[DE] Supreme Court Rules on Reasonableness of General Agreement for Collecting Society

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On 14 October 2010, the Bundesgerichtshof (Federal Supreme Court - BGH) issued a ruling on whether it was reasonable to expect a collecting society to enter into a general agreement. In the case concerned, the Bundesverband Musikindustrie e.V. (Federal Music Industry Association), which represents 13 music download services, had taken legal action against the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (Society for Musical Performance and Mechanical Reproduction Rights - GEMA) because the latter had refused to sign a general agreement with it on the use of fees laid down by the GEMA for the use of music in music download services.

Under Article 12 of the Urheberrechtswahrnehmungsgesetz (Copyright Administration Act), collecting societies are obliged to sign general agreements with such associations unless they cannot reasonably be expected to do so, particularly if an association has too few members. Such an agreement has a practical advantage for the collecting society compared to several individual contracts because it lightens its administrative workload. In return, the association benefits from discounted usage fees.

Agreeing with the ruling of the Oberlandesgericht München (Munich Appeal Court), the BGH concluded that the association had no right to a general agreement, since it was unreasonable to expect the GEMA to sign one. Since the association only had 13 members, the advantages that the defendant would gain from signing such an agreement would not be reasonably proportionate to the 20% discount that it would have to offer. The responsibility for certain administrative tasks that the association would have to take under a general agreement would not significantly reduce the administrative burden of the defendant.

In determining whether it was reasonable to expect a collecting society to sign such an agreement, the fact that the music download services represented by the association held a market share of approximately 90% was irrelevant. If the market share of the download services was decisive, the defendant would still be obliged, for example, to offer a general agreement discount if the market was dominated by only two companies, even if it would not gain any significant advantage in the management and collection of the fees. For this reason, it was

also irrelevant whether the association's members generated substantial turnover from the sale of music recordings via music download services.

The BGH was not convinced by the reference to a previous general agreement signed by the GEMA with an association of 13 cinema operators. Since, in that case, the individual cinema operators themselves had represented a total of 47 cinemas, the general agreement had reduced the defendant's administrative workload much more than it would have done in this case.

Urteil des BGH vom 14. Oktober 2010 (Az. I ZR 11/08)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=cbc6815278d0d0267210a2fbf93559a9&nr=54150&pos=0&anz=1

BGH ruling of 14 October 2010 (case no. I ZR 11/08)