

## Germany's Federal High Court of Justice (BGH) Rules on Liability of Access Providers

### **BVMI welcomes general recognition of liability but warns of loopholes in enforcing the law**

Berlin, 26 November 2015 – Germany's Bundesgerichtshof (Federal High Court of Justice or BGH) in Karlsruhe came to a decision today in a case focusing on the liability of access providers. The grounds for the judgment have not yet been made public. A press release issued by the BGH contains the following statement, among others: "A telecommunications company that provides third parties with access to the Internet – in legal terms as a secondarily liable entity or *Störer* – can be requested by a rightholder to block access to Web pages on which copyright-protected works are being made available to the public in an unlawful manner." At the same time, however, the high court rejected an appeal lodged by music companies who had filed suit against a particular Internet access provider. The rejection came as no surprise to the BVMI.

In Berlin, BVMI Managing Director **Dr. Florian Drücke** made the following statement with regard to the decision: "Even though the precise grounds for the decision were not contained in the [BGH press release](#) issued today, it is clear that the court recognizes the lawfulness of blocking injunctions against access providers in addition to intermediaries. The court also showed that it is examining the essential question of what rights holders must do in advance to be able to launch proceedings against those third parties who are much closer to the actual breach of law than intermediaries. According to the BGH, in order to prevent loopholes in protection laws when legal proceedings have been unsuccessful against other participants, it must be possible to launch proceedings against access providers. In its press release, the BGH makes it quite clear that there must be a possibility – especially in compliance with Article 8, Paragraph 3 of the guideline known as 2001/29/EG covering copyright in the information age in German law – to impose blocking orders against Internet access providers."

According to Drücke, the ruling fits into a series of cases ultimately seeking to define *who* is responsible for *what* in the Internet. "When we read the press release," he notes, "we see how important it is to define precisely the responsibility of each individual participant in distributing content online. However, the subsidiarity of access-provider liability, which the BGH established in fact today, should not lead to a situation in which rightowners find it impossible to enforce their rights. In other words, it might sound exciting in theory to send a detective to Tonga or Tuvalu to find out who's behind a particular website; in practice, however, this would only end in a quagmire of law enforcement. A much more practical first step would be to engage in more rigorous legal action against websites without 'Impressum' (legal information) as required for German websites."

An appeal in a second and similar legal case led by Germany's Society for Musical Performing and Mechanical Reproduction Rights (GEMA) was also rejected.

#### **For more information:**

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[www.echojazz.de](http://www.echojazz.de), [www.playfair.org](http://www.playfair.org)

**Bundesverband Musikindustrie e. V.:**

*The Bundesverband Musikindustrie (Federal Association of the German Music Industry) – BVMI – represents the interests of approximately 280 labels and music companies, which account for about 85 percent of the German music market. The Association advocates the music industry’s interests in German and European politics, and serves the public as a central point of contact for the music industry. In addition to publishing market statistics and establishing industry structures such as the B2B platform PHONONET, the BVMI portfolio also includes industry-related services. Since 1975, it has presented the GOLD and PLATINUM awards to the most successful artists in Germany, since 1977 the Official German Charts have been compiled on behalf of the BVMI. In 2013, the Association launched the PLAYFAIR initiative to provide guidance for consumers when using music online.*

*The BVMI’s cultural engagement takes place under the label Deutsche Phono-Akademie: each year, outstanding artists are honoured with the German music award ECHO, ECHO Klassik and ECHO Jazz. For more information: [www.musikindustrie.de](http://www.musikindustrie.de), [www.echopop.de](http://www.echopop.de), [www.echoklassik.de](http://www.echoklassik.de), [www.echojazz.de](http://www.echojazz.de), [www.playfair.org](http://www.playfair.org)*