DARK SANCTUARY v. BUSHIDO

Decision of April 16, 2015
File number: I ZR 225/12

ORDER
1. Defendants 1) and 2) will be convicted, if they avoid a fine of up to € 250,000.00 as an alternative to regular detention, or if they avoided a regular detention for up to 6 months, to regular detention for the defendant 1)) to be carried out on the managing director of the defendant 1), to refrain according to § 890 ZPO, to evaluate the works "S ..." (GEMA work no.: ...), "J ..." (GEMA work no .: ...) and have them evaluated,

The defendant 1) is also convicted of failing to act against the plaintiff 1) in accordance with Section 890 of the German Code of Civil Procedure (ZPO) when avoiding a fine of up to € 250,000.00 as a substitute, or when avoiding proper detention on the managing director of the defendant 1), the work "Sp ..." (GEMA work no.: ...) and the work "I ..." (GEMA work no .: ...) to be evaluated and evaluated.

2. Defendants 1) and 2) will be sentenced, as compared to complainants 1) and 2) if they avoid a fine of up to € 250,000.00, or if they avoid an orderly detention for up to 6 months, the orderly detention at the Defendant 1) to be executed on the managing director of Defendant 1), according to § 890 ZPO to refrain, to evaluate the work "B ..." (GEMA work no.: ...) and to have it evaluated,

the defendant 1) will also be convicted, it against the plaintiffs 1) and 2) in avoidance of a fine of up to € 250,000.00 alternatively order detention, or if a detention order up to 6 months, the order detention for the defendant 1) to be carried out on the managing director of the defendant 1), to refrain according to § 890 ZPO,

the work "E ..." (GEMA work no.: ...) and the work "D ..." (GEMA work no .: ...) to be evaluated and evaluated.

3. Defendants 1) and 2) will be convicted, and if you avoid a fine of up to € 250,000.00, you will be sentenced to custody, or if you avoid a custody order for up to 6 months Defendant 1) to be executed on the managing director of Defendant 1), according to § 890 ZPO to refrain,

the works "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA-Werk-Nr .: ...), "H ...)" (GEMA-Work no .: ...), "D ..." (GEMA work no .: ...) and "W ..." (GEMA work no .: ...) to evaluate and evaluate allow.

4. Defendants 1) and 2) will be sentenced, if they avoid a fine of up to € 250,000.00, or if they avoid a regulatory detention for up to 6 months, the orderly detention will be sentenced to 1) and 5) Defendant 1) to be executed on the managing director of Defendant 1), according to § 890 ZPO to refrain,

to evaluate the work "Br ..." (GEMA works no.: ...) and to have it evaluated.

5. The defendant 1) is sentenced to provide information on all the allocation of exploitation rights to the works referred to in item 1 as of the respective publication date - insofar as these are not exercised by GEMA within the framework of the GEMA management contract, and

To provide information and to submit an invoice for the entire income of the defendant 1), which they earned in connection with the use of the works referred to in section 1 from their respective publication date by granting rights to the claimant 1) in Reference to the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: ...), "Sp ..." (GEMA- Work no .: ...) and "I ..." (GEMA work no .: ...)), and to the plaintiffs re 1) and 2) with regard to the works "B ..." "(GEMA works no .: ...)," D ... "(GEMA works no .: ...) and "E ..." (GEMA work no .: ...), and to the plaintiffs re 1) and 3) in relation to the works "K ..." (GEMA work no .: ...), "G ..." (GEMA works no .: ...), "H ...)" (GEMA works no .: ...), "D ..." (GEMA-Werk-Nr .: ...) as well as "W ..." (GEMA-Werk-Nr .: ...) and towards the plaintiffs re 1) and 5) in relation to the work "Br .. . "(GEMA works no.: ...).

