

Tilo Gerlach
Gesellschaft zur Verwertung von Leistungsschutzrechten [GVL – Neighbouring Rights Society]
Berlin, Germany

ALAI-Conference 2008
Cultural Diversity: Its Effect on Authors and Performers in the Context of Globalisation

The social and cultural roles of Collective Rights Management Societies

Thank you very much for inviting me to this conference as a representative of the German rights management society representing performing artists and record labels. I am very grateful to be given an opportunity to speak about the social and cultural tasks of collective rights management societies. In Germany, a special law governs the activities of collective rights management societies, it is referred to as the German Act on the Administration of Copyright and Related Rights. The Act obliges the collective rights management societies expressly to notably account for cultural and social issues. Tariffs applied for licensing activities under section 13 paragraph 3 of the UrhWG (the Act) shall take music users' religious, cultural and social issues into consideration. GVL follows this requirement in practice in the following exemplary cases: public broadcasters pay considerably less for the usage of sound recordings in cultural programs than commercial private broadcasters; public performance of music in social institutions is cheaper than in shopping malls; cable retransmission in hospitals comes at a lower price than in hotels. With respect to the rights owners GVL is obliged to specially account for performances of high cultural value, which is embedded in section 7 of the Act. These recordings, however, often are those less commercially successful in the marketplace.

From this situation ensues a balancing act: in accordance with the law, the usages of particularly high cultural value must be cheaper. Those that execute those performances, however, should receive more than others. There is a rather clear intention behind the law to provide for a reallocation of remuneration. It does not reduce the collective rights management societies to the activities of 'pure' collecting agencies' which would allocate the exact remuneration to each performance directly.

Pursuant to section 8 of the Act, the collective rights management societies is also obliged to install pension schemes and support facilities for their rights owners. In accordance with this obligation, the rules and regulations of GVL allows for a deduction of up to 5% from the distributable amount which the members that have transferred their rights exclusively to GVL are entitled to. On this basis the advisory council (ie the representatives of the members) of GVL resolves every year which rules should apply to determine the details for the social and cultural allocations. In 2006, EUR 283,000 were allocated for social purposes. The social benefits for rights owners include, among others, financial support for right owners who, through no fault of their own lose their Income due to illness or accident. Subsidies are paid towards health expenses which are not covered by health insurances; subsidies are also paid for treatments at health resorts or therapeutic treatments; support is also offered in times of hardship or poverty.

The cultural allocations are substantially higher. They amounted to EUR 1,864,000 in 2006. They include financial support for further education, in the form of courses, seminars, workshops, studies abroad, orchestra training courses (youth orchestras) or one-to-one tuition. Furthermore, GVL grants financial support to enable its rights owners to participate in national and international competitions. Rightsowners can also receive subsidies towards the training of their children to be performing artists .

Performing Artists which have taken part in GVL's distribution over many years and whose income is in decline, obtain support from GVL within the scope of the so-called loyalty scheme. In accordance with this scheme, the members continue to receive their average GVL payments despite declining collections. Approximately 1,000 performing artists benefit from this scheme. In addition to the individual support, the council also pays subsidies to international organisations serving cultural purposes and supporting cultural policy. One example for this is the support of the „Deutsche Musikrat“. There is agreement within the advisory council that these measures of support and subsidisation are necessary. GVL members – and that applies to performing artists, record companies and concert organisers at the same time – form part of a community based on solidarity where the

performing artists represented by the council have quite often made their way into professional life through the support offered by GVL's promotion of young artists.

It is regrettable that this essential support which helps to unburden the State is by no means self-evident within Europe. In many European Member States there are no legal regulations such as the German Act for the Administration of copyright and neighbouring rights. Attempts by the European Commission to let collective rights management societies in Europe compete for performing artists do not just look highly problematic against the aforementioned background. Without a proper harmonisation of the statutory deductions for social purposes the German collective rights management societies suffer clearly from competition disadvantages when it comes to a performing artist choosing whether to receive EUR 1,000 from the British collecting society which does not know such deductions or whether to receive EUR 950 from GVL which is under a legal obligation to make these deductions. – Or even less, if the obligation to support contributions with a higher cultural value is fulfilled and reduces the payments for the other repertoire. Therefore it is not possible at this stage to speak of a European harmonisation in this area. There are cases where other countries finance the social and cultural support by taking parts of the income from e.g. private copying (blank media levies) pursuant to the law; this means that the monies collected under these levies don't even get to distribution stage as they are withheld before distribution for social and cultural purposes. This means that the distributable amounts are much less to start with than in Germany's case, where deductions are made in accordance with the social and cultural regulations defined by the council. Nevertheless the right owners obtain the wrong impression due to the seemingly undiminished payments that their remuneration has not been subjected to deductions for social and cultural purposes.

Due to the lack of harmonised basic parameters there is a total lack of fair competition under the same conditions between the European collective rights management societies. The European Parliament has realised this and attributes special importance to the social and cultural duties of the collective rights management societies which allows the societies to safeguard the cultural diversity.

We sincerely hope that this view will prevail and be implemented by the EU Commission.

Tilo Gerlach
18th September 2008