

[DE] Decision on Form of Joint Agreement

IRIS 2003-3:1/29

*Caroline Hilger
Saarbrücken*

On 30 January 2003, the Oberlandesgericht München (Munich Court of Appeal - OLG München) published a verdict in a dispute that had been dragging on for years concerning the form of a joint agreement between the Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (Performing Rights Collecting Society - GVL) on the one hand and the Verband Privater Rundfunk und Telekommunikation e.V. (Union of Private Broadcasters and Telecommunications Companies

- VPRT) and Arbeitsgemeinschaft Privater Rundfunk (Association of Private Broadcasters - APR) on the other.

The GVL is a collecting company which, as provided by copyright law, protects, inter alia, the rights of performers and phonogram manufacturers in accordance with Articles 76.2 and 86 of the Gesetz über das Urheberrecht und verwandte Schutzrechte (Act on Copyright and Related Rights - UrhG). Arbitration proceedings between the parties, conducted in 1996 by the Deutsche Patent- und Markenamt (German Patents and Trademarks Office - DPMA), were unsuccessful because the award was rejected by all the parties. The GVL subsequently appealed to the OLG München, demanding that an administration agreement be laid down in accordance with Article 12 of the Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Act on the Administration of Copyright and Related Rights - UrhWG). Such an agreement determines the level of remuneration that companies have to pay to collecting societies, for example - as in this case - for using pieces of music. The original agreement between the parties was terminated on 31 December 1993 by the GVL, which wanted to amend some of its provisions. However, when negotiations between the parties failed to produce a consensus, an interim agreement was concluded early in 1994, under which the original agreement would remain in force until the legal dispute was finally resolved. The GVL argued that the agreement needed amending because, over the years, there had been a steady increase in the amount of music private broadcasters were using and music now accounted for a larger proportion of transmission time. The GVL's principal claim was for either an increase in remuneration levels or the abolition of the 20% rebate proposed by the DPMA. The OLG upheld the claim as far as it could, leaving the 20% rebate untouched, but increasing the average rate of remuneration from 4.52% to 5.65% of income. The Court decided that the income figure should be calculated by

taking the gross revenue from advertising and/or sponsorship and deducting rebates, discounts and agency fees. However, marketing costs (expenditure on commercial representatives or marketing companies) can, in future, only be included up to a maximum of 5%.

The OLG München has refused to allow any appeal against its decision. However, the VPRT and APR have already appealed against this refusal. They fear that a large proportion of their members face serious financial difficulties if the GVL actually implements the new arrangements laid down by the Court.

Urteil des Oberlandesgerichts München vom 30. Januar 2003, Aktenzeichen 6 AR 1/97

Ruling of the Munich Court of Appeal, 30 January 2003, case no. 6 AR 1/97

Pressemitteilung des VPRT vom 31. Januar 2003

http://www.vprt.de/db/presse/pm_310103_gvl_verfahren.pdf

VPRT press release, 31 January 2003