6. Defendants 1) and 2) are sentenced to declare their consent that GEMA will inform the plaintiffs of all evaluations and the proceeds to be billed to the defendant 1) and the defendant 2) from the respective publication date of the works, insofar as these were not yet the subject of the GEMA billing with GEMA billing date 01.10.2007, - in addition, for the titles "D ..." and "W ..." on all evaluations and billing revenues from their publication - information provided, namely to the plaintiff re 1) with regard to the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: ...), "Sp ... "(GEMA-Werk-Nr .: ...) and" I ... "(GEMA-Werk-Nr .: ...) and to the plaintiff re 1) and 2) in relation to the works "B ..." (GEMA works no .: ...), "D ..." (GEMA works no .: ...) and "E ..." (GEMA works no .: ...),and to the plaintiffs 1) and 3) in relation to the works "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA-Werk-Nr .: .. .), "H ...)" (GEMA works no .: ...), "W ..." (GEMA works no .: ...) and "D ..." (GEMA -Work no .: ...) and to the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA work no .: ...).

7. The defendant 1) is sentenced to provide information on all the allocation of exploitation rights to sub-publishers and sub-sub-publishers since the respective publication date of the works, as well as information on all of the exploitation revenues achieved or expected in the future from the Evaluation of works according to number 1 have been achieved or are still being achieved since their publication, namely to the plaintiff re 1) in relation to the works "S ..." (GEMA work no .: ...), "J ..." (GEMA works no .: ...), "Sp ..." (GEMA works no .: ...) and "I ..." (GEMA works no .: ...), and to the plaintiffs to 1) and 2) in relation to the works "B ..." (GEMA-Werk-Nr .: ...), "D ..." (GEMA- Work no .: ...) and "E ..." (GEMA work no .: ...), and to the plaintiffs re 1) and 3) in relation to the works "K ..." (GEMA works no .: ...),"G ..." (GEMA works no .: ...), "H ...)" (GEMA works no .: ...), "W ..." (GEMA works No .: ...) as well as "D ..." (GEMA-Werk-Nr .: ...) and to the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA- Factory no .: ...).

8. It is determined that the defendant 1) has to compensate the plaintiffs for the damage that the plaintiffs have suffered and / or will arise in the future as a result of the inadmissible evaluation of the titles specified in numbers 1 to 4.

9. The defendant 2) is sentenced to compensate for the non-material damage caused by the use of the works specified in numbers 1. to 4. an amount of

€ 61,000.00 to the plaintiff re 1), an amount of € 1,500.00 to the plaintiff re 2), an amount of € 2,500.00 to the claimant re 3) and € 500.00 to the claimant re 5) pay, plus 5 percent interest above the base rate since May 13, 2008.

10. Defendants 1) and 2) are sentenced with regard to the titles "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: .. .), "Sp ..." (GEMA works no .: ...), "B ..." (GEMA works no .: ...), "D ..." (GEMA works Plant no .: ...), "E ..." (GEMA plant no .: ...), "K ..." (GEMA plant no .: ...), "G ... "(GEMA works no .: ...)," H ...) "(GEMA works no .: ...)," W ... "(GEMA works no. : ...) "D ..." (GEMA-Werk-Nr .: ...) and "Br ..." (GEMA-Werk-Nr .: ...) give GEMA permission to delete them as the composer or publisher of the composer and to register the plaintiff re 1) as a composer.

11. Defendant 1) is sentenced to give the plaintiff 1) information about the real name and address of the author K. ... and the claimant 2) information about the real names and address of the authors Mr. R. and Mr. E.-H ..

12. Defendant 1) is sentenced to claim 1) an amount of € 4,596.00, and to claim 1) and claim 2) an amount totaling 336.90 €, as well as to the plaintiff re 1) and the plaintiff re 3) for the whole hand an amount of 336.90 €, as well as to the claimant re 1) and the claimant re 5) for the whole hand an amount of 181 To pay € 80 plus 5 percent interest above the base rate since February 23, 2009; the defendant 2) is sentenced to the plaintiff 1) an amount in the amount of 4,360.00 €, as well as to the plaintiff 1) and the plaintiff 2) for the entire hand an amount of 336.90 €, as well as to the plaintiff re 1) and the plaintiff re 3) for the entire hand an amount of € 336.90,

