

Good Fences Make Good Neighboring Rights: The German Federal Court Rules on the Digital Sampling of Sound Recordings in Metall auf Metall

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This article analyzes *Kraftwerk, et al. v. Moses Pelham, et al.*, the recent Federal Court ruling in Germany commonly referred to as the *Metall auf Metall* case regarding whether the taking of two notes of a digital music sample constitutes infringement of German intellectual property laws. The article will compare the German court holding with the most recent U.S. 6th Circuit case on digital sampling, *Bridgeport Music, Inc. v. Dimension Films*. The article will begin with an explanation and history of the technique of digital sampling as used by contemporary musicians. It will then explore the similarities and differences between U.S. Copyright law, which protects copyrightable expression in sound recordings and *verwandte Schutzrechte* or "neighboring rights," a doctrine that protects the economic components of sound recordings for recording artists and music producers in Germany.

The article will compare the history of digital music sampling jurisprudence in the two countries, explaining the ways in which both jurisdictions treat the protection of sound recordings, particularly exploring the personal and economic consequences to music artists and producers who contribute to the creation of sound recordings, as well as new musicians who want to sample from previous artists without first obtaining a license from the owner of the intellectual property rights in the recording.

The article will offer a critique of both court opinions with respect to their treatment of the proper defenses available to sampling defendants, focusing on the *de minimis* and "fair use" exceptions available to defendants in the United States and the similar *Freie Benutzung* or "free use" provision in Germany. Finally, the article will conclude with a plea to the legislative bodies in both countries to amend their respective statutes governing the boundaries of intellectual property protection offered to owners and users of sound recordings by proposing new laws that will recognize the unique and continuously developing technological innovations that are used today to create music.

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