Pop Songs for the Tape Recorder, LPs for the Record Player? The Market Launch of Tape Recorders in West Germany and the Copyright Debate on Young Consumers' Practice of Tape-recording in the 1950s and 1960s

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Abstract: *»Hits für das Tonbandgerät, Alben für den Plattenspieler? Die Markteinführung des Tonbandgerätes in Westdeutschland und die Urheberrechtsdebatte über Musikaufnahmen jugendlicher Konsumenten in den 1950er und 1960er Jahren«*. Since the late 1950s, tape recorders were increasingly to be found in West German households. This device for the first time gave the consumers the opportunity to record music from records or from the radio. This triggered off discussions between the record industry and the GEMA (Society for musical performing and mechanical reproduction rights) on the one hand and tape recorder producers and users on the other hand. Whereas the former complained about falling record sales and called for the introduction of copyright fees, the latter argued that the tape recorder offered a large range of applications and that therefore a collective charging of producers and/ or users would not be justified. Against the background of the changing legal situation, the article retraces the copyright debate and evaluates the opponents' arguments. In spite of the manifold functions of the tape recorder, young consumers predominantly employed it to record their favourite light music. But these appropriation practices did not cause an overall decline in record sales but rather a change in music consumption patterns. While the possibility of recording single hits did in fact lead to falling sales figures of 45rpm-discs, sales of long-playing-records rose considerably.

Keywords: tape recorder, copyright, records, record player, GEMA, 1950s, 1960s, youth, Germany (West Germany).

> *[...] Vielleicht gibt's ja doch noch wen, der's begreift. Rap ist Musik und Musik ist Kunst und Kunst hat 'nen Preis. Mein Plattendeal ist einfach gesagt ein Arbeitsvertrag, ohne festen Lohn, denn ich werd' für getane Arbeit bezahlt. Das heißt, wenn sich mein Album verkauft dann krieg ich Prozente, wenn ihr euch das per Download im Netz holt, krieg ich niente. Doch weg von mir, denn ehrlich, ich werd' schon nicht dran krepier'n, also lass uns 'n Stück zurück und das*

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> *Plattenbusiness studier'n. Seid ihr mit mir? Mein Label errechnet Erfolg nach Zahlen, nicht wie viele mich feiern, sondern wieviele für's Album zahlen. [...]*[1]
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> *Maybe there is still someone who understands. Rap is music and music is art and art has a price. My record deal is a contract of employment without a fixed salary, as I am paid for the work I've done. That means, if my record sells well, I get my rates, if you download it from the internet, I don't get anything. But let me have a go! Honestly, I won't die from it, so let's take a step backwards and let's examine the record business. Are you with me? My Label calculates success in figures: not how many celebrate me, but how many pay for the record. […]*

In his song "So nicht", the rap artist *Curse* describes to his audience the difficulties that arise from illegal music-downloads from the internet. He asks for his listeners' support and points out that he can only earn his living if they pay for his music. The present-day debate on illegal downloads is not unprecedented but has similarly been conducted in the 1960s, when the home tape recorder was introduced on the German market. For the first time, an apparatus provided the average consumer with the opportunity to make recordings.

Neither the West German market for tape recorders and the producers' marketing strategies nor the copyright debate of the 50s and 60s has hitherto been subject of historical research. Thus, this essay for the first time analyses the impact of private music recordings by making use of historical sources which have not been considered so far. Sources of different origins will be included: The trade journal *Musikmarkt* and the news magazine *Spiegel* reflect the discussion between the manufacturers of tape recorders and the record industry and make an inspection of the opponents' arguments possible. Documents from company archives, such as advertisement brochures, reveal the producers' marketing strategies as well as the intended user groups. This combination of sources allows for an evaluation of the contention between tape recorder manufacturers and the record industry. Moreover, the documents give an indirect insight into young consumers' appropriation of the tape recorder, as they are discussed by the opponents in the copyright debate.

When it was introduced on the market, the tape recorder was not primarily marketed as a music playing device and the possibility of recording music from the radio or from records was not explicitly mentioned in advertisements.[2]

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[1] Curse, So nicht. LP: "Von innen nach außen", Subword (Sony BMG) 2003.

[2] Cf. Bijsterveld, Karin, 'What Do I Do with My Tape Recorder…?' Sound Hunting and the Sounds of Everyday Dutch Life in the 1950s and 1960s. In: Historical Journal of Film, Radio and Television, 2004, p. 614-634.

Rather, it was marketed as office equipment to take dictations, as a device to study foreign languages or to create a "sounding family album".[3]

But, contrary to the producers' intentions, consumers soon began to discover the advantages and possibilities the tape recorder offered and their appropriation of the apparatus differed from the applications that were suggested in the advertisements.[4] Not only did they record their own and their family members' voices but in particular youngsters assembled their personal hit parades by recording from the radio or from records they borrowed from friends.

The record industry almost immediately began to complain about falling record sales and a discussion between the manufacturing industry of tape recorders on the one hand and the record industry on the other hand evolved. It is precisely this debate about the young users' practices and their impact on the music industry that this essay is going to analyse: To what extent did private music recordings with the tape recorder affect record sales? What arguments did the opponents put forward? In how far did copyright laws respond to the new challenges?

As a first step, the West German market for tape recorders will be examined: What devices were offered at what price since the late 1950s? In how far did they make their way into German households and especially into youngsters' rooms? Did a considerable number of adolescents possess tape recorders and make private recordings so that the record industry's complaints might be justified?

