

APPENDIX H (Paragraph 118 of Report)

Draft form of Mechanical Copyright
Protection Society Limited (MCPS)
British Phonographic Industry
Limited (BPI) Import Licence,
including Terms and Conditions

THIS AGREEMENT IS MADE THE DAY OF 1985

BETWEEN

- (1) MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED ('MCPS)
- (2) MECHANICAL RIGHTS SOCIETY LIMITED ("MRS")

both of whose registered offices are at
Elgar House, 41 Streatham High Road, London SW16 1EK.

- (3) BRITISH PHONOGRAPHIC INDUSTRY LIMITED ("BPI")
whose registered office is at
Roxburghe House, 273/287 Regent Street, London W1R 8BN.

hereinafter referred to as "the Licensers".

and

- (4) whose registered office is at

hereinafter referred to as "the Licensee".

WHEREAS

- (a) The Licensee has for some time past carried on/intends to commence the business of importing records containing both copyright works and copyright sound recordings into the United Kingdom for the subsequent retail sale of such records in the United Kingdom.
- (b) The MCPS and MRS between them represent the copyright owners of many copyright musical works and MCPS issues licences on its members' behalf and on the behalf of the members of MRS for the mechanical reproduction of music and its derivatives.
- (c) The BPI which has well over 100 member. represents the majority of U K record companies who are the owners of copyright in sound recordings.
- (d) MRS and BPI have delegated the task of administering their respective parts of this Agreement to MCPS who is authorised by MRS and BPI to give a good receipt for monies collected.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. In consideration of the due payment of royalties at the rates given in the published 'Terms and Conditions' (attached) or as from time to time in force the LICENSORS contracting on behalf of Themselves and each as agents for and on behalf of their respective members who own or control copyrights in musical works and/or sound recordings in the United Kingdom GRANT TO THE LICENSEE the licences mentioned below conditional upon the Licensee performing its obligations in this Agreement and as set out in and subject to both the 'Terms and Conditions' and to the provisions and restrictions detailed in the MCPS/BPI published booklet entitled "An explanation of the terms for the licence of records to be imported into the UK" ("the Booklet"):-
 - (a) A licence under section 5(2) of the Copyright Act 1956 to import for the purposes of retail sale in the United Kingdom audio records which have been lawfully manufactured outside the United Kingdom and which contain musical works the United Kingdom copyright of which is owned or controlled by members of either MRS or of MCPS.
 - (b) A licence under section 5(3) of the Copyright Act 1956 to offer for sale and to sell such records in the United Kingdom for such purposes.
 - (c) A licence under section 16(2) of the Copyright Act 1956 to import for the purposes of retail sale in the United Kingdom audio records which have been lawfully manufactured outside the United Kingdom the copyright in the sound recording of which is owned or controlled in the UK by a BPI member company.
 - (d) A licence under section 16(3) of the Copyright Act 1956 to offer for sale and to sell such records in the United Kingdom for such purposes.
2. The licences granted shall only be in respect of records detailed in the Terms and Conditions and the "booklet" and do not authorise the importation of:
 - (a) Records containing musical works which are owned or controlled by third parties
 - (b) Records which have been manufactured outside the United Kingdom illegally or without the licence of the copyright owner(s) in the country of manufacture.
3. The Licensors individually and collectively reserve the right to withdraw or to amend this Licence and its ancillary documents with effect from 28 February 1986 or at any time thereafter on not less than 4 weeks' prior written notice.

