[DE] New Version of GEMA's Membership Agreement concerning the Use of Musical Works for Advertising Purposes

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On 12 March 2010, the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), the German collecting society for authors and music publishers, decided to adopt a new version of its membership agreement relating to the use of musical works for advertising purposes.

When music is used for advertising purposes, rights management is to be exercised separately by the member and GEMA. According to the amended version of section 1(k)(1) of the membership agreement the "right to allow third parties to use a musical work [...] for advertising purposes in an individual case or to prohibit such use" - that is to say, the "yes or no" decision on a use for advertising purposes - lies with the member.

According to section 1(k)(2), GEMA is assigned the rights mentioned in section 1(a)-(h) and (l) [transmission, copying, making available to the public] under a condition subsequent for advertising purposes. The condition subsequent accordingly occurs when the member makes use in an individual case of the possibility of prohibiting a specific use and informs GEMA of this in writing.

The reason for these changes is a judgment delivered on 10 June 2009 by the Bundesgerichtshof (Federal Court of Justice - BGH) in which it ruled that the current membership agreement - contrary to standard practice - did not properly authorise GEMA to manage the copyright holder's licensing rights with regard to the use of musical works for advertising purposes. It is hoped that the amendments will now ensure legal certainty and clarity in this area.

Änderung des GEMA-Berechtigungsvertrags

http://www.gema.de/fileadmin/inhaltsdateien/urheber/aktuelles/MGV_2010/virtuos_Sonderausgabe_2010.pdf

Amendment to the GEMA membership agreement

Urteil des BGH vom 10. Juni 2009 (A.: I ZR 226/06)

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http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=824117a3a77ee458e0dd240559fec932&nr=50030&pos=6&anz=12

BGH judgment of 10 June 2009 (case I ZR 226/06)

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