Second, the marketing strategies of the producers of tape recorders are examined: How were tape recorders marketed at the end of the 1950s and in the 1960s? What target group did the manufacturers try to appeal to? What possible applications were stressed in the advertisements? Did the manufacturers use the possibility of recording music as a sales argument?

Third, the debate on copyright laws, private recordings and record sales, which was conducted in particular in the trade journal *Der Musikmarkt* but which also became an issue in the German news magazine *Spiegel*, will be retraced. How did the producers of tape recorders and the record industry react to the consumers' appropriation of their products? What arguments did the opponents put forward and how did the manufacturers react to the allegations that they were negatively affecting record sales? Did the increasing distribution of tape recorders actually lead to a decline in record sales? In how far did the legal situation change as a result of this debate?

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[3] David Morton points out that the marketing of the tape recorder as an acoustic family album implies a comparison to amateur photography. Cf. Morton, David, Off the record. The Technology and Culture of Sound Recording in America. New Brunswick 2000.

[4] Cf. Weber, Heike, Mobile Freiheit – Überall und Jederzeit. Nutzungsideen, Gestaltung und Verwendung tragbarer Konsumelektronik in der zweiten Hälfte des 20.Jahrhunderts. Unpublished PhD Thesis, 2006.

I will argue that the owners of tape recorders (and young consumers in particular) developed unexpected practices[5], as they used their apparatuses to record pop songs from the radio or from records they borrowed from friends. Due to this unintended appropriation, the debate on questions of copyright and on the interrelations between rising tape recorder sales, the young consumers' practice of private recording and falling sales figures of the record industry was sparked. But contrary to the record industry's complaints, the rising distribution of tape recorders did not interfere with their total sales figures but only lead to a change in consumption patterns of music. The tape recorder became a device which was used to record and listen to short-lived pop songs but did not affect the sale of LPs by artists the consumers identified with.

1. The German market for tape recorders in the late 1950s and 1960s

At the German radio show 1935 in Berlin the companies *AEG* and *BASF* had presented their first tape recorder, the *Magnetophon K1*. In advantage over disks, tape made private recordings possible. Since 1938, the *Reichsrundfunkgesellschaft* took great interest in the new medium and its recording devices and the tape recorder was rapidly distributed throughout German broadcasting studios.[6] The early tape recorders were too expensive, bulky and too complex to handle for home use. Only at the end of the 50s did tape recorders for home use become affordable.

Even in the first years of the 50s, home tape recorders were still quite expensive. The first tape recorder for home use, the *Magnetophon KL 15* by *AEG*, which was presented at an industrial exhibition in Berlin in 1951, was sold at a price of 890DM.[7] Only with the beginning mass production of tape recorders in the middle of the 50s did they become manageable and affordable for the private consumer.[8] In 1956, *Telefunken* offered a tape recorder for less than 500DM[9], and in the winter-catalogue 1957/58, the mail order company *Neck-*

[5] In their essay "Storing Sound Souvenirs: The Multi-Sited Domestication of the Tape Recorder", Karin Bijsterveld and Annelies Jacobs examine why the tape recorder never was appropriated in the way the manufacturers had intended. They argue that the domestication of the tape recorder was multi-sited.

[6] Cf. Thiele, Erdmann (Ed.), Telefunken nach 100 Jahren. Das Erbe einer deutschen Weltmarke, Berlin 2003, p.114.

[7] AEG brochure, "AEG Klein-Magnetophon im Koffer", DTMB Berlin. The average West German worker in the industry earned 299DM per month (pre-tax) in 1951, cf. Federal Statistical Office, www.destatis.de.

[8] Cf. Schildt, Axel, Massenmedien im Umbruch der fünfziger Jahre. In: Jürgen Wilke (Ed.), Mediengeschichte der Bundesrepublik Deutschland, Bonn, 1999, p. 633-648, here: p.642.

[9] Magnetophon KL 65; cf. Telefunken brochure, DTMB Berlin. Kilian Steiner says *Telefunken*'s *KL 65 TX* was the first home tape recorder ("das erste echte Heimtonbandgerät"). It

ermann presented a device to the "affordable price" of 375DM.[10] But although the sales quantity of tape recorders rose considerably as a result of these price reductions in the late 50s -1957 166.000 apparatuses were sold, 1959 already 297.000 – only a minimal share of them were used in private homes and they were by far less often present in German households than record players, whose sales figures were considerably higher: in the years 1957-1959 1.2 million were sold every year.[11]

At the end of the 50s, a radio receiver was part of the standard equipment of German households, but playback devices to reproduce recorded music were only beginning to gain a foothold: In 1959 only 27% of West German households possessed a record player and only 3% owned a tape recorder.[12]

The record players' lead over tape recorders can primarily be explained by their price: the *Grundig* sales program of tape recorders in 1962 reveals a great range of prices. The cheapest recorder cost 249DM (plus 58DM for the power supply unit), for the portable tape recorder *TK 46* one had to pay 848DM.[13] In contrast, a great number of record players were sold for less than 200DM at the beginning of the 60s, and some even for less than 100DM, as for example a portable *Philips* stereo-player for 89DM and the automatic *Philips Mignon* player for 74DM.[14] Thus, record players were available for a quarter of the price of tape recorders.

