

## Synopsis International Talk about Copyright at Jazzforum in Leipzig October 15th, 2020

Moderation and author

Peter Ehwald (musician & composer)

Panelists

- Dr. Helga Trüpel, former Member of the European Parliament (Bündnis 90/Die Grünen)
- Philipp Rosset, European Affairs at GEMA Brussels Office
- Alicja Swierczek, European Affairs and Programme Manager at European Composer & Songwriter Alliance
- Wolfgang Lackerschmid, Board Member of Deutsche Jazzunion
- Micki Meuser, Chair of DEFKOM, Board of Deutscher Komponistenverband
- Dr. Tilo Gerlach, President AEPO-ARTIS (Association of European Performers' Organisations) and Managing Director GVL

### TOPIC 1 : 1st amendment of the EU copyright law of March 23rd, 2019

#### 1.1 Initial situation

For composers (GEMA- German society for musical performing and mechanical reproduction rights):

Phillip Rosset outlined the content of the EU amendment in this way:

*In principal, platforms must have a license agreements with a copyright collective in one form or another, so that the improved negotiating position will ultimately result in higher payments for the digital use of a composers' work - if the EU directive is implemented in national law in the interests of the composers.*

For performers (GVL-German music copyright collection society):

Tilo Gerlach outlined the problem as follows:



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*The position of the GVL is neutral, since performers and producers are equally organised. There is currently no right to direct remuneration for the utilization of ancillary copyrights; the funds are not (as with GEMA) collected and collectively distributed by the GVL. The distribution is regulated by individual contracts between performer and producer. GVL advocates a hybrid form here, i.e. individual contracts and an additional direct remuneration claim.*

Author's note: In my opinion, this would be of great benefit to jazz musicians.

Tilo Gerlach and Micki Meuser:

*The complex interaction between producers and authors often results in the so-called "blacklisting" problem with ancillary copyrights: When authors sue producers for more money, they often win the money but lose their jobs. In this case, the copyright' associations advocate the right to sue in a collective action.*

Author's note: In my opinion, this would also benefit jazz musicians.

## 1.2 Political dimension and problems in Germany

Micki Meuser and Alicja Swierczek:

*The EU states are currently in the process of implementing the amendment. France and Italy are closer to the content of the EU amendment in their respective legislative proposals than Germany; Germany is currently a "worst practice example". However, considering its importance as an EU state, it is to be expected, that many other EU states will follow the German draft.*

Helga Trüpel and Micky Meuser analysed the current political processes in Germany as follows:

*The Federal Ministry of Justice and Consumer Protection (BMJV) is led by the SPD (socialist party in Germany). Kevin Kühnert's (a politician of the SPD) influence is great; the tendency here is to wait focus on the votes of the younger generation. Unfortunately, the German draft law published last week is closer to the interests of consumers and platforms than to those of rights holders and does not correspond to the content of the EU amendment for fair remuneration of authors. There will be consultations with the other ministries (especially the Ministry of Economics) and other stakeholders (e.g. GEMA; GVL etc.) until December. In January, the draft law is to be debated and adopted in parliament.*

The same dynamics that have been taking hold in the EU over the last four years, are now taking hold again: the big platforms are making lobbying policies and trying to instrumentalise the younger generation. The SPD is divided. Nevertheless, all participants at the round table hope that the law will be passed in this legislative period. Its adoption will be even more problematic in a new government constellation: The Green party is as divided as the SPD, and its base is against the draft.

### 1.3 Concrete need for action

Micki Meuser:

*According to §6 pastiche and trivia/bagatelle exceptions in the German bill, 20 seconds of music are for free. With 20 seconds, a large company, for example, could advertise on Instagram/Facebook etc. without having to pay a cent to the author. In the digital world, contributions are getting shorter and shorter (Instagram, TikTok); if the German law stays like this, our content can be monetised without letting us participate.*

Author's note: 20 seconds is far too long in my opinion. The same exceptions apply to other fields of art: 1000 words can be used. This means for songwriters that their lyrics are no longer protected at all in the digital world according to German law. Photos, artwork up to 256kb (that is the data size of Facebook photos) are for free. The German bill undermines the improved negotiating position of authors as a result of the EU. At the European level, no exceptions in this form are envisaged at all.

However, at the moment there is a lack of clarity here: the panel members have presented §6 in such a way that 20 seconds after the new draft is supposed to be free of charge. Gerhard Pfennig from the Copyright Initiative, however, points out, that, according to the speaker's draft, shared use is "permitted, but in principle subject to payment". This means that such uses would not have to be authorised and would be remunerated through collective licences.

In my understanding, however, this would still mean that Björn Höcke (the leader of the far-right German party), for example, could misuse a text by Alin Coen on Instagram or TikTok for his own purposes without Alin being able to sue him. Or: Mercedes Benz advertises a new car on social media platforms with 20 seconds of music by Nikolaus Neuser, Nikolaus gets the collecting licence (e.g. 30€) but the chance for a normal advertising job is gone.

The debate on implementation will be back in the public domain by January at the latest. In my opinion, we should take a clear position this time, and focus on the content of the EU Directive - and its authors. Now is also the time to act as an association, to express our protest against §6 and bring changes, possibly in cooperation with the other actors. Micki Meuser has agreed to help with the text.

## TOPIC 2: current situation in streaming

### 2.1 Remuneration for streaming concerts

How are streaming concerts currently remunerated by the copyright societies?

*GVL: individual contracts exist between performers and producers on a basis for negotiations. Tilo Gerlach sees the future in the digital subscription in order to have collective right of compensation.*

*GEMA: If the club from which the concert is streamed pays a GEMA royalty, then the money is also paid out to the authors. Streaming is done either on private websites or via platforms. GEMA has decided not to demand any extra fees for stream concerts from organisers in the Covid crisis. Many organisers of jazz and classical music pay more than they would have to because of the slump in audience numbers. Internally, there is a shift in favour of small events. Even if there was no one in the audience at a streamed concert, GEMA will pass on the revenues to the authors.*

### 2.2 Alternatives to the streaming concert

"What are the alternatives to the fact that almost all music actors are currently using their scholarships and the German "Neustart Kultur" funds in generating free content for the major platforms?"

There was no concrete answer to this question, except for an answer from Alicja Swierczek. She recommended to only use platforms that specialise in paid music streaming and sent me two links in the follow-up:

<https://leuchtfeuer-booking.de/online-konzert-streaming-plattformen-eine-auflistung/>

<https://www.stageit.com/site/landing>

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