

JUDGMENT OF THE COURT  
OF 20 JANUARY 1981 <sup>1</sup>

**Musik-Vertrieb membran GmbH and K-tel International  
v GEMA — Gesellschaft für musikalische Aufführungs- und  
mechanische Vervielfältigungsrechte  
(preliminary ruling requested by the Bundesgerichtshof)**

“Free movement of gramophone records — Copyrights”

Joined Cases 55 and 57/80

1. *Free movement of goods — Treaty provisions — Application to sound recordings incorporating protected musical works  
(EEC Treaty, Art. 30)*
2. *Free movement of goods — Industrial and commercial property — Copyright — Application of Article 36 of the Treaty  
(EEC Treaty, Art. 36)*
3. *Free movement of goods — Industrial and commercial property — Copyright — Protection — Limits — Sound recordings marketed in a Member State with the consent of the owner of the copyright — Importation into another Member State — Prevention — Not permissible  
(EEC Treaty, Arts 30 and 36)*
4. *Free movement of goods — Industrial and commercial property — Copyright — Protection — Limits — Sound recordings marketed in a Member State with the consent of the owner of the copyright — Importation into another Member State — Difference between the royalties payable in the two States — Additional fees not exigible by a copyright management society  
(EEC Treaty, Arts 30 and 36)*

<sup>1</sup> — Language of the Case: German.

1. Sound recordings, even if incorporating protected musical works, are products to which the system of free movement of goods provided for by the EEC Treaty applies.  
  
restrict the importation of sound recordings which have been lawfully marketed in another Member State by the owner himself or with his consent.
2. The expression “protection of industrial and commercial property”, occurring in Article 36 of the EEC Treaty, includes the protection conferred by copyright, especially when exploited commercially in the form of licences capable of affecting distribution in the various Member States of goods incorporating the protected literary or artistic work.
3. The proprietor of an industrial or commercial property right protected by the law of a Member State cannot rely on that law to prevent the importation of a product which has been lawfully marketed in another Member State by the proprietor himself or with his consent. The same applies as respects copyright, commercial exploitation of which raises the same issues as that of any other industrial or commercial property right. Accordingly neither the copyright owner or his licensee, nor a copyright management society acting in the owner's or licensee's name, may rely on the exclusive exploitation right conferred by copyright to prevent or
4. The existence of a disparity between national laws which is capable of distorting competition between Member States cannot justify a Member State's giving legal protection to practices of a private body which are incompatible with the rules concerning the free movement of goods.

Articles 30 and 36 of the EEC Treaty preclude the application of national legislation under which a copyright management society empowered to exercise the copyrights of composers of musical works reproduced on gramophone records or other sound recordings in another Member State is permitted to invoke those rights where those sound recordings are distributed on the national market after having been put into circulation in that other Member State by or with the consent of the owners of those copyrights, in order to claim the payment of a fee equal to the royalties ordinarily paid for marketing on the national market less the lower royalties paid in the Member State of manufacture.

In Joined Cases 55 and 57/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesgerichtshof [Federal Court of Justice] for a preliminary ruling in the actions pending before that court between