ORDER OF THE COURT
19 July 1996 *

In Case C-191/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli, for a preliminary ruling in the criminal proceedings pending before that court against

Mario Modesti,

on the compatibility of national legislation relating to the management of copyright with Article 30 of the EC Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

after hearing the Advocate General,

* Language of the case: Italian.

makes the following

Order

1 By order of 21 February 1996, received at the Court on 3 June 1996, the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli (District Magistrates' Court, Rome, Tivoli Division), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on various articles of that Treaty in order to enable it to rule on the compatibility with those provisions of national legislation relating to the management of copyright.

2 Those questions arose in criminal proceedings against Mario Modesti who was charged with wrongfully disseminating musical compositions and illegally copying magnetic tapes and records.

3 Since it considered that the case before it raised questions concerning the interpretation of the EC Treaty, the national court referred the following questions to the Court of Justice for a preliminary ruling:

'(1) May the national legislation conferring on the SIAE (Italian Society of Authors and Publishers) the exclusive right to manage copyright impede or prevent the import or export of sound recordings which have been lawfully marketed in another State?

(2) In the context of the Single Market, characterized by the free movement of goods and the freedom to provide services, may the SIAE require payments in

all cases and circumstances on behalf of authors, relying on recourse to criminal proceedings in order to give effect to that power and enforce its claims?

(3) Is the national case-law and legislation referred to by the SIAE in its application to join the proceedings as a party claiming damages liable to give rise to arbitrary discrimination or a disguised restriction of trade, into and out of Italy, in relation to the commercial exploitation of copyright *vis-à-vis* the other Member States of the European Union?'

4 It should be observed that, in order to reach an interpretation of Community law which will be of use to the national court, it is essential that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, in particular, the judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo and Others* v *Circostel* [1993] ECR I-393, paragraph 6, and the orders in Case C-157/92 *Pretore di Genova* v *Banchero* [1993] ECR I-1085, paragraph 4, Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 12, Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 8, Case C-307/95 *Max Mara* [1995] ECR I-5083, paragraph 6, and Case C-2/96 *Sunino and Data* [1996] ECR I-1543, paragraph 4).

5 The information provided and the questions raised in orders for reference must not only be such as to enable the Court usefully to reply but also such as to give the Governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court (order in *Sunino and Data*, paragraph 5). It is the Court's duty to ensure that the opportunity to submit observations is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the orders for reference are notified to the

interested parties (judgment in Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6, and the orders in *Saddik*, paragraph 13; *Grau Gomis*, paragraph 10; *Max Mara*, paragraph 8; and *Sunino and Data*, paragraph 5).

6 The order for reference in this case does not contain sufficient information regarding the factual and legislative context to meet those requirements. The national court merely refers to criminal breaches of Italian copyright legislation and the question, raised in that context, as to whether the monopoly held by a company having the exclusive right to manage such copyright and authorized to require payment of fees with protection backed by criminal penalties is compatible with Community law. For the rest, it fails to give sufficient details of the factual context of the dispute, the Italian legislative context or the precise reasons which prompted it to consider the interpretation of Community law and to deem it necessary to refer questions to the Court of Justice for a preliminary ruling.

7 Since the order for reference is thus too vague as to the legal and factual situations envisaged by the national court, the Court is unable usefully to provide an interpretation of Community law.

8 It must therefore be held at this stage of the proceedings, pursuant to Articles 92 and 103 of the Rules of Procedure, that the request from the national court is manifestly inadmissible.

Costs

9 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

hereby orders:

The request for a preliminary ruling submitted by the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli, by order of 21 February 1996 is inadmissible.

Luxembourg, 19 July 1996.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President