,953.5)	93.7 (4,500.0)
Denmark	US\$ (DK)	87.2 (444.0)	81.4 (487.0)	54.0 (464.5)
France	US\$ (FF)	869.0 (3,626.0)	936.9 (4,254.0)	765.9 (5,300.0)
Germany (FR)	US\$ DM	1,247.2 (2,270.0)	1,265.3 (2,480.0)	983.6 (2,400.0)
Greece	US\$ Dch	44.0 (1,554.6)	46.0 (2,117.0)	39.6 (2,819.0)
Ireland	US\$ If	23.0 (10.0)	22.5 (11.9)*	19.8 (14.5)*
Italy	US\$ L	148.3 (122,657.5)	191.7 (178,065.0)	150.0 (211,200.0)
Netherlands	US\$ Gld	315.0 (620.0)	253.5 (540.0)	193.3 (520.0)
United Kindgom	US\$ £	723.0 (354.4)	1,045.7 (439.2)	(737.0) (457.0)
TOTAL	US\$	3,602.0	3,968.0	3,036.9

NOTES :

The figures given for Belgium include Luxembourg.

* Estimates.

SALES OF LEGITIMATE RECORDS AND PRE-RECORDED TAPES IN THE USA1978 - 1980 - 1982

(figures in millions)

Index 1978=100

	1978	1980	1982**
<u>UNITS</u>			
Singles	190.0 (100.0)	157.0 (82.6)	137.2 (72.2)
LPs	341.3 (100.0)	308.0 (90.2)	241.5 (78.8)
Cartridges	133.6 (100.0)	85.0 (63.6)	13.7 (10.3)
Cassettes	61.3 (100.0)	99.0 (161.5)	183.2 (298.9)
<u>Retail Value</u>			
(US\$)	4,131.4	3,682.0	3,592.0
(Index)*	(100.0)	(70.6)	(58.8)

The average drop in turnover is 12.3% per year in real terms.

* The index is adjusted to reflect inflation.

Source : Recording Industry Association of America Inc. (RIAA)

** From 1982, a new methodology has been used to record statistics. Had the same methodology been used between 1981 and 1982, it would have shown a much bigger drop in value -- 9.6% (without taking inflation into account) and in units -- 9.4%.

GROWTH OF THE EEC MARKET 1971-1978
(Units and Value in Millions)

COUNTRIES	UNITS			WHOLESALE VALUE		
	<u>1971</u>	<u>1978</u>	<u>Average Annual Increase</u>	<u>1971</u>	<u>1978</u>	<u>Average Annual Increase</u>
Belgium **	12.9	27.0	11.32%	BF 911.7	BF 2,300.0	14.24%
Denmark **	4.6	9.2	11.00%	DKr 62.0	DKr 180.8	17.10%
France	76.5	160.2	11.24%	FF 515.0	FF 1,837.0	19.96%
Germany(FR)	86.9	206.1	13.46%	DM 468.1	DM 1,060.0	13.03%
Italy	33.2	51.6	6.95%		No information	
Netherlands	24.3	55.0	13.41%	Gld 141.8	Gld 310.0	12.42%
United Kingdom	110.0	196.0	9.31%	£ 40.0	£ 250.1	31.61%
EEC	Average growth : 10.95%			Average growth : 18.06%		

NOTES :

* No information available for Ireland.

** Figures include only IFPI Member companies which represent about 85% of the market in Belgium and Luxembourg and 80% in Denmark.

Source : Association of IFPI National Groups in the European Communities.

Table 4

UNITS OF LEGITIMATE RECORDS AND PRE-RECORDED TAPES SOLD IN THE EEC
(1978-1980-1982)
(Units in Millions)