Detlef Siegfried argues that the introduction of stereo discs in 1958 and the establishment of the *High Fidelity*-certificate in the early 60s might explain this price difference. According to him, these developments led to a greater differentiation of the record player market and caused a decline of prices of mono-record players, which made them affordable for young consumers.[15]

But as the example of the portable *Philips* stereo record player shows, even stereo devices were considerably cheaper than the low-price tape recorders. The technology of the tape recorders was a good deal more elaborate, as they

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was launched 1957 at a price of 469DM. Cf. Steiner, Kilian J. L., Ortsempfänger, Volksfernseher und Optaphon. Die Entwicklung der deutschen Radio- und Fernsehindustrie und das Unternehmen Loewe 1923-1962. Essen 2005, p.282.

[10] Cf. Schildt, Axel, Massenmedien im Umbruch der fünfziger Jahre. In: Jürgen Wilke (Ed.), Mediengeschichte der Bundesrepublik Deutschland, Bonn 1999, p. 633-648, here: p.642.

[11] Der Musikmarkt, Nr.8, 15.8.1960, p.3.

[12] Cf. Dussel, Konrad, Medienkonsum als Ausdruck sozialen Lebensstils. Überlegungen zu Entwicklungen in den sechziger und frühen siebziger Jahren. In: Frese, Matthias; Paulus, Julia; Teppe, Karl (Ed.), Demokratisierung und gesellschaftlicher Aufbruch . Die sechziger Jahre als Wendezeit der Bundesrepublik. Paderborn 2003, p.647-665, here: p.659f.

[13] Brochure Grundig Frühjahr 1962, Deutsches Museum München.

[14] Philips Phonokoffer SK 20 Stereo. Cf. Philips Brochure "Programm der Freude", Deutsches Museum München.

[15] Cf. Siegfried, Detlef, Time is on my side. Konsum und Politik in der westdeutschen Jugendkultur der 60er Jahre, Göttingen 2006, p.98.

offered a much wider range of applications, which naturally made them more expensive.

Only with the introduction of the cassette tape recorder, which was presented by *Philips* at the German radio show in 1963, and which was also produced by other companies in the course of the 60s, did prices for tape apparatuses fall. The handy cassettes and their playback devices found a ready market since the end of the 60s, in 1970 already 2.7 million West Germans owned a cassette player or recorder, one year later 4.2 million.[16]

In spite of higher prices of tape recorders, and the fact that devices with a recording function were primarily to be found in households with higher incomes until the introduction of the cheaper cassette recorder, an inclining distribution of playback and recording devices in West Germany can still be stated.[17] Due to rising incomes of the total population, young consumers also had greater amounts of money at their disposal and became an important target group of the entertainment electronics industry. In 1970 40-50% of entertainment technology devices were sold to young consumers.[18]

Although comprehensive statistics on the equipment of West German households with tape recorders do not exist, a synopsis of various outcomes of market surveys can give a rough overview. According to the DIVO-Institute, in 1965 10% of West German households owned a tape recorder and 14% a radiogram (=”Musiktruhe”), which often included a tape recorder.[19] Four years later, in 1969, *Telefunken* sold its second millionth tape recorder[20] and a survey by the news magazine *Spiegel*, which analysed male consumers between 20 and 65 years of age came to the result that 29% within this group owned a tape recorder.[21] Among those who were still in professional training (i.e., young people), even 57% owned a tape recorder. [22]

All in all, a rising equipment of West German households with tape recorders can be stated. As the figures quoted above demonstrate, young people in particular bought consumer electronics. Tape recorders provided them with the opportunity to record their favourite English pop music which was only rarely

[16] Cf. Siegfried, Detlef, Time is on my side. Konsum und Politik in der westdeutschen Jugendkultur der 60er Jahre, Göttingen 2006, p.104.

[17] 1965 30% of all households with an income over 1500DM owned a tape recorder, but only 7% of all households with an income between 600DM and 800DM. Cf. Divo-Institut, Der westdeutsche Markt in Zahlen, 1965, p.156.

[18] Cf. Siegfried, Detlef, Time is on my side. Konsum und Politik in der westdeutschen Jugendkultur der 60er Jahre, Göttingen 2006, p.98.

[19] Cf. Divo-Institut, Der westdeutsche Markt in Zahlen, 1965, p.156.

[20] Vgl. http://www.telefunken.de/de/historie.html

[21] Spiegel Dokumentation Männer und Märkte: Volume3: Phono-, Fernsehgeräte, Film, Foto, Uhren, Freizeit, Hobby, Hobby-Ausrüstung. Hamburg 1969, table 51.

[22] Spiegel Dokumentation Männer und Märkte: Volume 3: Phono-, Fernsehgeräte, Film, Foto, Uhren, Freizeit, Hobby, Hobby-Ausrüstung. Hamburg 1969, table 51.

broadcasted by German radio stations in the late 50s and 60s.[23] They could listen to the latest pop songs and beat music once and again, as well as exchange it in their circle of friends and record it from the radio or from records. They did not need to buy each and every record they wanted to listen to, but compile their personal hit parade on tape. Only at the end of the 60s did German broadcasting stations adjust their program to the wishes of young listeners. Before that, American and English radio stations for the armed forces (AFN, BFBS), Radio Luxemburg and pirate radio stations such as Radio Caroline served as suppliers for the desired hits.[24]

Although a considerable number of adults also owned tape recorders, it was the adolescents' practices of use which worried the music industry most. The "Arbeitskreis der deutschen Schallplattenindustrie" (research group of the German record industry) declared in a publication in 1962 that it was a well-known sport and a popular hobby among youths to record music on tape and save the money instead of buying records.[25]

It is precisely this application of tape recorders which led to the vigorous discussion between the manufacturers of tape recorders and the record industry which will be examined in greater detail in the following. But first of all, it is necessary to have a look at the marketing strategies of the manufacturing companies of tape recorders. Do they stress the recording function and by doing that interfere with record sales? Do companies such as *Telefunken*, *Philips* and *Grundig* turn special attention to young consumers and their practices so that the record industry's complaints might be justified?

