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A Review of Magda Papede's Verwertungsgesellschaften im europäischen Kontext

Das Beispiel der baltischen Staaten^{*1}

Collecting societies have received quite some focus recently in the European arena, extending from implementation of Directive 2014/26/EU (the Collective Rights Management Directive)^{*2} to a groundbreaking German district court judgement^{*3} challenging the very existence of GEMA, Germany's central collecting society for musical works, by denying it a share in the profits raised from publishing of musicians' creations^{*4}. Much less research or published work has considered collecting societies and the associated regulations and practices in the Baltic States, at both international and regional level.

Dr Papede's thorough study is an attempt to fill this gap, and it fully succeeds in doing so on various levels. After a comprehensive introduction to the instrument of the collecting society as such and to its function and its regulation under European law (in chapters 1 and 2), the author devotes Chapter 3 to examining the existing legal frameworks for collecting societies in the Baltic States, for ascertaining differences and also practical implications (in this respect, the author's professional background as a practising lawyer in the field adds considerably to the value of the work). Chapter 4 is dedicated to comparative analysis of the three Baltic legal systems, but the work goes further, also considering them in relation to German law and the European approach to the issue, especially with respect to the establishment of collecting societies (Chapter 4), their relationship to authors (Chapter 5), and finally their connection to users (Chapter 6). The final chapter tackles the question of how advisable a reform of the present system of Baltic collecting societies would be, not only in the general interest of legal harmonisation but also in response to critical mass ultimately not being achieved for three 'sets' of national collection societies in the Baltic States, on account of their small size. According to the author, such a reform should be applied cautiously, without undue keenness to establish entirely free competition among collecting societies (as envisaged in line with

¹ Vol. 32 in the 'Karlsruher Schriften zum Wettbewerbs- und Immaterialgüterrecht series, from Carl Heymans Verlag, 2016, ISBN 978-3-452-28778-6.

² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84/72.

³ Judgement of Kammergericht Berlin from 14 November 2016 (24 U 96/14).

⁴ Recently discussed by Stefan Ventroni. Paukenschlag zur Verlegerbeteiligung: Aus für die Verteilungspraxis der GEMA? ['The leading decision on publishers' shareholding schemes: Major German collecting society's royalty-distribution practice declared unlawful']. – *Zeitschrift für Urheber- und Medienrecht* 2017/3, pp. 187–207.

the European trend anyway), because small collecting societies – and those of small countries such as the Baltic States – would not be competitive. Instead, the author favours closer co-operation among the Baltic societies but also between them and bigger collecting societies further afield, for creation of synergies and maintaining of national (which is in this case always cultural also) independence to at least the necessary minimal extent in this essential field.

With regard to content, any legal professional who deals with collecting societies or even intellectual property in general in the Baltic States would profit considerably from this meticulous work. While detailed legal research in the IP domain has traditionally been more scarce than practice and legal scholarship would desire, this has been especially true with regard to collecting societies. Yet the author does not stop by filling this gap. The work not only provides a thorough, up-to-date, and well-balanced overview of the three Baltic systems but evaluates them objectively by setting them in a European context in chapters 4–6. This renders the book of considerable interest also to readers of non-Baltic background or interests. The comparative analysis of co-operation models (in Chapter 3) or the determination of tariffs (in Chapter 6) especially works out general patterns that are applicable to all collecting societies active in Europe.

The seventh chapter, which forms the most standalone part of the work, addresses the challenge that various, mutually contradictory interests must be led to a compromise when it comes to justifying the diversity of Baltic collecting societies, marked by parallel purposes and often minuscule circles of authors or users. The author correctly points out the significance of the cultural independence of all three of the Baltic States, where individual collecting societies definitely are consistent with a demand for making creations publicly available in the respective titular language and in the traditional forms of publications, just as the risks of too liberal an approach in terms of free international competition among collecting societies are coherently characterised. The only flaw in this otherwise well-researched and also balanced analysis is that the author shies away somewhat from recognising the entirety of the potential that an academic work such as this one holds in serving this function: Beyond any doubt, there is no silver bullet for resolving the intricacies of the situation and the diverse perspectives of collecting societies in the Baltic States: no mere scratch of a pen holds an answer. But why not take the opportunity of academic freedom and draft some sort of specific proposal in any case? After all, the author has demonstrated enviable command of her field in the preceding chapters, which should lead the reader to trust fully in her expertise for drafting any proposal justifiably. In that context, it is not even relevant whether such a specific proposal presents modes of co-operation, a reform aimed at unification, a pan-Baltic or even pan-European solution, or something entirely different: With such a contribution, the author could have set a benchmark for future discussion in both academia and the practical realm. Certainly, in mindfulness of the many details and complications laid out in the pioneering work that the author has produced, one could only have expected such a proposal to be far from perfect and not to be directly implementable, but it could still have spurred on and greatly intensified the all-too-rare legal discussion in this field, which is so important today.

Hence, a follow-up to this analysis that goes further by proactively proposing some measures to be taken to alleviate the starkest discrepancies of the present situation is something the academic community would certainly be eagerly looking forward to. Therefore, one hopes that the author continues her work in this direction. In addition, a summary of this important work in English (if one does not yet exist at the time of publication) or the online availability of even a portion or some version of this work would probably be very well-received.