13. Otherwise, the action is dismissed.

14. The court costs have to be borne by the defendant 1) at 8/20, the defendant 2) at 6/20, the plaintiff 1) at 4/20 and the plaintiff at 2) at 2/20. The out-of-court costs of the 1) plaintiff have to bear the 1) defendant 11/25 and the 2) defendant 7/11, otherwise the 1) plaintiff bears his out-of-court costs himself; the extrajudicial costs of the second plaintiff must be borne by the third party (1) and 1/8 of the second (defendant), otherwise the second plaintiff bears his own extrajudicial costs; the out-of-court costs of the third party plaintiff must be borne by the first defendant and two fifths of the defendant's costs, otherwise the third party bears his out-of-court costs himself; the extrajudicial costs of the plaintiff to 4) have to bear them themselves; the extrajudicial costs of the 5) plaintiff must be borne by the 1) and defendant 2) each to 2/5, otherwise the 5) plaintiff bears its extrajudicial costs. Of the extrajudicial costs of the 1) defendant the 1) plaintiff has to bear 3/10 and the 2) plaintiff 1/10, otherwise the 1) defendant has to bear its extrajudicial costs; of the out-of-court costs of defendant 2) have to bear 1/8 each of plaintiff 1) and plaintiff 2), otherwise the defendant 2) bears his out-of-court costs himself. In addition, the defendant 1) has to bear its extrajudicial costs itself; of the out-of-court costs of defendant 2) have to bear 1/8 each of plaintiff 1) and plaintiff 2), otherwise the defendant 2) bears his out-of-court costs himself. In addition, the defendant 1) has to bear its extrajudicial costs itself; of the out-of-court costs of defendant 2) have to bear 1/8 each of plaintiff 1) and plaintiff 2), otherwise the defendant 2) bears his out-of-court costs himself.

15. The judgment is provisionally enforceable, with regard to the tenor re 1. and 2. against security in the amount of 40,000.00 €, with regard to the tenor re 3. against security in the amount of 50,000.00 €, with regard to the tenor re 4. against security in the amount of 10,000.00 €, with regard to the tenor re 5. and 7. each against security in the amount of 21,000.00 €, with regard to the tenor re 11. against security in the amount of 4,000.00 € and with regard to the tenor 9th, 12th and 14th each against a security deposit of 110% of the amount to be enforced.

OFFENSE
The plaintiffs, musicians living in France and acting under the name "DS", assert against defendant 2), acting under the stage name "B." in Germany, that he used music recordings made by them in his own productions in a manner that infringes copyright. The subject of this legal dispute are claims due to the violation of author claims of the plaintiff - text and composition. Defendant 1) is used as the publisher of Defendant 2). In a parallel dispute on business no. 310 O 155/08 claims against the defendant to 2) and other defendants due to the violation of ancillary copyrights are asserted.

The plaintiffs - "DS" - published the albums (available under Appendix K 1) between 1999 and 2004

• "R ... M ..." (1999),

• "D ... 1 ..." (2000),

• "L ... 1 ... 1 ..." (2003) and

• "L ... M ... B ..." (2004).

With the exception of the song "V ..." from the album "R ... M ..." and the song "D ... M .." from the album "L ... M ... B .. . ", All songs from the above-mentioned music albums are registered with the French collecting society, Firma S. (cf. Annex K 2, whereby the title“ V ... ”is registered with GEMA according to the information provided by the plaintiff at the hearing). There one of the plaintiffs is named as the composer or as the author of the text of the respective song (see Annex K 2). In the booklets for the music albums and on the website of the “DS” group, the plaintiffs' real names are not given, but pseudonyms (“”).

The albums are made by the recording company SC. based in Milan under the label "AR". The first plaintiff signed this as a representative of the "DS" group between 1999 and 2005 with the company SC. various contracts known as “Recording Contract” or “Copyrights firm license sale contract”, which extend to the albums mentioned above (Annex B 5 / Defendant to 2)). With these contracts, the members of the group “DS” undertook to transfer the following rights: “Copyright in and to all master tapes, records, photo sessions or any other kind of performance solicited or authorized by the company.” (“Recording Contract” dated 09/25/1999, item 3.a and “Recording Contract” dated 06/18/2005, item 3.a), “the copyrights to manufacture, market and sell in the Territory the master recordings object of this deal ("Product"). "(Contract of December 18, 2003, Section 4). For clarification, the plaintiff re 1) wrote as a representative of the group "DS" and the company SC. a "Side letter" dated April 7, 2008 on the contracts dated 09/25/1999 and 06/18/2005. It is confirmed or agreed that all rights from §§85, 86 UrhG at the company SC. lie (see section 1 of the accompanying letter).