COUNTRY	SINGLES & EPS			LPs			CASSETTES		
	1978	1980	1982	1978	1980	1982	1978	1980	1982
Belgium	12.0 (100.0)	11.3 (94.2)	14.1 (117.5)	13.0 (100.0)	9.1 (70.0)	9.8 (75.4)	2.0 (100.0)	2.2 (110.0)	1.8 (90.0)
Denmark	1.5 (100.0)	2.1 (140.0)	2.2 (146.7)	5.4 (100.0)	5.6 (103.7)	5.5 (101.9)	4.7 (100.0)	3.1 (66.0)	2.7 (57.4)
France *	62.8 (100.0)	57.8 (92.8)	66.5 (105.9)	75.5 (100.0)	64.4 (84.7)	58.6 (77.6)	19.7 (100.0)	21.8 (110.6)	27.7 (140.6)
Germany	46.3 (100.0)	45.0 (97.0)	54.7 (118.1)	112.5 (100.0)	109.7 (97.5)	101.9 (90.6)	47.3 (100.0)	44.4 (93.9)	51.1 (108.0)
Greece	insignificant			4.3 (100.0)	6.3 (146.5)	5.6 (130.2)	2.5 (100.0)	2.5 (100.0)	3.1 (124.0)
Ireland	2.1 (100.0)	-	1.8 (85.7)	1.6 (100.0)	-	1.9 (118.7)	0.6 (100.0)	-	1.1 (183.3)
Italy	18.7 (100.0)	19.1 (102.1)	23.0 (123.0)	16.9 (100.0)	17.2 (101.8)	22.0 (130.2)	8.0 (100.0)	8.0 (100.0)	15.0 (187.5)
Netherlands	14.0 (100.0)	14.0 (100.0)	14.5 (103.6)	35.5 (100.0)	27.0 (76.1)	21.0 (59.2)	5.5 (100.0)	4.5 (81.8)	4.0 (72.7)
United Kingdom*	88.8 (100.0)	77.8 (87.6)	78.6 (88.5)	86.0 (100.0)	67.4 (78.4)	57.8 (67.2)	21.2 (100.0)	25.2 (118.9)	31.5 (148.6)
TOTAL EEC	<u>246.2</u>	<u>227.1</u>	<u>255.4</u>	<u>350.7</u>	<u>306.7</u>	<u>284.1</u>	<u>111.5</u>	<u>111.7</u>	<u>138.0</u>

NOTES :

* Figures include cartridges and reel to reel tapes: France : 1978 - 156,000; 1980 - 32,000; 1982 - 17,000

- Not available.

UK : 1978 - 600,000; and negligible for the other years.

Source : Association of IFPI National Groups in the European Communities.

WHOLESALE VALUE OF SALES OF LEGITIMATE RECORDS AND PRE-RECORDED
TAPES IN THE EEC (1978 - 1980 - 1982)

(figures in millions)
(The indexes represent the real, inflation adjusted value)
Index 1978=100

COUNTRY	Currency	1978	1980	1982
Belgium	BF	2,300.0 (100.0)	2,160.4 (84.2)	2,454.7 (81.8)
Denmark	DK	230.0 (100.0)	227.0 (80.2)	248.9 (71.5)
France	F	1,850.1 (100.0)	2,170.2 (93.2)	2,693.0 (91.3)
Germany (FR)	DM	1,060.0 (100.0)	1,187.0 (102.0)	1,149.0 (88.5)
Greece	DR	1,026.0 (100.0)	1,448.4 (95.0)	1,973.0 (86.0)
Ireland	I£	7.0 (100.0)	8.5+ (90.8)	10.5+ (79.5)
Italy	IL	64,556.5 (100.0)	94,000.0 (104.8)	111,940.0 (89.5)
Netherlands	Gld	310.0 (100.0)	307.0 (88.7)	279.0 (71.1)
United Kindgom	£	250.1 (100.0)	251.8 (75.3)	272.5 (67.0)
TOTAL EEC	US\$	1,946.5 (100.0)	2,082.5 (90.2)	1,604.8 (82.0)

NOTES :

The figures given for Belgium include Luxembourg.
+ Estimates.

SALES IN UNITS AND RETAIL VALUE
OF LEGITIMATE RECORDS AND PRE-RECORDED TAPES IN 1983

COUNTRY	RETAIL VALUE (in millions)	UNITS (in millions)			
		Singles	LPs	Cassettes	CD
Belgium	F 4,195.0*	13.5	7.1	1.3	-
Denmark	DK 430.0	1.8	5.0	2.0	-
France (estimates)	FF 5,600.0	72.0	52.0	27.0	0.3
Germany	D 2,290.0	50.8	76.8	45.7	0.9
Greece	DR 2,751.0	-	5.0	3.6	-
Ireland	IR £ 13.0	1.5	1.4	1.0	-
Italy	L 228,000.0	16.0	19.3	14.0	0.2
Netherlands	Gld 475.0	12.0	18.5	4.5	0.2
United Kingdom	£ 482.0**	74.0	54.3	35.8	0.3

* Sales value of compact discs included.

