

Germany: Use 15 seconds of music for free!

A key reason for forming ECSA, besides creating a body of like-minded composers to be recognized as stakeholders, was the sharing of information between countries that would help our organisation to better serve our members. Here is a piece of news from Germany that should be of interest.

In many cases, composers are legally forced to allow anyone to use/post their music and to waive claims to income when the use is less than 15 seconds.

On 7th June, the European Copyright Directive was ratified and implemented in German law. An old saying “There's many a slip 'twixt the cup and the lip” says it all. Just when we composers thought we were about to taste the wonderful wine there was a sudden spill and it was decided that, in many cases, we won't get any money if our music is used for less than 15 seconds. The user doesn't even have to ask. And you can do nothing about it if your most emotional work is being used as a backdrop for a viral TikTok video of a pair of singing and copulating Otters. If you are a composer - or a creator of any other forms of expression - this should really interest you. Anselm and I will take you step by step through the new law.

We would be grateful to our international colleagues if they would inform us of any such strange and damaging devices following the implementation of the European Copyright Directive.

First of all, most colleagues still talk about “copyright”. There is a subtle difference to “author's rights“. While “copyright” means the transferrable right to exploit or use a work, “author's right” refers to the non-transferrable right of intellectual property, including all moral rights. Only authors have such rights.

In any case, we are talking about a property right that ensures a creator is adequately compensated for the use of his or her creations and protects against unauthorised use. Exceptions are known as limitations which allow certain uses where the creator is not “adequately compensated”.

Minor and presumably permitted uses (meaning “Bagatelle use” or “de minimis exceptions”). The colloquial term “bagatelle” is not found directly in the text of the law. It refers to “presumably permitted” or “minor” uses.

In order to protect user-generated content (UGC for short, media content from internet users) such as fan art, fan fiction, memes, mashups, remixes, video clips with background music, blog posts, comments, etc., the Copyright Amendment 2021 introduced the “de minimis” exceptions. They supplement the new generally applicable restrictions on quotations (article 51 UrhG), caricatures, parodies and pastiches (article 51 a UrhG). These limitations are expressly confirmed in article 5 of the new Copyright Service Providers Act (UrhDaG) as permitted use against remuneration of the service provider to the author.

The additional bagatelle/de minimis rule only applies to online platforms like TikTok, Facebook, Instagram, Twitch, YouTube, and Twitter. They were therefore not regulated in the Copyright Act, but in the new Copyright Service Providers Act, which will come into force on 1st August 2021.

§ 10 - Minor Uses Copyright Service Providers Act

*The following uses of third-party works shall be deemed “minor” within the meaning of article 9(2), first sentence, No. 3, provided they are **not for commercial purposes** or serve only to generate insignificant income:*

- 1. uses of up to 15 seconds each of a cinematographic work or motion picture,*
- 2. uses of up to 15 seconds per soundtrack,*
- 3. uses of up to 160 characters per text and*
- 4. uses of up to 125 kilobytes per photographic work, photograph or graphic.*

Such uses are still subject to the remuneration obligation through platforms and can be prevented by authors through takedown procedures in the event of personal rights/moral rights violations. But as stated above, claims for income is lost on the authors' side in favour of UGC creators.

Explanation of §10 Copyright Service Providers Act

In practice, upload filters will in the future be set so that they do not become active for content below the limits. Larger content will also not be blocked if the platforms have acquired licenses, which at least the large providers are obliged to do. They pay out an appropriate remuneration (article 4 (3) UrhDaG). Since they profit from user-generated content, this regulation seems fair. Content that is less than 50% of a work, which is compiled with other works or new material, as well as minor uses, or demonstrably licensed uses are also considered presumptively authorised until proven otherwise:

§ 9 Reproduction by the public of presumably lawful uses

(1) In order to avoid disproportionate blocking when using automated procedures, presumably permitted uses shall be publicly reproduced until the conclusion of an appeal procedure (article 14).

(2) For user-generated content which

- 1. contain less than half of a work of a third party or of several works of third parties*
- 2. combine the work parts according to No. 1 with other content and*
- 3. make only minor use of works of third parties (article 10) or are marked as legally permitted (article 11), it shall be reputedly presumed that their use is legally permitted under article 5 (presumed permitted uses). Images may be used in full in accordance with §§ 10 and 11.*

(3) The service provider shall immediately inform the right-holder of the communication to the public and of the right to lodge a complaint under article 14 in order to have the presumption under subsection 2 reviewed.

Explanation of § 9 Copyright Service Provider Act

Complaint procedures are possible, but blocking can only happen after successfully proving that an infringement has taken place within the strictly regulated conciliation procedure.

We hope that you have enjoyed finding out about this new leak in your finances! As we said, if you have any news from your country, we would be grateful if you would share them.

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