2. Target groups and functions of tape recorders in advertisements

The first tape recorder for home use which was sold for less than 500DM, the *Magnetophon KL 65* by *Telefunken*, which was launched in 1956, was marketed as a multifunctional device. Listening to music was just one of many possibilities, recording radio transmissions or music from records was not even

[23] Cf. Schildt, Axel, Massenmedien im Umbruch der fünfziger Jahre. In: Jürgen Wilke (Ed.), Mediengeschichte der Bundesrepublik Deutschland, Bonn 1999, p. 633-648, here: p.642.

[24] Cf. Maase, Kaspar, Establishing Cultural Democracy. Youth, "Americanization", and the irresistible Rise of Popular Culture. In: Schissler, Hanna (Ed.), The miracle years. A cultural history of West Germany, 1949-1968. Princeton [u.a.] 2001, p. 428-450, here: p.443; and Schildt, Axel/ Siegfried, Detlef (Eds.), Between Marx and Coca-Cola. Youth cultures in changing European societies, 1960-1980, New York [u.a.] 2006, p.23f.

[25] "ein bekannter Sport und ein beliebtes Hobby, auf Band zu überspielen (und das Geld für Schallplatten zu sparen)."
Schallplattenindustrie hofft nun auf den Bundestag : Änderung des Urheberrecht-Gesetzentwurfs würde zu Einschränkung der Aufnahmetätigkeit führen. In: Der Musikmarkt 5/1962, p. 6.

mentioned. The opportunity to preserve memories and special events was put to the fore: As an "auditory treasure of the family" ("Tonschatz der Familie") it was supposed to document the children growing up and to complement the photo album:

> Even after years have passed, you can experience your child's first sounds, his enthusiasm on Christmas Eve and on his birthday, his first attempts at playing the piano and the reciting of a poem. Home concerts, engagement and wedding, nothing gets lost. Because whenever you experience hours you wish to treasure, the Telefunken tape recorder Magnetophon KL 65 will help you to capture them.[26]

Furthermore, its qualities as office assistant to take dictations or to write the minutes, in the physician's or lawyer's office, in school or as an objective critic for artists and orators were stressed.[27]

Advertisements of this kind were typical of the late 50s and 60s and were published by all tape recorder manufacturers. A great range of applications was introduced and marketed, the recording of music was only one out of many opportunities (if it was mentioned at all). Even ads which appealed to young customers did not explicitly point out the possibility of recording music from the radio. On the contrary, *Grundig*'s low-price tape recorder for youngsters, the "*NIKI SKL*", was meant to be used as a sounding lecture notebook ("tönendes Kollegheft") or to record "uncle Eduard's birthday speech".[28] Many producers even promoted their recorders with the help of open contests, asking the participants to produce radio plays and send them in.[29]

Applications were described as manifold: Under the headline "Ich möchte so gern ein Tonbandgerät" ("I would like to have a tape recorder"), *Grundig* quoted various fictitious users who described their practices. A teacher for foreign languages (who records his pupils' pronunciation) had his say as well as a physician who records heart sounds, an actress who wants to improve her elocution, and also the teenager who listens to and records music:

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[26] "Noch nach Jahren können Sie die ersten Laute Ihres Kindes, seine Begeisterung an einem Weihnachtsabend, an Geburtstagen, seine zaghaften Anschläge auf dem Klavier und das Aufsagen eines Gedichtes erleben. Hauskonzerte, Verlobung, Hochzeit, nichts geht Ihnen verloren. Denn immer, wenn Sie Stunden erleben, von denen Sie sich eine recht lebendige Erinnerung bewahren möchten, hilft Ihnen das Telefunken-Tonbandgerät Magnetophon KL 65, sie festzuhalten." Brochure Telefunken Magnetophon KL 65; DTMB Berlin.

[27] Brochure Telefunken Magnetophon KL 65; DTMB Berlin.

[28] Advertisement Grundig NIKI SKL, 1959, Deutsches Museum München.

[29] Advertisement Uher Tonbandgeräte : Kriminalhörspiel als Preisausschreiben. In: Twen Nr.10, 22.11.1960, Jg.2, p.78.

> On Saturdays, I take my TK 20 on the lap and we drive to our meeting point with the scooter. One of our friends has a tape recorder as well. Often, we record from tape to tape. [30]

Even if recording music usually was not mentioned as a function, many advertisements contained a note on the question of copyright. The producers seemed to be aware of the recording function being a main purchase criterion.

> The recording of copyrighted works of music and literature is only permitted with the consent of its creators or their representatives, e.g. the GEMA, the publishers etc. [31]

In how far did the copyright laws cover private recordings from the radio in the late 50s and 60s? Did the rising distribution of tape recorders really mean a threat to the record industry? What significance did the recording practice of young consumers have within this copyright debate and for the business with tape recorders and records? What arguments did the opponents – tape recorder manufacturers on the one hand and record industry and the *GEMA* (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte/ Society for musical performance and copyrights) on the other hand – put forward?

3. The copyright debate on the young consumers' practice of tape-recording

Since 1901, the "Gesetz betreffend das Urheberrecht an Werken der Literatur und Tonkunst" (Law concerning the copyright of works of literature and musical art) was applied, but over the years it fell short of the latest technological developments, particularly with regard to the rising distribution of sound recording devices for home use.[32] The law explicitly excluded the private sphere from its field of application and thus permitted the recording of sound documents for private use.