** Sales value of compact discs not included as too insignificant.

Table 7(a)

SOCIAL IMPORTANCE OF THE RECORDING INDUSTRY - 1978 (ESTIMATES)
(Number of people who directly or indirectly benefit from the activities of the recording industry)

Number of Persons Employed in :	BELGIUM	DENMARK	FRANCE	GERMANY(FR)	IRELAND	ITALY	NETHERLANDS	UNITED KINGDOM
Productions (recording studios)	50	45	)	)	)	) 3,000))
Manufacture	) 500	) 50	) 6,336	) 13,000	) 367	)	) 1,450	) 12,000
Wholesale	)	)	)	) 500))))
Retail	1,500	750	12,000/13,000	26,000	400	) 40,000	5,000	12,500
Printers	70	30	-	-	-	)	500	-
Music Publishing Industry	100	30	-	3,000	20/30	-	500	6,000
Authors' Societies (in music depts)	100	80 ¹	-	600	-	600	80	-
<u>Musicians</u>								
Total	600	6,267 ²	6,000/8,000	18,000 ²	-	6,000/8,000	-	-
FIM Members ³	500	3,800	1,600	7,000	1,564	2,512	1,350	38,887
Session Musicians	250	200	3,000	1,500/2,000	350	3,000	400	5,000

1 Persons employed by NCB

2 Members of joint performers/recording industry collecting societies

3 International Federation of Musicians

Sources: Association of IFPI National Groups in the European Communities, International Federation of Musicians.

Table 7(b)

SOCIAL IMPORTANCE OF THE RECORDING INDUSTRY
Estimates - 1982

<u>Country</u>	<u>Employment in the Recording Industry</u>				<u>Musicians</u>
	<u>Production Manufacture</u>	<u>Wholesale</u>	<u>Retail</u>	<u>Printers</u>	
BELGIUM	500		1,400	65	3,000
DENMARK	90		750	30	5,000
FRANCE	4,600		11,000	N/A	5,000
GERMANY	12,000	400	21,000	N/A	16,800
GREECE		3,000		N/A	4,000
IRELAND 1,500	220		400		N/A
ITALY	3,000	40,000		N/A	26,000
NETHERLANDS (1983)	1,000		4,000	350	3,500
UNITED KINGDOM	7,000		11,000	N/A	45,000 (including semi-professional musicians)

Source: IFPI National Groups, FIM.

Table 8(a)

ROYALTIES COLLECTED BY AUTHORS' SOCIETIES FROM PRODUCERS OF PHONOGRAMS

1970-1978

(Value in Millions)

	BELGIUM BF	DENMARK DK	FRANCE FF	GERMANY(FR) DM	ITALY L	NETHERLANDS DLF	UNITED KINGDOM £
1970	48.7	2.7	31.0	55.1	2,318.8	8.5	2.7
1971	56.6	3.5	32.0	68.5	2,807.1	10.4	3.7
1972	47.0	3.7	46.0	71.1	3,220.8	12.6	5.2
1973	76.9	3.5	75.5	81.5	4,163.9	15.5	7.7
1974	86.1	4.4	92.0	91.9	5,033.8	19.9	9.7
1975	56.7	5.7	120.0	95.7	5,750.2	22.7	11.9
1976	87.3	7.6	130.0	107.1	7,383.7	29.2	12.7
1977	137.0	11.7	162.0	130.8	8,409.4	33.5	13.6
1978	<u>137.5</u>	<u>15.1</u>	<u>210.0</u>	<u>165.8</u>	<u>9,000.0</u>	<u>39.7</u>	<u>18.4</u>
Average Variation %	+ 19.%	+ 26.1%	28.2%	+ 15.1%	+ 18.7%	+ 21.3%	+ 27.9%

Average Variation for the EEC * :22.3%

NOTES :

* No Information available for Ireland.

Source : Authors' Societies/Association of IFPI National Groups in the European Communities.

Table 8(b)

ROYALTIES COLLECTED BY AUTHORS' SOCIETIES FROM PRODUCERS OF PHONOGRAMS
1978-1982
(Value in Millions)

	BELGIUM BF	DENMARK DK	FRANCE FF	GERMANY(FR) DM	ITALY L	NETHERLANDS DFL	UNITED KINGDOM £
1978	137.5	16.0	210.0	165.8	9,000.0	39.7	18.4
1979	127.2	17.8	247.7	189.2	10,700.0*	39.0	19.9
1980	121.9	18.5	244.5	192.0	11,300.0*	41.5	21.5
1981	103.4	19.9	253.9	190.0	12,500.0*	50.0	20.7
1982	<u>84.3</u>	<u>21.0</u>	<u>300.9</u>	<u>186.0</u>	<u>13,155.0</u>	<u>47.1</u>	<u>21.3</u>
Average Variation :	- 11.3%	+ 7.0%	+ 9.7%	3.1%	+ 10.1%	+ 4.8%	+ 3.8%
Average Variation for the EEC ** :			3.9%				

NOTES :

* Estimates.

** No information available for Greece and Ireland.

Source : Authors' Societies/Association of IFPI National Groups in the European Communities.

