

Source: Patent, Trademark & Copyright Journal - Daily Edition: News
Archive > 2016 > May > 05/18/2016 > Copyrights > Royalties: Top Court Ruling Upends German Royalty Collection System

Royalties

Top Court Ruling Upends German Royalty Collection System



By Jabeen Bhatti

May 17— A recent decision by the Federal Court of Justice (BGH) has thrown into doubt the legality of a long-held system of collecting royalties for rights' holders, with publishers and collecting societies vowing to find a way to overturn the ruling.

In an April 21 decision, the high court ruled that VG Wort, the German collecting society representing the copyright interests of hundreds of thousands of authors and publishers, was not entitled to distribute half of its copyright levies to publishing houses and similar organizations (Bundesgerichtshof (BGH) (Federal Court of Justice), Az.: I ZR 198/13, *decision*, 4/21/16).

The BGH said that collection societies were instead required to pay out revenues “exclusively to the holders of these rights and remedies,” in this case the authors of published works, according to a statement on the verdict.

It's a significant change, attorneys said.

“It goes basically to the fundamentals of German collecting societies, not just VG Wort, but all major collecting societies, like GEMA for the music industry and VG Bild-Kunst for photography and visual art,” Urs Verweyen, a partner in intellectual property law at KVLegal in Berlin, told Bloomberg BNA in a May 13 interview.

“What it says at its core is that the way in which money collected by collecting societies is distributed to authors and publishing houses is illegal and always has been illegal—publishers don't occupy a position as rights' holders,” Verweyen said.

Decision In Line With Copyright Law

The case originally arose in 2011 when Martin Vogel, an author of scientific works who has been a member of VG Wort since 1994, sued VG Wort in the Regional Court of Munich, claiming that the collecting society was reducing copyright levies owed him by distributing them to his publisher.

The court ruled in favor of Vogel on May 24, 2012. VG Wort tried to appeal but the Higher Regional Court of Munich also ruled against the collection society on Oct. 17, 2013. The case then made its way to Germany's highest court, which confirmed the lower courts' rulings.

Some said the verdict is not surprising as it's largely in line with existing copyright law.

“Publishing houses in Germany don't have their own rights under copyright laws. Under European and German law, the money that is collected by collection societies has to go to rights' holders, and those are only authors in the case of VG Wort,” said Verweyen.

“The BGH said it is quite clearly against the law to cut that intake into two pieces and distribute a fixed share, in this case 50 percent, to publishing houses.”

Full Effect On Collecting Societies Uncertain

The decision will have a significant effect on how collecting societies and publishing houses operate, said Verweyen.

“In the future, the major collecting societies will have to re-work their distribution schemes fully from the ground up, and they will also face claims by authors for repayment.”

The extent of these claims is as yet unknown, and will ultimately depend on two factors, according to Verweyen: how many authors or musicians and other rights' holders seek repayment, and what the statute of limitation is for claims.

Collecting societies say the statute of limitation is three years, but Verweyen believes that it could eventually be up to 10 years. The total amount of repayments sought will be considerable, in any case.

"Sources close to the collecting societies are saying it could be up to hundreds of millions of euros," he said.

'Dark Day' For Publishers And Authors

The German publishing industry has strongly criticized the court's ruling.

"The BGH decision is a dark day for publishers and for authors. VG Wort will have to claim money back from publishers, and that will create great difficulties especially for smaller and medium-sized publishing houses," said Alexander Skipis, the managing director of the German Publishers' and Booksellers' Association in Frankfurt, in an interview with Bloomberg BNA May 17.

"According to our estimates, a number of these smaller firms will have to declare bankruptcy, and that would be a great loss for Germany's cultural diversity," he added.

Skipis said the association was currently investigating ways to overturn the verdict.

"We are looking into the chances of a constitutional complaint, and they do not seem to be bad," he said. The association was also holding "political discussions" to develop a way that would allow publishing houses to continue to receive payouts, Skipis added.

"But if nothing changes with this verdict, publishers will have to adjust, meaning they will invest less in authors, and in the marketing and editing of their books," said Skipis.

EU Final Arbiter Of Decision

VG Wort also called the court's verdict "highly problematic" in a May 4 statement on its website. It said it would examine the court's ruling in detail to see what kinds of "common rights' management" for authors and publishers are permitted.

At the beginning of June, VG Wort is also going to hold a members' meeting in Berlin to decide how to proceed, said Verweyen.

Collecting societies and publishers are already pushing for changes to be made to the German law that would allow them to return their old distribution model, but Verweyen says such copyright reforms will ultimately have to come from the EU.

"This is a European development, and these laws have been discussed and harmonized across Europe already," he said.

"But the EU is not very quick in designing new laws, copyright law especially, and it's a slow process with many stakeholders, so this will take time."

To contact the reporter on this story: Jabeen Bhatti in Berlin at correspondents@bna.com

To contact the editor responsible for this story: Mike Wilczek in Washington at mwilczek@bna.com

For More Information

The BGH statement on the verdict can be found, in German, at <http://src.bna.com/e4P>

The BGH verdict can be found in full, in German, at <http://src.bna.com/e4Q>

VG Wort statement can be found, in German, at <http://src.bna.com/e4R>

Contact us at <http://www.bna.com/contact-us> or call 1-800-372-1033

ISSN 2157-1414 (Intellectual Property Law Resource Center), ISSN 2379-6073 (Patent, Trademark & Copyright

Copyright © 2016, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.