The subject matters of the dispute are the following titles of Defendant 2):

• "S ..." (GEMA works no. ...),

• "Br ..." (GEMA works no. ...),

• "B ..." (GEMA works no. ...),

• "K ..." (GEMA works no. ...),

• "G ..." (GEMA works no. ...),

• "(H ..." (GEMA works no. ...),

• "I ..." (GEMA works no. ...),

• "J ..." (GEMA work no. ..., also published on February 9, 2007 on the CD single "J ..."),

• "D ..." (GEMA works no. ...),

all under the Urban label of the recording company Firma U. on September 1st, 2006 on the album "V ..." and on February 9th, 2007 on the album "V ... - Pur Version" and on June 15th, 2007 on the album " V ... - Platinum Edition".

The titles are also controversial

• "W ..." (GEMA work no. ...), published on the album "V ... - Platinum Edition (Bonus CD)" and

• "E ..." (GEMA work no. ...) released on the album "V ... - Platinum Edition" as well as on the album "N ..." released on January 26, 2007.

The titles are also controversial

• "E ..." (GEMA works no. ...),

• "Ic ..." (GEMA works no. ...),

• "T ..." (a GEMA extract is not available, the plaintiffs indicate here as the GEMA work number ...),

• "D ..." (GEMA works no. ...),

• "Sp ..." (GEMA works no. ...),

all published under the label E. of the recording company E. GmbH on December 1st, 2006 on the album "E. Sampler Vol. 2 - Vendetta".

Sound carriers of the albums mentioned are available (under Appendix K 3).

The defendant 1) as the original publisher and the defendant 2) as the composer and lyricist are entered in the GEMA database (see Appendix K 5). There are the following exceptions: In the case of the title "I ...", the defendant to 2) is not, but "K. ... "as a composer. For the title "E ...", in addition to the second defendant, Mr. R. is also entered as a lyricist. For the title "Ic ...", Mr. T. is entered and for the title "Sp ..." again, Mr. R. is entered as the lyricist. Defendant 2) is only registered here as a composer. With the title "D ..." Mr. E.-H. and Mr. R. is registered as a lyricist, the defendant to 2) is also only registered here as a composer. There

is no extract from the GEMA register for the title “T ...” (see Appendix K 5). There is (as Annex K 17) a letter from GEMA dated February 22, 2008, according to which the title "T ..." under the work no. ... is registered; The letter does not reveal who is registered as a composer, lyricist and original publisher.

It is characteristic of all of the named titles objected to by the plaintiffs that they focus on the spoken word of the second defendant ("rap"), which is accompanied by a drum beat and a repetitive sequence of notes played with other instruments. The titles mentioned are not only sold on sound carriers, but are also offered for download on the website of the company U. (cf. Annex K 4) and listed by the defendant re 2) during live performances (cf. exemplary tour dates, Annex K 22 and K 33). An exception applies to the title of the album “E. Sampler Vol. 2 - Vendetta "and" N ... ". Here an evaluation is carried out by the defendant to 1) only in the sound carrier area. The digital evaluation is carried out by digital sales (see Annex K 19).

The defendant to 2) is in public criticism because of the texts, among other things, the above-mentioned pieces of music. Some of his titles were indexed by the Federal Inspectorate for Media Harmful to Young People because of their content classified as misogynistic and “brutalizing” (cf. Annex K 23). The texts of the second defendant are also discussed beyond the German-speaking area (cf. article from the British newspaper "The Independent" of August 17, 2005, Annex K 24).