ESTIMATED EXTENT OF PIRACY OF PHONOGRAMS WORLDWIDE - YEAR 1982

(and comparison with 1978 - 1980)

Breakdown by Area

<u>Area</u>	<u>Units Sold</u>		<u>Retail</u>	<u>As % of</u>
	('000,000)		<u>Value</u>	<u>Total</u>
	LPs**	Tapes	(US\$'000,000)	<u>Market *</u>
				<u>Tapes***</u>
Western Europe	5.	28.	100.	14-15%
North America	18.	42.	400.	16%
Mediterranean Area				
Middle East & Africa	2.	48.	160.	60-80%
Asia & Australia	2.	100.	190.	60-80%
Latin America	<u>3.</u>	<u>22.</u>	<u>65.</u>	30-50%
Total	30.	240.	915.	
<u>1980</u> (total)		315.	1,100.	
<u>1978</u> (total)		416.	884.	

Notes:

* Total Market means legitimate and pirate market.

** Piracy of singles is negligible.

*** Disc piracy is much less significant than tape piracy. In most countries it is kept well below 10%.

Table 10

ESTIMATED EXTENT OF PIRACY OF PHONOGRAMS IN THE EEC - 1982
(and comparison with the years 1978 and 1980)

COUNTRIES *	UNITS SOLD ('000)		RETAIL VALUE US\$ '000		AS % OF TOTAL MARKET ** (units)		AS % OF TOTAL MARKET (value) **
	<u>Discs(LPs)</u>	<u>Tapes</u>	<u>Discs(LPs)</u>	<u>Tapes</u>	<u>Discs(LPs)</u>	<u>Tapes</u>	
Belgium	100.	80.	680.	200.	1.0%	4.0%	1.%
France	300.	1,400.	2,600.	12,100.	0.5%	5.0%	2.%
Germany	1,500.	3,000.	8,200.	14,300.	1.5%	7.0%	2.%
Greece	-	9,500.	-	19,000.	-	75.0%	32.%
Ireland	-	20.	-	100.	-	3.%	0.5%
Italy	1,000.	5,500.	3,500.	17,700.	5.%	30.%	11.%
Netherlands	900.	180.	7,300.	1,300.	3.%	5.%	4.%
United Kingdom	<u>500.</u>	<u>2,500.</u>	<u>5,000.</u>	<u>10,000.</u>	<u>1.%</u>	<u>7.5%</u>	<u>2.%</u>
TOTAL EEC	<u>4,300.</u>	<u>22,180.</u>	<u>27,280.</u>	<u>74,700.</u>	<u>1.5%</u>	<u>14.0%</u>	<u>3.%</u>
(without Greece (which joined in 1981)	(4,300.)	(12,680.)	(27,280.)	(55,700.)	(1.5%)	(8.5%)	(2.5%)
TOTAL EEC (1980)	8,900.	13,330.	59,500.	93,800.	33.0%	11.%	4.%
TOTAL EEC (1978)	11,650.	16,200.	81,400.	112,000.	3.5%	13.%	5.%

NOTES :

* Denmark is not included because piracy of both discs and tapes is negligible.

** Total market means legitimate market and pirate market.

- Negligible.

Source: Association of IFPI National Groups in the European Communities.

IMPORTS/EXPORTS OF RECORDS AND PRE-RECORDED TAPES IN THE EEC COUNTRIES

Year - 1978
(Value in US\$'000,000)

	BELGIUM	DENMARK	FRANCE	GERMANY	IRELAND	ITALY	NETHERLANDS	UNITED KINGDOM	TOTAL
<u>IMPORTS</u>									
from EEC	49.0	15.0	26.0	81.9	8.2	13.6	42.5	23.3	259.5
from ROW	<u>2.7</u>	<u>8.1</u>	<u>9.3</u>	<u>19.8</u>	<u>1.4</u>	<u>7.3</u>	<u>12.1</u>	<u>22.2</u>	<u>82.9</u>
Total	51.7	23.1	35.3	101.7	9.6	20.9	54.6	45.5	342.4
<u>EXPORTS</u>									
to EEC	17.0	1.7	41.7	54.0	2.9	8.5	44.1	55.7	225.9
to ROW	<u>0.8</u>	<u>2.4</u>	<u>19.9</u>	<u>71.7</u>	<u>0.4</u>	<u>8.5</u>	<u>28.5</u>	<u>51.5</u>	<u>183.7</u>
Total	17.0	4.1	61.6	125.7	3.3	17.0	72.6	107.2	408.5

Net EEC Exports* : US\$100.8 million.

NOTES :

* Exports less Imports from and to non EEC countries.

