

Humboldt Universität zu Berlin  
in cooperation with ALAI Deutschland e.V. and The Copyright Society  
present:

## What Every Practitioner Needs to Know About the Differences in Collective and Individual Licensing between the EU and in North America

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### SUNDAY, OCTOBER 15TH - DAY 1 – PRINCIPAL TOPIC: MUSIC

**10:15 AM – 11:30 AM GMT+2**

#### **Session 1: Managing Authors' (Composers'/Songwriters'/Publishers') Rights**

**Speakers:** Dr. Tobias Holzmüller, CEO, GEMA (Germany); Alexander Wolf, President, SESAC (Europe); Indi Chawla, Head of International Relations, MLC (US); Götz von Einem, Managing Director Peermusic/President, German Music Publishers' Association DMV, (Germany); Dr. Claudia Rossbach, attorney-at-law (Germany); and moderator Dr. Martin Schaefer.

**10:15-10:20**

**Introduction** by moderator

Dr. Martin Schaefer, Partner, BOEHMERT&BOEHMERT, Berlin

**10:20-10:30**

**"GEMA on ICE" – The role of CMOs in international licensing**

Dr. Tobias Holzmüller, CEO GEMA

- Lucius Klobucnik & Daniel Campello Queiroz  
The Role of Traditional CMOs in the Digital Era  
EIPIN – IS Research Paper No. 19-05, 2020

<https://www.eipin-innovationsociety.org/wp-content/uploads/2019/07/Working-paper-Lucius-Klobucnik-19-05.pdf>

**10:30-10:40**

**How does SESAC work, compared to a traditional CMO?**

Alexander Wolf, President, International, of the SESAC Music Group

- Conference Paper - How does SESAC work?

**10:40-10:50**

**The US experience of blanket music licensing by MLC**

Indi Chawla, Head of International Relations, MLC

1. USCO Music Modernization Act Pamphlet
2. Amendments to the Copyright Act as a result of the Orrin G. Hatch – Bob Goodlatte Music Modernization Act
3. Section 115 of the Copyright Law of the United States
4. USCO Circular 73A: Compulsory License for Making and Distributing Phonorecords Other Than Digital Phonorecord Deliveries
5. USCO Circular 73B: Compulsory License for Making and Distributing Digital Phonorecords and Limitations on Liability Prior to the License Availability Date (January 21, 2021)
6. Music Licensing Modernization – Federal Rulemaking
  - (Docket 2018-10) Technical Amendments to Section 115 Compulsory License Regulations
  - (Docket 2018-11) Designation of Music Licensing Collective and Digital Licensee Coordinator
  - (Docket 2020-5) Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment
  - (Docket 2020-6) Rulemaking Regarding Reporting and Distribution of Royalties Under the Blanket License by the Mechanical Licensing Collective
  - (Docket 2020-7) Rulemaking Regarding the Protection of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator
  - (Docket 2020-8) Rulemaking Regarding the Public Musical Works Database and Transparency of the Mechanical Licensing Collective
7. The MLC - DSP Notice website page, and example Notice of License – Apple Music
8. The MLC Dispute Resolution Policy – Musical Work Ownership, February 2021
9. The MLC - Policies website page
10. Phonorecords II
11. Phonorecords III (Published in the Federal Register August 10, 2023)
12. Phonorecords IV

**10:50-11:00**

**The position of an independent music publisher**

Dr. Götz von Einem (Managing Director Peermusic/President of German Music Publishers' Association DMV)

- Conference Paper Summary

- Decision Regional Court Munich I 25 June 2009 MyVideo\_Non-official English Translation

**11:00-11:10                    Advising authors of music and lyrics on how to have their rights administered**

Dr. Claudia Rossbach, Rossbach & Beier Rechtsanwälte, Attorneys-at-Law,  
Munich

- Donald S. Passman  
All You Need to Know About the Music Business  
10<sup>th</sup> Edition, Free Press, 2019
- Moser/Scheuermann/Drücke (ed.)  
Handbuch der Musikwirtschaft (*in German only*)  
7th edition, Munich 2018

**11:10-11:25                    Discussion/Audience Q&A**

**11:25-11:30                    Concluding remarks**

**Materials:**

- Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code  
<https://www.copyright.gov/title17/title17.pdf>
- The U.S. Copyright Office study, “Copyright and the Music Marketplace,”  
<https://copyright.gov/docs/musiclicensingstudy/>
- Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0026&from=EN>
- European Commission, Directorate-General for Communications Networks, Content and Technology  
Study on emerging issues on collective licensing practices in the digital environment – Final report  
Publications Office, 2021, <https://data.europa.eu/doi/10.2759/611658>
- European Commission, Directorate-General for Communications Networks, Content and Technology,  
Study on selected issues relating to the application of the CRM Directive – Final report  
Publications Office, 2021, <https://data.europa.eu/doi/10.2759/91877>