With the production and distribution of home recorders, record industry and *GEMA* ran the risk of not being able to control the copying of copyrighted material. In the 1950s, in particular the board of management of the *GEMA* argued for a protection of melodies and stricter copyright laws. Already in

[30] "Samstags nehme ich den TK 20 auf den Schoß und wir fahren auf unserem Roller zum Treff. Einer unserer Freunde hat ein zweites Tonbandgerät. Wir überspielen dann oft von Band zu Band." Grundig Revue 1959, Deutsches Museum München.

[31] "Die Aufnahme urheberrechtlich geschützter Werke der Musik und Literatur ist nur mit Einwilligung der Urheber oder deren Interessenvertretungen, wie z.B. GEMA, Bühnenverlage, Verleger usw. gestattet." For example: Brochure Telefunken Magnetophon KL 65; DTMB Berlin; Advertisement Grundig NIKI SKL, 1959, Deutsches Museum München.

[32] Cf. Movsessian, Vera; Seifert, Fedor, Einführung in das Urheberrecht der Musik, Wilhelmshaven, 2.erw. Aufl. 1995, p.80.

1950 Dr. Erich Schulze, general director of the *GEMA*, wrote an article on the dangers of private recording.

> As long as the tape recording method was only used by broadcasting studios and the record industry, the creators were able to control the production of tapes, so that unauthorized persons could not produce or utilise tapes. This has changed suddenly as the industry has begun to produce such apparatuses for the retail market. […]
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> The [tape recorder] industry advertises the manifold applications of the apparatuses, in particular the possibility of tape-recording broadcasts and record transmissions. The apparatuses are available as single devices or in combination with radios. Any owner of such an apparatus has the ability to assemble a private tape-archive after his/ her fancy.[33]

The record industry repeatedly held it against the manufacturers of tape recorders that they particularly emphasized the possibility of recording music from the radio in their advertisements. The sources at hand from the companies *AEG*, *Telefunken*, *Grundig* and *Philips* do not support this charge, as has been demonstrated above. But an article from 1961 in the trade journal *Musikmarkt* concentrated on this issue:

> It is known well enough [...] that tape recorders are first and foremost bought by individuals to record music and other performances from records and the radio. The producers of tape recorders and tapes know that quite well, otherwise they would not point out the tape-recording function more or less explicitly in their advertisements. [34]

To address this problem, Erich Schulze suggested already in 1950 to charge each owner of a tape recorder with a monthly license payment which would allow him or her to make recordings for private use.[35] For the time being, this

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[33] "Solange das Magnettonverfahren nur vom Rundfunk und von der Schallplattenindustrie verwendet wurde, waren die Urheber in der Lage, die Bandherstellung zu kontrollieren, so daß kein Unbefugter ein Band herstellen oder verwenden konnte. Dies hat sich jedoch jetzt mit einem Schlage dadurch geändert, daß die Industrie dazu übergegangen ist, solche Geräte für den freien Handel herzustellen. [...]
Die Industrie preist in ihren Werbeprospekten die vielen Verwertungsmöglichkeiten der Geräte, insbesondere aber die Möglichkeit zum Mitschneiden von musikalischen Rundfunksendungen und Schallplattenübertragungen an. Die Geräte sind im freien Handel als Einzelgeräte und auch als Kombination mit Rundfunkempfangsgeräten erhältlich. Jeder Besitzer eines solchen Gerätes ist daher in der Lage, sich gewissermaßen ein Band-Archiv nach eigenem Geschmack anzulegen ..." Spiegel, 22/1953, 27.05.1953, p.26.

[34] "Es ist nur zur Genüge bekannt [...], dass in allererster Linie Tonbandgeräte von Privatpersonen zum Überspielen von Musik und sonstigen Darbietungen von Schallplatten und Rundfunk gekauft werden. Das wissen die Tonbandgeräte- und Bandhersteller selbst nur zu gut, denn sonst würden sie in ihren Werbungen nicht mehr oder weniger deutlich auf die Überspielungsmöglichkeiten hinweisen." Tonbandgeräte-Industrie greift Urheberrecht an, in: Der Musikmarkt 10/1961, p.27.

[35] "daß von jedem Besitzer des Magnettongerätes an die Urheber oder deren Rechtsnachfolger ein monatlicher Pauschalbetrag entrichtet werden solle. Die Zahlung dieses Pauschalbetrages würde den Besitzer des Magnettongerätes nur zu Bandaufnahmen zum persönlichen

proposition was not implemented, but when *AEG* was planning to successfully introduce their home tape recorders on the German market in 1951/52, they closed a contract with the *GEMA*. As a consequence of this contract, *AEG* paid 1% of the factory value of each tape recorder as a licence fee to the *GEMA*.[36] Presumably, *AEG* took this step to safeguard their head start on the German tape recorder market against potential objections by the artists and their representative organisations. A circular letter of the *AEG* for their employees and retailers, dating from summer 1953, compiles a catalogue of arguments and possible answers to clients' questions concerning the relationship between *GEMA* and record industry on the one hand and tape recorder manufacturers (and users) on the other hand. It points out that the *GEMA* has ensured in the contract that the owners of *AEG* tape recorders will not be charged for the private use of these recorders.[37]

