

TIME WARNER

Dean S. Marks
Vice President
Legal Affairs

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Re: Parallel Imports of Laserdiscs from U.K. into
Denmark for Rental

As mentioned, I recently had a long discussion with Jorg Reinbothe of DG XV of the Commission. Mr. Reinbothe was the Commission official most responsible for the Rental Rights Directive. Mr. Reinbothe confirmed to me the following:

--The rental right is not subject to Community exhaustion. It is exercisable on a country-by-country basis. Indeed, Mr. Reinbothe states that because the rental right concerns a "service," exhaustion does not play a role. Thus, for example, a rightholder may authorize the rental of particular videocassettes only on the part of a particular video shop, and (if so desired by the rightholder) only for a limited period of time. Mr. Reinbothe confirmed that Article 1, paragraph 4 of the Directive means Community exhaustion does not apply. The advice I gave in my July 6, 1994 letter to Johan Schluter still stands.

--The fact that laserdiscs may have been sold in the U.K. without any explicit prohibition as to rental is irrelevant. And it is equally irrelevant that the laserdiscs may have originally been manufactured and shipped from the U.S. or elsewhere outside the EU. The rightholder(s) in Denmark may still exercise their rental right to prevent such laserdiscs from being rented in Denmark.

Please let me know if I can provide you with any further information. I would be happy to discuss these issues with you at your convenience.

Please keep me informed of progress on this matter; I would be grateful for information on the case on an ongoing basis.

Kind regards.

Sincerely,


Dean S. Marks