MCPS-BPI IMPORT LICENCETERMS AND CONDITIONS

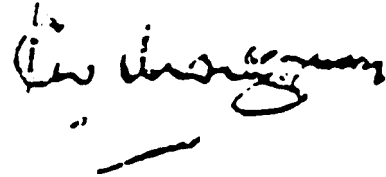
1. The copyright owners of the Musical Works reserve the right not to licence the importation of records containing certain Musical Works. A register of these works and/or relevant records is held by MCPS and the Licensee must satisfy himself that any record he wishes to import is not on that register and does not contain any of those works.
2. Subject to the above, the licence covers the importation of records (which expression includes cassettes) by the Licensee into the United Kingdom in the following categories (herein referred to as "licensed records"):
 - (a) Any record lawfully manufactured outside the EEC which, at the time of entry, is not in the Catalogue of any BPI member company. For the avoidance of doubt any record which, by virtue of an early release schedule in another country, does not appear in a BPI member catalogue, but is intended for release by that company, is deemed to be in the catalogue of that company and would therefore require prior permission from that company.
 - (b) Any special format of record lawfully manufactured outside the EEC which at the time of entry is in a current catalogue of a BPI member company PROVIDED THAT the prior written permission of that company has been obtained and the MCPS are notified of such permission before importation takes place. "Special format" shall include any record where the contents are different from the UK version or where there is a premium pressing or "sound laboratory" version intended to produce a superior sound.
3. The licensee is required to affix stamps to all licensed records at the rates which are set out on Page 2 of the booklet entitled "Mechanical Copyright and the Importation of Audio Records" issued by the Licensors and any variation of such rates subsequently notified to the Licensee by the Licensors.
4. The Licensors shall be at liberty in their discretion to vary such import licence rates and to alter the categories of the stamps. The Licensee shall be obliged to pay such amended rates on receipt of written notice of the new rates from the Licensors or from MCPS on their behalf.
5. Nothing in this Licence shall preclude the Licensee from making prior application for a licence to import records which fall outside the scope of Clause 2(a) or (b) above. (Failure to obtain the prior written consent of the copyright owners of the sound recordings and of the Musical Works contained in them may infringe copyright and render the Licensee liable to legal action by and on behalf of the copyright owners concerned). These Terms and Conditions and Rates are not to be taken as indicative either of the conditions upon which such a Licence to import may be granted or that a Licence will be granted at all.

- b. The Licensee must maintain sufficient written details of the catalogue numbers of licensed records together with full details of the quantity of each catalogue number imported and their origin so as to enable the Licensors (or the Licensee on their behalf) upon request by inspection or otherwise to verify the origin, number and nature of such imports. The licensee shall be obliged to provide such details of licensed records at the written request of the Licensors.
7. The Licensee must obtain from MCPS sufficient stamps of the correct value prior to importation to cover the number of licensed records to be imported and shall affix the correct stamps on all the appropriate licensed records (or their sleeves) within fourteen days of their importation and in all cases before such records are sold to any third party or otherwise released from the control of the licensee time being of the essence. The Licensee must at all times retain sufficient stamps to enable him to comply correctly with the terms of this clause.
8. The licensee shall pay for the stamps within fourteen days of the date of the invoice for such stamps.
9. Such stamps are supplied for the personal use of the Licensee. In no circumstances should the Licensee sell assign or otherwise make available to any third party any stamps obtained from the Licensors except as affixed to licensed records which are sold at the same time. Ownership of the stamps shall remain with MCPS until they have been paid for and affixed to the appropriate licensed records and the records have been sold at retail.
10. If the licensee does not strictly comply with all or any of the conditions of this Licence the records imported shall be deemed to be imported and/or sold in infringement of copyright and without licence whether or not notice of the same has been sent to the Licensee by the Licensors.
11. Where records bearing stamps are subsequently returned as faulty or destroyed for any reason the Licensee may apply to the Licensors for a rebate at the Licensors' discretion. The Licensee is referred to Paragraph 6 on Page 3 of the aforementioned booklet for guidance.
12. The Licensors may terminate this Licence without notice if the Licensee is in breach of either the Agreement OR these Terms and Conditions or those set out in the booklet or if the Licensee ceases to trade or has a receiver appointed or if a Petition is presented for its winding-up or if a creditors' meeting is convened to consider such a resolution.
13. If the Licensee wishes to terminate this Licence he may do so by giving not less than one month's written notice to the Licensors. Records imported prior to the effective date of termination will be deemed to be "licensed records" on condition that the Licensee remains bound by and performs these contractual terms in respect of those records.
14. On termination the Licensee shall immediately notify the Licensors of its stock of records and of stamps and shall deliver up any unused stamps.
15. If any conflict should arise between the Agreement, these Terms and Conditions and the Booklet, the parties agree to accept the decision

AS WITNESS the hands of the parties here Lo

SIGNED by MCPS

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LICENSORS

SIGNED by

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for and on behalf of the
LICENSEE

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