The managing director of company SC contacted us by email dated April 16, 2007 (Annex K 9). Defendant 1) and objected to the fact that certain music titles of Defendant 2) used recordings from the group "DS" without prior permission from SC company. or "DS" would have been obtained. In the following time it came between company SC. and the lawyer Mr K., who initially worked for the second defendant, on settlement negotiations (cf. e-mail dated 07/10/2007 / Annex B 4, e-mail dated 09/27/2007 / Annex B 2 and e-mail dated October 8, 2007 / Appendix B 3). In the course of these settlement negotiations, a contract, entitled “Sampling Settlement Agreement”, was drawn up between the second defendant and the label “AR” (Appendix B 1), with which the use of certain so-called samples from recordings of the group “DS “In eight of the above-mentioned music titles of the second defendant should be permitted against payment of a lump sum of € 24,500.00 (the plaintiffs were not yet aware of any other titles at that time). This contract was undisputed neither by the second defendant nor by a representative of company SC. signed. As a precaution, the plaintiffs, who deny, state that there are negotiations between the second defendant and the company SC. to have been informed, the contestation of a possible declaration of agreement by the company SC. for fraudulent misrepresentation. signed. As a precaution, the plaintiffs, who deny, state that there are negotiations between the second defendant and the company SC. to have been informed, the contestation of a possible declaration of agreement by the company SC. for fraudulent misrepresentation. signed. As a precaution, the plaintiffs, who deny, state that there are negotiations between the second defendant and the company SC. to have been informed, the contestation of a possible declaration of agreement by the company SC. for fraudulent misrepresentation.

In a letter dated October 29, 2007 (Annex K 7), the first plaintiff warned the first defendant about the use of compositions for which he claimed copyrights. With letters dated November 19, 2007 (Annex K 13) and December 10, 2007 (Annex K 37), the warning was extended to include the processing of the French texts on the music titles and the violation of the rights of the plaintiffs 2) to 5). In the context of pre-litigation attempts to reach an agreement between

the plaintiffs and the defendant 1), the defendant declared that it was ready to provide the required information about the income generated with the titles in question and to declare the consent required for GEMA to provide information (Annex K 11) . With a letter dated November 16 In 2007, the defendant 1) sent an account of the net publishing shares of € 27,647.67 previously paid by GEMA to the defendant 1) as well as the so-called "Non-Society Incomes" for the title "J ..." in the amount of € 3,555.24 (Annex K 12). This information was corrected in a letter dated November 21, 2007 (Annex K 14) to the extent that the pure GEMA net publishing income up to this point was only € 21,791.46 and the non-society income € 3,450.24. Defendant 1) stated the difference to the information initially given with income that had been achieved in Austria and Switzerland and should not be taken into account. The attempts to reach an agreement between the plaintiffs and the first defendant were ultimately unsuccessful. € 67 and the so-called “Non-Society Incomes” for the title “J ...” in the amount of € 3,555.24 (Annex K 12). This information was corrected in a letter dated November 21, 2007 (Annex K 14) to the extent that the pure GEMA net publishing income up to this point was only € 21,791.46 and the non-society income € 3,450.24. Defendant 1) stated the difference to the information initially given with income that had been achieved in Austria and Switzerland and should not be taken into account. The attempts to reach an agreement between the plaintiffs and the first defendant were ultimately unsuccessful. € 67 and the so-called “Non-Society Incomes” for the title “J ...” in the amount of € 3,555.24 (Annex K 12). This information was corrected in a letter dated November 21, 2007 (Annex K 14) to the extent that the pure GEMA net publishing income up to this point was only € 21,791.46 and the non-society income € 3,450.24. Defendant 1) stated the difference to the information initially given with income that had been achieved in Austria and Switzerland and should not be taken into account. The attempts to reach an agreement between the plaintiffs and the first defendant were ultimately unsuccessful. 46 € and the "Non-Society" revenue is 3,450.24 €. Defendant 1) stated the difference to the information initially given with income that had been achieved in Austria and Switzerland and should not be taken into account. The attempts to reach an agreement between the plaintiffs and the first defendant were ultimately unsuccessful. 46 € and the "Non-Society" revenue is 3,450.24 €. Defendant 1) stated the difference to the information initially given with income that had been achieved in Austria and Switzerland and should not be taken into account. The attempts to reach an agreement between the plaintiffs and the first defendant were ultimately unsuccessful.

In parallel to the warning to the defendant 1), the plaintiffs also warned the defendant 2) (letter of November 16, 2007 and letter of November 21, 2007, both under Appendix K 15). The legal representative of the second defendant had already sent a list of all sales of the above-mentioned album carriers in Germany since their publication in a letter dated November 13, 2007 (Annex K 19). In a letter dated November 13, 2007 (Annex K 20), the company U. also provided the plaintiff with information about the digital evaluation of the album "V ..." in Germany up to that point. Attempts to reach an agreement between the plaintiffs and the second defendant also ultimately failed. The defendants continue to evaluate the music titles mentioned.

