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## Royalties

### Music Publishers Owe Artists Under German Copyright Ruling



By Jabeen Bhatti

Nov. 18 — A Berlin court's copyright royalty ruling could have even bigger financial repercussions for the music industry than a similar verdict has had for book publishing, attorneys said (Kammergericht (Ger.), No. Az.: 24 U 96/14, *decision* 11/14/16).

Although the two rulings are similar, the Berlin Appellate Court's Nov. 14 ruling impacting the music industry is "on a much larger scale," Urs Verweyen, a partner in intellectual property law at KVLegal in Berlin, told Bloomberg BNA in a Nov. 18 telephone interview. "The sheer volume of money involved here is much bigger."

The Berlin appellate court (KG Berlin) ruled that GEMA, a state-authorized collecting society for the music industry with about 70,000 members, can't distribute the royalties it collects from copyright levies to music publishing houses as well as artists. Instead, the royalties must be distributed exclusively to rights holders— such as, in the case at hand, musicians, composers and lyricists. What's more, publishers are to return years of past payments.

"GEMA and music publishers will face huge claims for additional payments going back to at least 2010," Verweyen said.

The KG Berlin said in a statement that its verdict was "transferring and pushing forward" Germany's Federal Court of Justice (BGH) April 21 verdict on the distribution of copyright levies in publishing. The BGH, Germany's highest court of civil and criminal jurisdiction, said VG Wort, a collecting society for the publishing industry, was not entitled to distribute half of its copyright levies to publishing houses because the houses, unlike authors, don't hold the rights to the works.

At the time, that ruling, which upended the publishing industry's long-standing royalty collecting system, was expected to impact collecting societies' business practices outside publishing, attorneys told Bloomberg BNA. The Berlin court's decision appears to bear that out.

#### Court: Music Publishers Lack Copyrights

The music case arose when two musicians, Bruno Kramm and Stefan Ackermann, who were rights holders as well as GEMA members, filed suit against the collecting society, claiming that they were owed the royalties GEMA paid out to publishing houses in addition to the royalties they had already received as rights holders.

The KG Berlin ruled in the musicians' favor. GEMA, according to the BGH's ruling, is only allowed to distribute royalties to parties that had "effectively transferred" their rights to the collecting society, the court said.

If a rights holder transfers rights to GEMA in a contract, publishers can't derive any claims from the artists' copyrights because they lack ancillary copyrights, it said. In some cases, that calculus could change, such as if rights holders enter into a "concrete payment agreement" in favor of publishers or agree to relinquish part of their compensation from GEMA to publishers, the court said. But in the case at hand, no such agreements were present, nor are they typical for the industry, it said.

The court, furthermore, ordered GEMA to inform the plaintiffs about the amount of royalties it had given to publishers. It has declined to rule as of yet on whether the artists had a claim to additional royalty payments, noting that information on payment distributions was still forthcoming.

The extent and justifications of the court's decision—including its reasoning for selecting 2010 as the cut-off year for claiming back payments—will not be known until its complete verdict is released. A court spokesperson said that is likely within the next month.

The KG Berlin said GEMA could not appeal its ruling to the BGH. Also, an appeal against the denied admission is not allowed because the sum disputed doesn't reach the minimal 20,000 euro (\$21,200) threshold, it said.

#### Snapshot

- German court decision on royalties hits music publishers
- Financial impact likely much greater than for books

## **Ruling 'Strengthens' Musicians, Composers**

As with the BGH's VG Wort ruling, attorneys said the verdict was good news for artists and rights holders.

"The ruling absolutely strengthens the positions of artists and musicians," said Verweyen. "It says it is illegal, and always has been illegal, for collecting societies to pay a large part of these copyright royalties to publishers—here roughly 40 percent of levies were paid illegally to music publishers by GEMA."

While GEMA cannot appeal the ruling, it's likely that the collecting society will try to find a solution in which musicians and other artists agree to forgo a portion of these claims and hand them over to publishers.

"GEMA will probably claim musicians have a strong, very friendly relationship to their publishing houses and that there is a kind of symbiosis between the two," said Verweyen. "And that they work closely together and the one can only exist with the other—but really, in most cases it's just a contractual relationship."

And similar attempts by VG Wort to negotiate with its members have not yet resulted in a new collective arrangement, Verweyen said.

GEMA criticized the court's ruling, in a Nov. 15 statement, and said rights holders and publishers should have a share in royalty payments, "if a rights holder arranges this with his publishing house."

"We hold this decision to be false," Harald Heker, the GEMA CEO, said in a statement.

"What is more important is that authors and publishers have been in agreement for decades that both parties should benefit economically from these royalties through the granting of rights," Heker said. "If rights holders would like to reward their publishers in return for their publishing activities, then their participation in royalties is legitimate."

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