**11:45 AM – 1:00 PM GMT+2**

## **Session 2: Managing Record Label & Performers Rights**

**Speakers:** Dr. Tilo Gerlach/Guido Evers, CEOs of GVL; Ryan Lehning, Assistant General Counsel, International, SoundExchange (US); Richard Pfohl, CONNECT Music Licensing (Canada); Ama Walton, SoundCloud; and moderator Casey Chisick, Partner, Cassels Brock & Blackwell LLP and President, The Copyright Society.

### **Managing Record Label & Performers' Rights in the U.S., Canada, and the EU**

#### **Outline**

##### **I. Introductions**

**Guido Evers** and **Tilo Gerlach**, Managing Directors, GVL, the German collective management organization for the rights of performers and producers of sound recordings

Guido responsible mainly for sound recording producers, Tilo for performers

**Ryan Lehning**, Assistant General Counsel, International, SoundExchange, the exclusive CMO designated by the U.S. Congress to collect and distribute digital performance royalties for sound recordings

**Richard Pfohl**, General Counsel, Music Canada and CONNECT Music Licensing, one of Canada's largest CMOs for the collection and distribution of royalties and remuneration for sound recordings

**Ama Walton**, SVP Music Licensing & Partnerships & Deputy General Counsel, SoundCloud

##### **II. Nature of Rights**

###### **A. United States**

What rights in sound recordings are administered collectively in the U.S.?

Limited Exclusive Performance Right - Digital Audio Transmissions

Owned by Record Company

Digital Only - Does Not Apply to Broadcast or Public Performance

- a. Subject to Non-Exclusive License
  - i. Non-interactive Digital Audio Transmissions

- ii. Administered by SoundExchange
- iii. Remuneration right for record companies, featured performers, and non-featured performers

.....Column Break.....**B.Canada**

2. How do the applicable rights in Canada compare?
  - a. Performance Right
    - i. Remuneration right for recording artists, session musicians, and background performers
    - ii. Administered by Re:Sound and its member organizations
  - b. Reproduction Right
    - i. Exclusive right for record labels and artists who own their masters
    - ii. Administered by CONNECT and SOPROQ
3. What about performers' rights in their performances? Are those also administered collectively?

### **C. EU (Germany)**

4. The European system works a little differently. Let's talk about that.
  - a. The European Framework
    - i. Partially harmonized based on EU-Directives, but additional national provisions
    - ii. Equitable remuneration (broadcasting and communication to the public) based on Art. 15 WPPT, no limitations
      1. Additional remuneration right for rental based on EU-Rental Directive
      2. Private copying not harmonized, different in member states
    - iii. Exclusive rights for reproduction, distribution and making available (Art. 7, 8, 10 (for performers) and Art. 11, 12, 14 (record labels))
5. Let's talk about remuneration rights first. Which of those rights are administered by GVL?
  - a. Remuneration rights / combined with statutory rights of users
    - i. for broadcasting and public performance (Art. 78 para 2 UrhG)
      1. right of the performer against the user, Record Label is entitled to a share
      2. broadcasting includes all noninteractive transmissions, also digital
      3. different opinions regarding Webcasting and interactive elements (scope of DMCA)
    - ii. for private copying (Art. 54 UrhG)
      1. Levies for performers and record labels based on the exemption of their exclusive reproduction right, includes AV performers (actors)
      2. for parody or pastiche uses on user upload platforms (Art. 5 para 2 UrhDaG)
    - iii. Additional remuneration rights (in addition to the transfer of the existing exclusive right)
      1. rental (Art. 27 para 2 UrhG)
      2. retransmission (Art. 20 bis UrhG)

- 3. licensed content on user upload platforms (Art. 4 para 3 UrhDaG – contested by the labels)
  - 4. All remuneration rights are unwaivable and inalienable and can transferred in advance only to a CMO.
6. What about exclusive rights? Are they also managed collectively?
- a. Exclusive rights
    - i. reproduction rights – necessary for broadcasting (Art. 77, 85 )
    - ii. making available of commercial phonograms on on-demand platforms of broadcasters – ancillary to broadcasting (Art. 78 para 1, 85)
    - iii. performers’ exclusive broadcasting right not fixed on commercial phonograms (Art. 78 para 1).