Exchange rates at end of Year.

Source : IFPI National Groups in the European Communities and Customs & Excise Authorities.

Table 11(b)

IMPORTS/EXPORTS OF RECORDS AND PRE-RECORDED TAPES IN THE EEC COUNTRIES

Year - 1980
(Value in US\$'000,000)

	BELGIUM	DENMARK	FRANCE	GERMANY	IRELAND	ITALY	NETHERLANDS	UNITED KINGDOM	TOTAL
<u>IMPORTS</u>									
from EEC	58.7	10.9	33.4	95.1	6.7	28.8	42.8	40.4	316.8
from ROW	<u>3.7</u>	<u>10.3</u>	<u>12.9</u>	<u>37.3</u>	<u>1.1</u>	<u>12.5</u>	<u>21.0</u>	<u>31.5</u>	<u>130.3</u>
Total	62.4	21.2	46.3	132.4	7.8	41.3	63.8	71.9	447.1
<u>EXPORTS</u>									
to EEC	15.1	2.4	33.6	51.1	5.7	7.8	74.6	49.0	239.3
to ROW	<u>0.5</u>	<u>1.8</u>	<u>21.3</u>	<u>60.9</u>	<u>0.4</u>	<u>7.4</u>	<u>47.4</u>	<u>38.2</u>	<u>177.3</u>
Total	15.6	4.2	54.9	112.0	6.1	15.2	122.0	87.2	417.2

Net EEC Exports* : US\$ 47 million.

NOTES :

* Exports less Imports from and to non EEC countries.

Exchange rates at end of Year.

Source : IFPI National Groups in the European Communities and Customs & Excise Authorities.

IMPORTS/EXPORTS OF RECORDS AND PRE-RECORDED TAPES IN THE EEC COUNTRIES *
Year - 1982
(Value in US\$'000,000)

	BELGIUM	DENMARK	FRANCE	GERMANY	IRELAND	ITALY	NETHERLANDS	UNITED KINGDOM	TOTAL
<u>IMPORTS</u>									
from EEC	48.6	8.6	29.0	80.0	7.9	20.0	39.0	33.4	266.5
from ROW	<u>3.2</u>	<u>6.3</u>	<u>9.8</u>	<u>31.0</u>	<u>2.0</u>	<u>10.0</u>	<u>11.2</u>	<u>11.5</u>	<u>85.0</u>
Total	51.8	14.9	38.8	111.0	9.9	30.0	50.2	44.9	351.5
<u>EXPORTS</u>									
to EEC	17.8	4.0	23.7	63.0	3.8	5.5	70.0	25.2	213.0
to ROW	<u>1.4</u>	<u>2.0</u>	<u>19.3</u>	<u>64.7</u>	<u>0.3</u>	<u>5.5</u>	<u>39.4</u>	<u>35.1</u>	<u>167.7</u>
Total	19.2	6.0	43.0	127.7	4.1	11.0	109.4	60.3	380.7

Net EEC Exports ** : 82.7

Notes :

* No information on Greece.

** Exports less imports from and to non-EEC countries.

Figures for Belgium and Ireland include pre-recorded videotapes.

Exchange Rates at end of year.

Source : IFPI National Groups and Customs and Excise Authorities.

Table 12

RETAIL PRICES OF LEGITIMATE, PIRATE, COUNTERFEIT AND BOOTLEG SOUND RECORDINGS
(1982) - ESTIMATES

COUNTRY *		CURRENCY	LEGITIMATE	PIRATE	COUNTERFEIT	BOOTLEG
France	LPs	F	60-80	40-80	40-80	80-100
	Cassettes	F	60-80	40-80	40-80	
Germany	LPs	DM	12-13	10	10-15	25
	Cassettes	DM	10-11	10	10-15	20
Greece	LPs	Dch	235-320	-	-	-
	Cassettes	Dch	240	100	-	-
Ireland	LPs	Ir£	6.99	-	6.99	
	Cassettes	Ir£	6.99	4-5	6.99	
Italy	LPs	L	12,000-13,000	5,000-6,000	10,000-11,000	-
	Cassettes	L	12,000-13,000	5,000-6,000	10,000-11,000	
Netherlands	LPs	Dfl	17-29.00	10-25	10-25	20-30
	Cassettes	Dfl	17-29.00	10-25	10-25	15-25
United Kingdom	LPs	£	4.99	2-4	2-4	
	Cassettes	£	4.99	2-4	2-4	

* The prices of legitimate products in Belgium and Denmark are: Belgium - BF 300/400; Denmark - DK 45/53

NATURE OF RECORDINGS
=====

Country		Music	Artistic Works (Poems, plays etc)	Spoken Words	Other	Don't Know/ No answer
BELGIUM	(1978)	94%	-	-	6%	N/A
DENMARK	(1977)	92%	-	-	3%	5%
	(1980)	93%	-	-	0%	7%
FRANCE	(1976)	82%	4%	-	14%	N/A
	(1983)	90%	5%	-	5%	N/A
GERMANY*	(1978)	89.4%**	0.3%	2.9%	6.1%	1.3%
	(1980)	91.1%**	0%	1.8%	3.8%	3.2%

* nature of last recording.