Those companies which had not closed such a contract with the *GEMA* faced legal action: In law suits (in 1953) at the county court Berlin against the companies *Grundig*, *Lorenz* and *Metz* and in a court case against *Schaub* that was initiated by the record companies *Elektrola*, *Deutsche Grammophon Gesellschaft* and *Philips-Ton*, a clear decision was reached: the tape recorder manufacturers were enjoined from selling tape recorders without committing their customers to record works of musical art only with the consent of the *GEMA*. Concerning their advertisements, the manufacturers were obligated to advert to the fact that the recording of music from the repertoire of the *GEMA* needed their consent.[38]

The decision of the county court Berlin was not legally binding until the Federal Court of Justice in Karlsruhe came to a final judgement in May 1955. From then on, recordings on tape were interpreted as a violation of the law even if they were made only for private use. The reason for the decision lay in the fact that private recordings might interfere with record sales.[39]

The creative (pop song) producer Carl-Ulrich Blecher argued that this latest resolution did not avert the danger of falling record sales. In an article that was published in May 1959 under the headline "Das private Tonbandgerät" / "The private tape recorder", he dealt with the "rising importance of private tape recordings of songs (in particular from the radio) in competition to the re-

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Gebrauch berechtigen ..." "Tonband. Lauscher an der Wand." In: Spiegel, 22/1953, 27.05.1953, p.26.

[36] The company Loewe-Opta acted the same way, cf. "Tonband. Lauscher an der Wand." In: SPIEGEL, 22/1953, 27.05.1953, p.27.

[37] AEG circular letter, 01.07.1953, DTMB Berlin.

[38] "...daß die Benutzung der Geräte zur Aufnahme und/oder Wiedergabe von Werken des Repertoires der Klägerin [GEMA] deren Einwilligung bedarf." "Tonband. Lauscher an der Wand." In: SPIEGEL, 22/1953, 27.05.1953, p.26.

[39] Cf. Dümling, Albrecht, Musik hat ihren Wert.100 Jahre musikalische Verwertungsgesellschaft in Deutschland, Regensburg 2003, p.283.

cord."[40] Due to rising sales figures of tape recorders on the German market, he was worried that even if they were not going to replace the record, private tape recordings might well be a considerable competitor. Although advertisements mentioned various applications of tape recorders, he thought that private use will "not be restricted to recording uncle Otto's birthday speech. […] He/she who owns a tape recorder particularly records music."[41]

Furthermore, the creative producers and the record industry accused the manufacturers of tape recorders of printing the note on the copyright situation (that was required in the ads since the decision of the Federal Court of Justice) in a way that did not attract the attention of the potential customer, i.e. only in very small letters. They took this fact as an evidence for the manufacturers knowing very well that their sales figures depended on the possibility of recording music from the radio or from records.[42]

In fact, there are several advertisements by various manufacturers from the end of the 50s and in the 60s that printed the note only very small and inconspicuously. Actually, there are some which do not even give any.

At the end of the 50s, Dr. Erich Schulze rejoined the discussion by publishing another article in the trade magazine *Musikmarkt*. He explained the problem of private tape recordings as follows.

> Music on a record can not be deleted. If I want other music, I have to buy a new record. Just think of the short-lived pop song. But the tape can be deleted. Its life-span is almost unlimited, so that I can record, delete, and record again.[43]

While the creator gained 8% of the retail price of a record, Schulze argued, he lost royalties/ licence fees for a great amount of records with every tape recorder sold. That way, the economic situation of the artists and producers changed for the worse proportionately to the rising distribution of tape recorders. Just as in 1950, he suggested payment of a licence fee; but now it seemed more practicable to him to charge the manufacturers and not the individual user.[44]

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[40] "steigende Bedeutung der privaten Tonbandaufnahme von Platten-Titeln (hauptsächlich aus dem Rundfunk) als Konkurrenz zur Schallplatte" Das private Tonbandgerät, in: Der Musikmarkt 5/1959, p.8.

[41] "...sich kaum in der Aufnahme von Onkel Ottos Geburtstagsrede erschöpfen. [...] Wer ein Bandgerät hat, der nimmt vor allem Musik auf." Das private Tonbandgerät, in: Der Musikmarkt 5/1959, p.8.

[42] Tonbandgeräte-Industrie greift Urheberrecht an. In: Der Musikmarkt 10/1961, p.27.

[43] „Die auf Schallplatte aufgenommene Musik läßt sich nicht löschen. Will ich eine andere Musik, muß ich eine neue Platte kaufen. Denken wir nur an den kurzlebigen Schlager. Das Tonband kann ich aber löschen. Seine Lebensdauer ist praktisch unbeschränkt, so daß ich aufnehmen, löschen und wieder aufnehmen kann." Dr. h.c. Erich Schulze, Privates Tonbandgerät und Urheber-Entschädigung, in: Der Musikmarkt 6/1959, p.34.

[44] Dr. h.c. Erich Schulze, Privates Tonbandgerät und Urheber-Entschädigung, in: Der Musikmarkt 6/1959, p.34.