### **III. How Rates are Set**

#### **A. United States**

- 7. How are rates set under the U.S. regime?
  - a. Copyright Royalty Board - US Rate Tribunal
  - b. Rate Periods - 5 Years
- 8. What standard does the CRB use when setting rates?
- 9. Is there an appeals process?
- 10. Is collective administration mandatory or can any of the rights be licensed directly, or are rights holders required to go through SX and the CRB?

.....Column Break.....**B.Canada**

- 11. Is the system the same in Canada?
  - a. Copyright Board Process
    - i. Tariffs
    - ii. Arbitration
  - b. Direct Licensing
- 12. What standard does the Copyright Board use when setting rates?
  - a. Fair and equitable
  - b. Statutory considerations introduced in 2018: willing buyer/willing seller, public interest, applicable regulations, “any other criterion that the Board considers appropriate”

#### **C. EU (Germany)**

- 13. How are rates and terms set in Germany?
  - a. Harmonized in Europe based on the CRM-Directive, but flexible solutions in member states

- b. In Germany:
    - i. Negotiation
    - ii. if no agreement: arbitration board at the German Patent and trademark office
    - iii. if their proposal is not accepted appeal to the courts with several possible instances
14. Is the arbitration board bound to any particular rate-setting standard? Are the courts?

**D. The Licensee's Perspective**

15. Ama, can you talk about how SoundCloud acquires the rights it needs to operate in various jurisdictions? Does it participate in rate-setting proceedings, license rights directly, or both?
- a. U.S
  - b. Canada
  - c. Germany
16. What is your take on the willing buyer/willing seller standard in practice?

.....Column Break.....**IV.Administration of Rights**

**A. Canada**

17. There are three main collectives in Canada: CONNECT, SOPROQ, and Re:Sound. Do they work together to collect and distribute remuneration to rights holders?
- a. Public Performance - Statutory Division of Payments
    - i. Record Companies/Makers
    - ii. Performers
  - b. Makers' Reproduction Rights
  - c. Frequency of payment
18. What about the reproduction rights of performers?

**B. U.S.**

19. How does the U.S. system compare?
- a. Statutory Division of Payments
    - i. Record Companies
    - ii. Featured Performers
    - iii. Non-featured Performers
  - b. Frequency of Payment
  - c. Administration Rate
20. SoundExchange is a so-called "joint society," paying performers and phonogram producers directly. Is direct payment affected by performer work for hire agreements in the US? In other words, if a performer is WFH to a US label, can the US label claim the performer's share?

21. **Richard:** Is the situation the same in Canada?

### **C. EU/Germany**

22. The system in Germany is a little different, isn't it?

- a. Division of Payments based on agreements—usually 50:50, not fixed by law
- b. Cultural and social deductions
- c. Some key figures

### **V. Comparing the Regimes**

23. We've heard a lot about the similarities and differences between the three regimes.

- a. **Ryan:** Can you comment on a key advantage or disadvantage of the Canadian or German system, as compared to the U.S. system, from your perspective?
- b. **Richard:** Same question
- c. **Guido/Tilo:** Same question

24. **Ama:** Does SoundCloud encounter any challenges navigating the different licensing regimes? Which is most efficient for the licensee? Which is least efficient?

### **VI. International Activities**

25. How do the various CMOs interact with each other internationally? (Guido/Tilo, then Richard, then Ryan)

- a. Payment to International CMOs
- b. International Collections on Behalf of GVL Members with international mandate
- c. Policy Issues - National Treatment versus material reciprocity

### **VII. Other Questions (as time permits)**

26. What are the advantages of remuneration rights versus exclusive rights? (**Tilo, Richard, Ama**)

27. Why is the deduction of costs for social and cultural support of importance? (**Tilo**)

- a. Nothing comparable in Canada or the U.S.? (**Richard, Ryan**)

28. How are technical developments influencing collective management? (**All**)

- a. Does AI play a role? Will it?

29. Looking ahead, what key issues or trends can you identify that will affect the collective management of rights in sound recordings? (**All**)



**Materials:**

1. US Copyright Act. Section 114 (<https://www.copyright.gov/title17/92chap1.html#114>).
2. Statutory License Rate and Terms - Code of Federal Regulations - 37 CFR Section 380 et seq (<https://www.ecfr.gov/current/title-37/chapter-III/subchapter-E/part-380?toc=1>).
3. SoundExchange Website ([www.soundexchange.com](http://www.soundexchange.com))
4. Court of Justice of the European Union decision. Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Ltd, C-265/19, September 8, 2020 (<https://curia.europa.eu/juris/document/document.jsf?text=&docid=230741&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1994359>).