In a letter dated November 30, 2007, GEMA sent the plaintiff's agent sales statements for the revenues settled up to that point in relation to certain titles of the second defendant (Annex K 16). This list contained information on evaluations between the 3rd quarter of 2006 and the 1st quarter of 2007. With a letter dated February 22nd, 2008, a further sales list followed “as of January 1st, 2008” (Annex K 17). The proceeds listed there have so far not been paid out to defendant 1), but are in a blocked account. At the request of the plaintiffs, GEMA has

temporarily deferred the offsetting and payment since November 8, 2007 or - with regard to the titles "D ..." and "W ..." - since March 4, 2008.

The plaintiffs claim that they appear under the pseudonyms specified in the booklets and on the website of the “DS” group. Thus, the complainant to 1) is "A.", the complainant to 2) is "H.", the plaintiff to 3) is "S.", the plaintiff to 4) is "D." "And for the applicant to 5) by" M. ".

The plaintiffs further claim that the second defendant has backed all of the above-mentioned songs with excerpts from the plaintiffs 'music recordings by extracting passages of an average of 10 seconds from the plaintiffs' original recordings, then changing some of them slightly and creating a repetitive sound loop (as a so-called "loop") with his spoken word and the drum beat. The text of the music titles from "DS" - this is undisputed - was not adopted by the second defendant. Specifically, in each of the following music tracks, defendant 2) should have taken over parts of the plaintiffs' music recordings:

• "S ..." should contain recordings of "L ..." from the album "R ... M ...",

• "Br ..." should contain recordings of "V ..." from the album "R ... M ...",

• "B ..." should contain recordings of "" from the album "D ... l ...",

• "K ..." should contain recordings of "" from the album "",

• "G ..." should contain recordings of "" from the album "",

• "Are you something (H ... should contain recordings of" "from the album" ",

• "I ..." should contain recordings of "" from the album "L ... M ... B ...",

• "E ..." should contain recordings of "D ... M .." from the album "L ... M ... B ...",

• "W ..." should contain recordings of "" from the album "",

• "D ..." should contain recordings of "" from the album "",

• "E ..." should contain recordings of "" from the album "L ... M ... B ...",

• "I'll grab you by the hair" should contain recordings of "" from the album "L ... M ... B ...",

• "Sp ..." should contain recordings of "" from the album "L ... M ... B ...",

• "T ..." should contain recordings of "" from the album "R ... M ...",

• "D ..." should contain recordings of "" from the album "L ... M ... B ...",

• "J ..." should contain recordings of "L ... M ... B ..." from the album "L ... M ... B ...".

The plaintiffs are of the opinion that the parts of their recordings taken over are passages whose composition and - if available - their text enjoy copyright protection. In particular, the adopted and still recognizable sequences are each the formative parts or even the melody of

the original versions of the plaintiffs. The plaintiffs have submitted two reports on the use and protectability of the allegedly taken over parts: The report by Mr P. (Annex K 6) only relates to the music titles "E ...", "Ic ..." and "J ... ". The expert opinion by Prof. Herr F. (Annex K 31) deals with all disputed music titles.

Insofar as the plaintiffs have already made a quantified payment claim, this has been calculated on the basis of the GEMA information already provided (K 16 and K 17). This was based on 100% of the revenues billed or billed to all registered authors and the publisher. The fact that the plaintiffs are entitled to this share of the proceeds follows from Section 4 (4) of the General Principles of GEMA's Distribution Plan A for performing and broadcasting rights and from Section 3 of the General Principles of GEMA's Distribution Plan B for mechanical reproduction rights. The music of the title of the defendant 2) in dispute consists 100% of the compositions of the plaintiff. A participation of the defendant due to a possible editing of the text or

To calculate the asserted warning costs, the plaintiffs used the following object values and fee rates as a basis:

For the warning to defendant 1) of October 29, 2007 by plaintiff 1), an object value of € 418,607.10 was taken as the basis (€ 10,000.00 per title for the injunction claim (for the 12 titles attacked at the time, a total of € 120,000.00), € 30,000.00 for the information claim, € 48,607.10 for the quantified claim for damages, € 100,000.00 for the claim for damages assessment and € 120,000.00 for the coveted deletion at GEMA). In view of the complexity of the case, a fee rate of 2.0 according to No. 2300 VV RVG is appropriate. For the extension of the warning against defendant 1) by plaintiff 2) from November 19, 2007 (Annex K 13), an object value of € 93,931.34 was used (€ 10,000.00 per title for the injunction claim (for the another 3 titles so a total of 30,000, € 00), € 7,000.00 for the information claim, € 6,931.34 for the quantified claim for damages, € 20,000.00 for the claim for compensation for damages and € 30,000.00 for the coveted deletion at GEMA). Again, according to the second plaintiff, a 2.0 fee should be appropriate. For the extension of the warning against defendant 1) by plaintiff 3), which was also made in the letter dated November 19, 2007 (Annex K 13), an object value of € 93,633.26 was taken as the basis (€ 10,000.00 per title for the injunction claim (for a further 3 titles attacked at the time, a total of € 30,000.00), € 7,000.00 for the information claim, € 6,633.26 for the quantified claim for damages, € 20,000.00 for the claim for damages assessment and € 30,000.00 for the coveted deletion in the GEMA). Here too, the third plaintiff considers a 2.0 fee to be appropriate. For the extension of the warning against defendant 1) by plaintiff 4) from December 10, 2007 (Annex K 37), an object value of € 31,768.89 and also a fee of 2.0 (€ 10,000.00 for the Omission of a title, € 2,500.00 for the right to information, € 2,268.89 for the quantified claim for damages, € 7,000.00 for the claim for damage compensation and € 10,000.00 for the coveted deletion at GEMA). For the extension of the warning against defendant 1) by plaintiff 5) also from December 10, 2007 (Annex K 37), an object value of € 29,274.50 and a fee of 2.0 (again € 10,000.00 for the omission of a title, € 2,500.00 for the right to information, 1,774,

For the warning of the defendant re 2) by the plaintiffs re 1) to 5) of November 16, 2007 or November 21, 2007 (Annex K 15), a total object value of € 566,215.11 (€ 10,000.00 per title for the injunction claim (€ 140,000.00 in total), € 40,000.00 for the information claim, € 66,215.11 for the quantified claim for damages, € 180,000.00 for the determination of damages and € 140,000.00 for the coveted deletion at GEMA). Again, given the complexity of the case, a fee rate of 2.0 according to No. 2300 VV RVG is appropriate. According to No.

1008 VV RVG, this value should be increased by 0.3 fees for each additional client, so that I give a business fee of 3.5.

The plaintiffs request

1. for the plaintiff re 1):

The defendants re 1) and 2) are convicted, if they avoid a fine of up to € 250,000.00 as an alternative to custody, or if they avoid custody up to 6 months, to custody with the defendant 1) to be carried out on the managing director of the defendant to 1), according to § 890 ZPO to refrain from

the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk -No .: ...) to be evaluated and evaluated, as well as

the defendant 1) is sentenced, if avoiding a fine of up to € 250,000.00, instead of custody, or if avoiding a proper custody, to execute it on the managing director of the defendant 1), to be omitted according to § 890 ZPO,

the work "Ic ..." (GEMA-Werk-Nr .: ...), the work "Sp ..." (GEMA-Werk-Nr .: ...), the work "I ..." (GEMA work no .: ...) as well as the work "T ..." (GEMA work no .: ...) to be evaluated and evaluated;

2. for the plaintiff re 1) and 2):

The defendants re 1) and 2) are convicted, in the event of avoidance of a fine of up to € 250,000.00, as an alternative, order detention, or in case of avoidance of order detention for up to 6 months, order detention the defendant to 1) to execute on the managing director of the defendant to 1), according to § 890 ZPO to refrain from

evaluating the work "B ..." (GEMA work no .: ...), as well as

the defendant 1) is sentenced, if he avoids a fine of up to € 250,000.00 as an alternative to regular detention, or in the case of avoidance of a regular detention up to 6 months, to enforce orderly detention with the defendant 1) on the manager of the defendant 1), according to § 890 ZPO to refrain from

evaluating the work "E ..." (GEMA-Werk-Nr .: ...) and the work "D ..." (GEMA-Werk-Nr .: ...) and to have evaluated;