** this percentage refers to blank tapes which are being used for recording music and includes recordings of live concerts 0.6% (1978); 2.2 (1980); recordings of private play (music activities) 0.8% (1978), 0.78% (1980).

- included in column 'other'.

SOURCES OF RECORDINGS

Table 14

(Basis 100%)

Country		Radio	TV	Pre-Recorded Music		Home Recorded Tapes	Live Performance	Others	Don't Know No Answer
				Records	Tapes				
BELGIUM ^a	(1978)	46%	7%		39%	3%	1%	4%	N/A
DENMARK ^b	(1977)	73%	3%	12%			N/A	1%	6%
	(1980)	55%	1%	30%			-	-	4%
FRANCE	(1976) ^c	20.2%	10.6%		46.4%	5.8%	2.2%	1.6%	13.2%
	(1981)	32%	10%		54%	N/A	3%	1%	N/A
	(1983)	24%	4%		61%	9%	2%	1%	N/A
GERMANY	(1978) ^d	64.4%	6.3%	18.7%		0.9%	inc.	6.5%	1.4%
	(1980) ^d	67.9%	3.3%	19.8%		0.8%	inc.	3.9%	2.1%
GREECE	(1979)	55%	N/A	37%		N/A	N/A	8%	N/A
IRELAND	(1982) ^b	24%	14%	48%			-	N/A	N/A
NETHERLANDS	(1976) ^b		44%		49.5% ^f		N/A	6%	0.5%
	(1979) ^b	39%	4%		51% ^f		N/A	3%	3%
UNITED	(1977)	24%	4%	66%		N/A	N/A	1%	N/A
KINGDOM ^e	(1979)	24%	3%	69%		N/A	N/A	0%	N/A
	(1981)	21%	2%	70%		N/A	N/A	1%	N/A

a) sources of recordings

b) main sources of music recordings over the past 12 months

c) main source of last cassette taped

d) source of last recording

inc. included in others

e) main source of recordings

f) including home recorded tapes

- percentage negligible

Percentages of Singles, Popular LP's and Classical Recordings
which made a Profit in EEC Countries in 1982 (1)

(Estimates)

COUNTRY	% of Profitable Singles	% of Profitable LPs	% of Profitable Classical Recordings
Denmark	10%	5-20%	0%
Germany (2)	30%	40%	50%
Greece (3)	N/A	15%	N/A
Italy A (4)	8%	7%	4%
B (4)	20%	25%	40%
Netherlands	9%	6%	5%
United Kingdom	10%	10%	5%

(1) The profitability of a recording is defined here as covering all direct and indirect costs including overheads.

(2) The profitability has been calculated over a period covering several years, hence the figures are higher.

(3) Sales of singles are virtually nil in Greece. The Classical market is also small and 99% of recordings are imported.

(4) A: Recordings produced and released in Italy.
B: Recordings released and pressed in Italy but produced abroad.

COST BREAKDOWNS OF PRE-RECORDED MUSIC
IN THE UNITED KINGDOM

	Pop LP	Pop Cassette	7" Single	12" Single
Retail Price	£4.99	£4.99	£1.35	£2.29
VAT	0.65	0.65	0.18	0.30
Dealer Margin	1.03	1.03	0.24	0.40
Distribution + dealer discounts	0.73	0.73	0.20	0.34
Artist Royalty	0.62	0.62	0.16	0.20
Mechanical Royalty	0.27	0.27	0.07	0.12
Design & Packaging	0.20	0.06	0.06	0.10
Manufacturing	0.38	0.37	0.15	0.38
Total A & R cost	0.23	0.23	0.07	0.10
Advertising & Promotion	0.22	0.22	0.07	0.12
Contribution to overheads	0.52	0.52	0.15	0.25
Profit (Loss)	0.14	0.29	0.00	(0.02)

SOURCE : British Phonographic Industry.

