[DE] Supreme Court Decision on Transfer of Unknown Exploitation Rights

IRIS 2003-3:1/28

Jan Peter Müßig
Solicitor, Düsseldorf

In a judgement published on 4 February 2003, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that the holders of performance rights also own the rights for forms of exploitation that were still unknown at the time when the relevant contract was concluded.

In both cases being heard, performing artists had, in 1972 and 1979 respectively, granted to record companies the right to exploit music recordings "in all possible ways". CDs were not expressly mentioned in either Institute of European Media Law (EMR) Saarbrücken / Brussels contract. In the 1980s, the record companies published recordings of the musicians' work on CD. The musicians applied for an injunction against them.

Under German law, the granting by an author of exploitation rights for as yet unknown types of use has no legal effect according to Article 31.4 of the Gesetz über Urheberrecht und verwandte Schutzrechte (Act on Copyright and Related Rights - UrhG). An author is defined as the creator of a work (see Articles 7 and 2). Under Article 31.4, it must be ensured that authors are equitably remunerated for the exploitation of their works and do not, in advance, voluntarily give up their exploitation rights, at a time when their economic value is not yet clear. In the Court's view, however, this rule does not apply to the holders of performance rights. Performance rights exist for cultural performances of third-party (sometimes in the public domain) works and are protected by Articles 70 ff. of the UrhG. These include performances by performing artists and phonogram manufacturers.

In this case, the BGH ruled that the contracts should be interpreted as including the transfer of CD rights to the record companies.

Since the BGH considers that Article 31.4 of the UrhG does not apply to performance rights, it did not need to decide whether publication on CD rather than record represents an unknown type of use.

Urteil des Bundesgerichtshofs vom 10. Oktober 2002, veröffentlicht am 4. Februar 2003, verbundene Rechtssachen Az. I ZR 16/00 und I ZR 180/00

© European Audiovisual Observatory (Council of Europe) 2026

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Sort=3&sid=89b98d432fb747f538bcfdc5e6ef6c08&Art=en&anz=1&pos=0&nr=25075&id=1046276377.26

Judgment of the Federal Supreme Court of 10 October 2002, published on 4 February 2003, in relation to case nos. I ZR 16/00 and I ZR 180/00

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026