Another article was published in Musikmarkt in 1960 which supported the theory of the negative effects of the rising equipment of German households with tape recorders. Rising sales figures of the apparatuses were confronted with falling record sales (cf. table 1). In addition to that, output figures were cited as well: In 1958, the article says, 57.2 million records had been produced, but in 1959 only 53.4 million, so that one could state a decline of 6.7%. By further differentiating the figures, the article pointed out that these losses were exclusively to be found in the field of light music, while the sale of records with serious music had inclined. The author of the article cited these figures as evidence for the negative effects of home tape recorders, as consumers would rather record light music and short-lived hits from the radio than serious music. The falling sales figures of 45rpm-popmusic-records could, according to the article, only be explained by the fact that

> since 1958 the tape recorder has become available to those circles, which are the prime consumers of pop songs, i.e. the teens and twens. To make recordings, they do not even need the record, but can easily record the radio programme.[45]

Moreover, the author argued, tape recorders were mainly sold without the standard accessory of a microphone, which meant that it could not be used to make dictations or to preserve sounding memories, but would primarily be applied to record music. With reference to the Federal Court of Justice's decision from 1955, the author advocated an association of all disadvantaged artists and companies to preserve their rights.[46]

Tab.1: Inlands-Umsatz in der Bundesrepublik einschließlich West-Berlin. Aus: Der Musikmarkt 8/1960, S.3

Jahr	Tonbandgeräte	Plattenspieler/ -wechsler	Schallplatten
1957	166.000	1.193.000	47.300.000
1958	186.000	1.197.000	48.100.000
1959	297.000	1.142.000	43.200.000

Self-evidently, the manufacturers of tape recorders made a stand against the *GEMA*'s and the record industry's claims. The *Fachabteilung Tonbandgeräte und Zubehör* (department for tape recorders and auxiliary equipment) of the

[45] "daß das Tonbandgerät seit 1958 den Kreisen verfügbar geworden ist, die als Hauptinteressenten für den Schlager anzusprechen sind, also den Teens und Twens. Diese brauchen zum Überspielen ja nicht einmal mehr die Schallplatte, sondern können einfach die Schallplattensendungen des Rundfunks aufnehmen."
Edwin Hein, Überspielung bereitet ernste Sorgen. Energische Maßnahmen gegen das Überhandnehmen von privaten Überspielungen notwendig. In: Der Musikmarkt 8/1960, p.3&23.

[46] Edwin Hein, Überspielung bereitet ernste Sorgen. Energische Maßnahmen gegen das Überhandnehmen von privaten Überspielungen notwendig. In: Der Musikmarkt 8/1960, p.23.

Zentralverband der elektrotechnischen Industrie (central organisation of the electrical engineering industry) resisted "making the owners of tape recorders the scapegoats of the record industry".[47] The alleged decline of record sales was rejected as nothing but a "Tendenzmeldung" (announcement of a trend/ tendency) . Not the quantity of records sold was the decisive factor, they stated, but their value. That means, one needed to take into account certain exchange factors (which ascribe a 45rpm-record a value of 1 unit and a 33rpm-record a value of 6 units). Doing so, the decline in record sales would only be 1.6% and in the first quarter of 1960 there even was an increase of 7.5%. Above all, there was a rise in the production of record players and -changers, i.e. the interest in records did not seem to slow down. Falling sales figures of 45rpm-pop-records could rather be explained by a basic change in taste ("grundlegender Geschmackswandel") and a shifting of preferred leisure activities ("Verlagerung der Freizeitinteressen"). The authors also repudiated the allegiation that tape recorders were sold without microphones by arguing as many microphones as tape recorders had been sold.[48]

But, in fact, several manufacturers did sell tape recorders without microphones, so that customers had to buy them additionally if they needed them. In 1957, *Telefunken* offered the *Magnetophon 75 de Luxe* which did not include a microphone. On the contrary, it was sold with the standard fitting of a recording cable which was needed to connect it to the radio, while a microphone was declared to be the first accessory part the consumer would additionally buy.[49]

Nevertheless, the record companies' complaints about declining sales figures do not seem to be justified. As has been shown above, the conversion of records into units of measurement leads to totally different results and the value of records sold does not seem to have declined considerably.

Furthermore, in 1962 the *Bundesverband der Phonographischen Wirtschaft* (federal association of the phonographic industry) published statistics which stated that 50 million records had been sold in the Federal Republic of Germany in 1960[50], which means an incline of 15.7% in comparison to 43.2 million records in 1959. In the trade journal *Musikmarkt*, which had published the record companies' and *GEMA*'s complaints before, 1960 is declared to have been the year of the highest production rates of the phonographic industry

[47] "...den Tonbandgerätebesitzer zum Prügelknaben der Schallplattenindustrie zu machen". Tonbandgeräte-Besitzer sind keine Prügelknaben. Tonbandgeräte-Industrie nimmt scharf gegen Edwin Heins Ausführungen Stellung. In: Der Musikmarkt 10/1960, p.7.

[48] Tonbandgeräte-Besitzer sind keine Prügelknaben. Tonbandgeräte-Industrie nimmt scharf gegen Edwin Heins Ausführungen Stellung. In: Der Musikmarkt 10/1960, p.7.

[49] Das Magnetophon 75 de Luxe – ein bewährtes und vielseitiges Tonbandgerät; Brochure Telefunken; DTMB Berlin. The microphone was "das erste Zubehörteil, das sich der Tonbandamateur anschafft" / the first accessory part that the tape amateur buys.

[50] Cf. Der Musikmarkt 3/1962, p.1.

ever.[51] Production rates had also risen about 15% from 1959 to 1960. At the beginning of 1963, the journal even stated that the record business was stabilising and that the sales rates had been rising so far.[52]

Consequently, one cannot speak of an alarming situation of the record market which the representatives of the record industry and the *GEMA* had feared on account of rising tape recorder sales. Although the sales figures of 45rpm-discs fell, consumers seem to have covered these losses by their rising consumption of long-playing discs.