COMPARISON BETWEEN INCREASES IN PRICE OF PHONOGRAMS AND THE GENERAL RETAIL PRICE INDEX
FRANCE, NETHERLANDS AND THE UNITED KINGDOM

	1975	1976	1977	1978	1979	1980	1981	1982	1983
<u>FRANCE</u>									
Price of records and tapes	100.0	103.3	107.3	112.8	126.1	135.8	146.2	161.8	171.0
Retail Price Index	100.0	109.6	119.9	130.8	144.9	164.5	186.5	208.5	228.5
<u>NETHERLANDS</u>									
Average LP price	100.0	97.6	92.9	96.9	101.3	110.7	119.9	129.9	131.5
Retail Price Index	100.0	108.8	116.0	121.0	125.8	135.0	144.0	152.7	156.5
<u>UNITED KINGDOM</u>									
Pop LP price	100.0	118.2	121.9	145.2	156.1	170.6	163.3	170.6	181.5
Retail Price Index	100.0	117.2	135.7	147.0	166.7	196.7	220.1	239.0	250.0

Sources: SNEP (France); NVPI (Netherlands); BPI (United Kingdom).

IMPORT DUTIES AND TAXES ON RECORDS AND TAPES IN THE EECSALES TAXES*

COUNTRY	AUDIO	
	DISCS	TAPES ¹
Belgium	25% ²	25%
Denmark	22% ²	22%
France	33.33%	33.33%
Germany(FR)	14%	14%
Greece	12% ⁴ & 4.8% ³	12% & 4.8%
Ireland	23% ⁴	35% ⁵
Italy	10%	10%
Luxembourg	12%	12%
Netherlands	19%	19%
United Kingdom	15%	15%

NOTES :

- * VAT (Value Added Tax) except for Greece.
- 1 Pre-recorded and blank audio tapes.
- 2 An additional tax of 30% of the wholesale price is also levied on records.
- 3 12% turnover tax and 4.8% stamp duty.
- 4 40% excise duty on ex-factory price.
- 5 Blank tapes bear a higher VAT rate of 18%.

IMPORT DUTIES

There is no duty on trade between member states of the EEC*. The Common External tariff is shown below. Those duties are applied to goods imported from non-member states.

Matrices for the production of records	3.9%
<u>Records</u>	
for teaching languages	3.1%
other	5.7%
<u>Compact discs</u>	6.0%
<u>Audio cassettes</u>	
blank	5.7%
pre-recorded	6.0%

* Except for trade with Greece which is still in the transitional period.

R O M E C O N V E N T I O NConvention for the Protection of PerformersProducers of Phonograms and Broadcasting Organisations(October 26 1961)State of Ratifications and Accessions as on 1st August 1984

<u>Contracting States</u>	<u>Deposit of Instrument</u>	<u>Entry into force</u>	<u>Ratification (R)</u> <u>Accession (A)</u>
Austria*	March 9th 1973	June 9th 1973	R
Barbados	June 18th 1983	September 18th 1983	A
Brazil	June 29th 1965	September 29th 1965	R
Chile	June 5th 1974	September 5th 1974	R
Colombia	June 17th 1976	September 17th 1976	A
Congo*	June 29th 1962	May 18th 1964	A
Costa Rica	June 9th 1971	September 9th 1971	A
Czechoslovakia*	May 13th 1964	August 14th 1964	A
Denmark*	June 23rd 1965	September 23rd 1965	R
Ecuador	December 19th 1963	May 18th 1964	R
El Salvador	March 29th 1979	June 29th 1979	A

Fiji*	January 11th 1972	April 11th 1972	A
Finland*	July 21st 1983	October 21st 1983	R
Germany, Federal Republic of*	July 21st 1966	October 21st 1966	R
Guatemala	October 14th 1976	January 14th 1977	A
Ireland*	June 9th 1979	September 19th 1979	R
Italy*	January 8th 1975	April 8th 1975	R
Luxembourg*	November 25th 1975	February 25th 1976	A
Mexico	February 17th 1964	May 18th 1964	R
Niger*	April 5th 1963	May 18th 1964	A
Norway*	April 10th 1978	July 10th 1978	A
Panama	June 2nd 1983	September 2nd 1983	A
Paraguay	November 26th 1969	February 26th 1970	R
Philippines	July 25th 1984	September 25th 1984	A
Sweden*	July 13th 1962	May 18th 1964	R
United Kingdom*	October 30th 1963	May 18th 1964	R
Uruguay	April 4th 1977	July 4th 1977	A

