

## Contesting GEMA Concert Rates

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In February 2009 the German copyright collection society drastically increased its rates for concerts, or at least it aimed to do so. The German concert industries associations IDKV and VDKV of course immediately protested these rate increases. VIP-News spoke with Jens Michow the president of the IDKV about the current situation of the rate debate in Germany.

**VIP-News: What is the current state of play regarding the negotiation between the concert associations and GEMA?**

**»This leads to the conclusion that it no longer makes any sense to promote concerts at all«**

- Jens Michow

**Jens Michow:** Well, we just had another talk in Munich. So far we are just in the middle of the decision at the so-called arbitration court of the German Patentamt. This is not a real court but it issues a preliminary court decision supposed to find a solution which considers both opinions and both parts for this finding. At a matter of fact everybody should know that GEMA raised the 1.87 net rates for the use of repertoire at concerts to 8%, an increase of more than four and a half times. With this in mind it very understandable that no one in our business and certainly no promoter can live with it. We instituted a survey by the GfK, a well known market research company, that showed that for most concert companies that the net profit result for the average promoter is about 9 percent of revenue before taxes. So of this 9 percent before taxes, promoters are supposed to give away 8%. This leads to the conclusion that it no longer makes any sense to promote concerts at all.

**VIP-News: But nevertheless, in other countries such as Switzerland and Austria, as well as in the Netherlands there is a much higher copyright rates for concerts. In the case of Austria it is about 8.9 percent, it is almost the same in Switzerland and it's 7 percent in the Netherlands.**

**Jens Michow:** It is actually not. Let's start with the UK, this country is with no doubt one of the most important countries probably within the world and at least in Europe for the export and import of music, but you have to pay only 3 percent to PRS. If you look at Switzerland, Austria or even in the Scandinavian countries, you find out that as we have to, you have to pay fees to pay to the copyright collection societies as a promoter you have several opportunities for deductions. Our rates so far are at 3.9 percent, and when I told you before that we only paid 1.87 percent, this figure includes all deductions that are allowed to us, these deductions considered the costs of staging a concert, and were considered for promoters that do more than one concert, then promoters that do at least 20 concerts a year, get another 20 percent reduction and so on. And these deductions worked out at the 1.87 %, which we finally paid. So they may have been considered to be all right for many years in the past, but nobody can tell us any reason why it should not be this way any longer. At least the measure for what is appropriate, because the courts will always say appropriate, was what happened in the past. So when it comes down to it I would say 1.87 net or 3.9 basic is not enough. We are always prepared to negotiate something that is reasonable, but more reasonable than they consider it to be now, no problem but to raise it up to 4.5 more as it is now, is without any reason and is just totally beyond wherever you should place it.

**VIP-News: What about the arbitrary court decision, is it binding for both parties?**

**Jens Michow:** No, not all. It is a proposal, a proposal for both parties. At least it is a measure that clever thinking people might think to be appropriate. So whatever happens one of the sides will go to the normal court, which is the Oberlandesgericht in Munich. And then if it does not fit our needs we will even go to the highest court in Germany which is called the BGH and that might take years and this is why we went to GEMA, which is not only criticized by the promoters at the moment, but is criticized from many different sides in a petition,



Jens Michow

someone we don't even know, appears from the club area having raised more than a hundred thousand signatures saying GEMA has to change their system. Ok, that has nothing to do with us, point one, point two, there are people who are writing stories saying the GEMA has to batch everything together, nothing to do with us. This only shows that many sides at the moment are not satisfied with the GEMA system. So we just said recently to GEMA it might be appropriate that you consider how great the damage might be if all this goes on for the next 3 years even, because you never know when the highest court in Germany will even have a date to hear us. So as a matter of fact we can only suggest to GEMA to think very, very carefully how bad things could get if they don't find a reasonable compromise between both parties.

**VIP-News: When will the arbitrary court make it's ruling?**

**Jens Michow:** Middle of October - that is what we also told the GEMA yesterday in Munich, you don't have much time. They should talk to their review board I guess because they made the decision to raise it up to ten percent less then twenty percent for all those who are part of an association. They get 20 percent less so that is why we almost discuss about the 8 %. As a matter of fact they should talk to their supervisory board, I'm pretty sure this decision about ten or twenty percent was made in 2007. If they would go back the executive board, then would go back to the supervisory board people may have changed their minds in the past two years anyhow. So we suggested they research sincerely with the greatest care whether they should not revise their diplomacy of the past two years, and negotiate with us.