At the beginning of 1962, the *GEMA* set up a central office for private recording rights (*Zentralstelle für private Überspielungsrechte*). Following the decision of the Federal Court of Justice, this office should collect the license fee from the owners of tape recorders and thereby grant them the right to make recordings from the radio, TV and from records. By paying 12DM per year, the private user of tape recorders had the chance to legalise his recording practices. But the *GEMA* also made it clear that they would prefer license agreements with the manufacturing firms of tape recorders, as the collection of payments from single consumers was rather complicated.[53]

In the same year (1962), an amendment of the existing copyright laws lifted the ban on private recordings of copyrighted material. From then on, recordings for private use were permitted but the creators were granted a compensation. In the first instance, purchasers of tape recorders were obliged to pay the license fee. But the Federal Court of Justice decided that this judgment was not enforceable on account of a violation of privacy (as it would have been necessary to keep track of every single tape recorder into the private households). As a consequence it was decided that the producers of tape recorders had to pay the fees.[54]

The new copyright law which was enacted January 1st 1966[55] adhered to this judgement of the Federal Court of Justice and obliged the manufacturers and importers of tape recorders to pay license fees (5% of the factory price of each apparatus) to the *GEMA*.[56]

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[51] According to this article, 67.1 million records had been produced in 1960. 1960: Produktionsrekord der deutschen Phono-Industrie. 67,1 Millionen Platten wurden gepreßt. In: Der Musikmarkt 9/1961, p.23.

[52] "bisher steigende Linie der Umsätze". 1961: Ruhige Konjunktur bei steigenden Kosten. In: Der Musikmarkt 3/1962, p.1.

[53] GEMA. Mister fünf Prozent. In: Spiegel 50/1961, p.45.

[54] http://www.gema.de/der-verein-gema/gesetze/rechtsprechung/mai0/

[55] UrhG vom 09.09.1965, §53, 1 (Published in: Movsessian, Vera/ Seifert, Fedor (Eds.), Einführung in das Urheberrecht der Musik. Wilhelmshaven, 2.erw. Aufl. 1995, p.369ff.).

[56] Cf. Albrecht Dümling, Musik hat ihren Wert.100 Jahre musikalische Verwertungsgesellschaft in Deutschland, Regensburg 2003, p.284.

According to an article of the news magazine *Spiegel*, the legislator drew his consequences from the fact that it was impossible to detect and register millions of "audio tape sinners" ("Tonbandsünder").[57]

Consequently, when the cassette recorder was introduced on the German market in the middle of the 60s, it did not face any copyright obstacles. Producers were allowed to advertise it by explicitly adverting to its recording functions and the advantage of assembling personal hitparades and making cheap music recordings:

> Or arrange your personal hitparade at home. That is child's play with your radio or record player. […] It's not only fun but also saves money! A full hour of home-recorded music with a Grundig cassette costs only DM 4,95. That's cheap, isn't it?[58]

4. Conclusion: Changing patterns of music consumption and recording

The mass production of low-price tape recorders since the end of the 50s enabled the buyer to record music from the radio and made consumers just about independent of the record industry. Although record players were a lot cheaper in the 50s and 60s, a rising equipment of West German households with tape recorders can be detected. Particularly young consumers showed great interest in the new opportunities, as the purchase of a (relatively expensive) tape recorder promised cheap consumption of music in the long term.

Contrary to claims of the record companies and the *GEMA*, the producers of tape recorders did not put the tape-recording function into the foreground of their advertisements. In fact, the multiplicity of possible applications of the apparatus was stressed, even in those ads that were meant to appeal to young consumers. But, as the examination of the copyright debate has illustrated, teens' and twens' appropriation of the tape recorder soon began to worry the record industry. Although the manufacturers did not explicitly invite the young customers to tape-record their favourite pop songs from the radio, that is exactly what they did.

The *GEMA* advocated license fees and at first planned to collect them from the users of tape recorders. As more and more Germans owned tape recorders, it seemed more practicable to charge the manufacturers. The complaints of the record companies and the *GEMA* which said that the companies selling tape

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[57] Mitschneiden erlaubt. In: Spiegel 4/1966, p.39.

[58] "Oder stellt Euch zuhause die neueste Hitparade selbst zusammen. Das geht kinderleicht von Eurem Radio oder Plattenspieler. [...] Das macht nicht nur Spaß, das spart auch Geld! Denn eine ganze Stunde selbstaufgenommene Musik mit einer Grundig Cassette kostet nur DM 4,95. Ist doch billig, nicht?" Grundig Brochure, Fall/Winter 1971/1972, p.37, Deutsches Museum München.

recorders were not adequately pointing out that private recordings of music were illegal, seem to be justified, as there are numerous advertisements which did not give any information on the copyright situation (or only very small).

But the complaints about falling record sales have proved to be unjustified. Although one can detect a rising distribution of tape recorders in Germany, the total value of record sales did not decline. Rather, the structure of the record market and music consumption patterns seem to have changed: While 45rpm-discs with pop music sold less well, the sales figures of 33-rpm discs rose. So called "one-hit-wonders" could easily be recorded from the radio and deleted once their heyday was over, but complete long-playing-records of the consumers' favourite artists (whether "light" or "serious" music) still had to be bought in the record stores. Buying a record of one's favourite band, of an artist one identified with, meant supporting their career and standing up for the new music genres that were scarcely broadcasted on German radio.

That is exactly what the rap artist Curse wants his audience to do: He asks them for their support and to refrain from downloading music from the internet. Only a certain degree of identification with an artist or a band can persuade the listeners to buy the whole record in the store, while a single song would have been tape-recorded in the 60s and is downloaded from the internet nowadays.

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