Total Number of States: 27

* The instruments of ratification or accession deposited with the Secretary-General of the United Nations contain declarations made under the Articles mentioned hereafter: for Austria, Article 16(1)(a)(iii) and (iv) and (1)(b); for Congo, Article 5(3) concerning Article 5(1)(c) and 16(1)(a)(i); for Czechoslovakia, Article 16(1)(a)(iii) and (iv); for Denmark, Articles 6(2), 16(1)(a)(ii) and (iv) and 17; for Fiji, Articles 5(3) concerning Article 5(1)(b), 6(2) and 16(1)(a)(i); for Finland, Articles 6(2), 16(1)(a)(i), (ii), (iv), 16(1)(b) and 17; for Germany (Federal Republic of), Articles 5(3) concerning Articles 5(1)(b) and 16(1)(a)(iv); for Ireland, Article 5(3) concerning 5(1)(b); Article 6(2) and Article 16(1)(a)(ii); for Italy, Articles 6(2), 16(1)(a)(ii),(iii) and (iv), 16(1)(b) and 17; for Luxembourg, Articles 5(3) concerning Article 5(1)(a) and (b); 16(1)(a)(i) and 16(1)(b); for Niger, Articles 5(3) concerning Article 5(1)(c) and 16(1)(a)(i); for Norway, Articles 6(2); 16(1)(a)(ii), (iii) and (iv); for Sweden, Articles 6(2), 16(1)(a)(ii) and (iv), 16(1)(b) and 17; for the United Kingdom, Articles 5(3) concerning Articles 5(1)(b), 6(2) and 16(1)(a)(ii), (iii) and (iv); the same declarations were made for Gibraltar and Bermuda.

GENEVA (PHONOGRAMS) CONVENTIONConvention for the Protection of Producers of Phonogramsagainst Unauthorised Duplication of their Phonograms (Geneva, October 29, 1971)State of Ratifications and Accessions as on 1st August 1984

<u>Contracting States</u>	<u>Deposit of Instrument</u>	<u>Entry into Force</u>	<u>Ratification (R)</u> <u>Accession (A)</u>
Argentina	March 19th 1973	June 30th 1973	A
Australia	March 12th 1974	June 22nd 1974	A
Austria	May 6th 1982	August 21st 1982	R
Barbados	March 23rd 1983	July 29th 1983	A
Brazil	August 6th 1975	November 28th 1975	R
Chile	December 15th 1976	March 24th 1977	A
Costa Rica	March 1st 1982	June 17th 1982	A
Denmark	December 7th 1976	March 24th 1977	R
Ecuador	June 4th 1974	September 14th 1974	R
Egypt	December 15th 1977	April 23rd 1978	A
El Salvador	October 25th 1978	February 9th 1979	A
Fiji	June 15th 1972	April 18th 1973	A

Finland	December 18th 1972	April 18th 1973	R
France	September 12th 1972	April 18th 1973	R
Germany, Federal Republic of	February 7th 1974	May 18th 1974	R
Guatemala	October 14th 1976	February 1st 1977	A
Holy See	April 4th 1977	July 18th 1977	R
Hungary	February 24th 1975	May 28th 1975	A
India	November 1st 1974	February 12th 1975	R
Israel	January 10th 1978	May 1st 1978	R
Italy	December 20th 1976	March 24th 1977	R
Japan	June 19th 1978	October 14th 1978	R
Kenya	January 6th 1976	April 21st 1976	R
Luxembourg	November 25th 1975	March 8th 1976	R
Mexico	September 11th 1973	December 21st 1973	R
Monaco	August 21st 1974	December 2nd 1974	R
New Zealand	May 3rd 1976	August 13th 1976	A
Norway	April 10th 1978	August 1st 1978	R
Panama	March 20th 1974	June 29th 1974	R
Paraguay	October 30th 1978	February 13th 1979	A
Spain	May 16th 1974	August 24th 1974	R
Sweden	January 18th 1973	April 18th 1973	R

United Kingdom*	December 5th 1972	April 18th 1973	R
United States of America	November 26th 1973	March 10th 1974	R
Uruguay	October 6th 1982	January 18th 1983	R
Venezuela	July 30th 1982	November 18th 1982	A
Zaire	July 5th 1977	November 29th 1977	A

Total Number of States: 37

* The United Kingdom declared by Notification, addressed to the Secretary General of the United Nations, and which took effect on March 4th, 1975, that the Convention is applicable to the following territories: Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Isle of Man, Hong Kong, Montserrat and St. Lucia.

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- NOTES : (1) Reports of Meetings of the Committees of the Berne Union, Universal Copyright Convention and the Rome Convention are listed in footnotes of Chapter III. These reports are reproduced in full in Copyright and in its French edition, Le Droit d'Auteur, published monthly by the World Intellectual Property Organisation (WIPO), Geneva.
- (2) Articles published in RIDA (Revue Internationale du Droit d'Auteur) are also published in Spanish and French in the same issue.

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