

BVMI on today's ECJ ruling in the "Metall auf Metall" case: **ECJ creates more clarity regarding the use of samples**

Berlin, 29 July 2019 – Der Bundesverband Musikindustrie e. V. (BVMI) takes positive note of the fact that the European Court of Justice (ECJ) has basically strengthened the rights of phonogram producers in its ruling today and created legal clarity also with regard to "sampling" through a clear definition. Inter alia, the court stated that phonogram producers' rights are fully in line with the EU Charter of Fundamental Rights and the Copyright Directive and that sampling can constitute an infringement if it is carried out without consent. According to the European Court of Justice, sampling can only fall under artistic freedom if the sampled audio fragment has been altered and it is unrecognisable to the ear. Musical quotations, on the other hand, are only admissible if an explicit artistic examination of the cited work takes place.

The ruling relates to the legal dispute between the group "Kraftwerk" and music producer Moses Pelham, which has now lasted about 20 years. In 1997 the latter had used a concise rhythmic sequence from the Kraftwerk song "Metall auf Metall" for a title sung by Sabrina Setlur. In the course of the past two decades, several courts, including the Federal Supreme Court twice, had ruled in favour of "Kraftwerk" until the Federal Constitutional Court overturned the judgments in 2016 as unconstitutional and referred them back to the Federal Supreme Court, in particular with regard to doubts as to their compatibility with EU fundamental rights. The BGH then submitted the case to the ECJ for examination.

Dr. **Florian Drücke**, CEO of the BVMI: "After 20 years, the ECJ clarified in the "Metall auf Metall" case that a phonogram producer is allowed to "permit or prohibit the reproduction of its phonogram" and that under certain conditions it can also defend itself against the use of third parties even if the audio sequence used is very short. The ECJ thus on the one hand clearly supports the rights of phonogram producers and on the other hand creates a clear framework by creating criteria as to when sampling falls under artistic freedom and thus can outweigh property rights, and when it does not. The individual cases remain questions of balance, but here, while acknowledging the value of music recordings, more clarity has also been created for the side of sample users. The interpretation of the ECJ's new criteria will, however, certainly give rise to discussions."

Drücke further: "In recent years, we have repeatedly spoken out clearly against the erosion of the rights of our members. The ruling of the European Court of Justice manifests the legal foundation of the industry at a time when the substantive debate on the implementation of the European copyright reform and thus the rules governing digital licensing are very important. The European Court of Justice especially underlines the relevance of harmonization, particularly in the area of the regulations on exceptions, which will have to be reflected in the implementation."

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About the Bundesverband Musikindustrie e. V. (German Music Industry Association):



The Bundesverband Musikindustrie (German Music Industry Association, BVMI) represents the interests of roughly 250 music industry labels and companies who themselves comprise more than 80 percent of the German music market. As the music industry's advocacy group, the BVMI works to promote and uphold the concerns of the music industry among German and European policymaking bodies. It also serves the public as the central contact partner for all issues relating to the music industry. In addition to the compilation and publication of market statistics, the BVMI portfolio also includes many other industry related services. Since 1975, the BVMI has handed out its GOLD and PLATIN awards to the most successful artists in Germany. It launched its DIAMOND Awards in 2014 and has also commissioned the compilation of the Official German Charts since 1977. In 2013, the BVMI started its PLAYFAIR initiative, which provides consumers with guidance with regard to online music consumption.

For more information, please visit: www.musikindustrie.de, www.playfair.org