3. For the plaintiffs 1) and 3):

The defendants 1) and 2) are sentenced, if they avoid a fine of up to € 250,000.00 as an alternative to custody, or if they avoid custody for up to 6 months, to custody the defendant 1) to execute on the managing director of the defendant 1), according to § 890 ZPO to refrain,

the works "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA-Werk-Nr .: ...), "H ...)" (GEMA-Work no .: ...), "D ..." (GEMA work no .: ...) and "W ..." (GEMA work no .: ...) to evaluate and evaluate allow;

4. for the plaintiffs re 2) and 4):

The defendants re 1) and 2) are sentenced, if they avoid a fine of up to € 250,000.00 as a substitute for custody, or if they avoid custody for up to 6 months, the custody the defendant 1) to execute on the managing director of the defendant 1), according to § 890 ZPO to refrain from

evaluating the work "E ..." (GEMA work no .: ...) and having it evaluated;

5. for plaintiffs 1) and 5):

Defendants 1) and 2) are sentenced, if they avoid a fine of up to € 250,000.00 as an alternative to custody, or if they avoid a custody order for up to 6 months, the defendant to 1) is assigned to the managing director of the defendant 1), according to § 890 ZPO, to refrain from

evaluating and having the work "Br ..." (GEMA work no .: ...) evaluated.

6. The defendant 1) is sentenced to provide information about all the allocation of exploitation rights to the works referred to in item 1 from the respective publication date of the works - insofar as these are not exercised by GEMA within the framework of the GEMA management contract - , as well as to provide information and to submit an invoice for the entire income of the defendant 1), which it has achieved in connection with the use of the works referred to in number 1 from their respective publication date by granting rights to the plaintiff re 1) in relation to the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: ...), "Ic ..." (GEMA works no .: ...), "Sp ..." (GEMA works no .: ...) and "T ..." (GEMA works no. ...), and to the plaintiffs to 1) and 2) in relation to the works "B ..." (GEMA work no .:...), "D ..." (GEMA-Werk-Nr .: ...) and "E ..." (GEMA-Werk-Nr .: ...), and towards the plaintiffs re 1) and 3) in relation to the works "K ..." (GEMA works no .: ...), "G ..." (GEMA works no .: ...), "H .. .) "(GEMA works no .: ...)," W ... "(GEMA works no .: ...) and" D ... "(GEMA works no .:. ..) and towards the plaintiffs re 2) and 4) in relation to the work "E ..." (GEMA work no .: ...) and towards the plaintiffs re 1) and 5) in relation to the Work "Br ..." (GEMA work no .: ...);) and to the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA work no .: ...);) and to the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA work no .: ...);

7. To condemn defendants 1) and 2), to declare their consent that GEMA will provide the plaintiffs with all evaluations and the proceeds to be billed to the defendant 1) and the defendant 2) from the respective publication date of the works, insofar as these were not yet the subject of the GEMA billing with GEMA billing date 01.10.2007, - moreover, for the titles "D ..." and "W ...", provides information on all evaluations and billable revenues from their publication, namely to the plaintiff re 1) with regard to the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: ...), "Ic .. . "(GEMA works no .: ...)," Sp ... "(GEMA works no .: ...) and" T ... "(GEMA works no. ...)) and to the plaintiff re 1) and 2) in relation to the works "B ..." (GEMA work no .: ...), "D ..." (GEMA work no .:. ..) and "E ..." (GEMA works no .: ...),and to the plaintiffs 1) and 3) in relation to the works "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA-Werk-Nr .: .. .), "H ...)" (GEMA works no .: ...), "W ..." (GEMA works no .: ...) and "D ..." (GEMA -Work no .: ...) and towards the plaintiffs re 2) and 4) in relation to the work "E ..." (GEMA work no .: ...) and towards the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA work no .: ...);

8. to condemn the defendant to 1) to provide information on all the allocation of exploitation rights to sub-publishers and sub-sub-publishers since the respective publication date of the works, as well as information on all of the exploitation revenues achieved therefrom or expected in the future that from the evaluation of works according to number 1 have been achieved or are still being achieved since their publication, namely to the plaintiff re 1) with regard to the works "S ..." (GEMA work no: ...), "J ..." (GEMA works no .: ...), "Ic ..." (GEMA works no .: ...), "Sp ..." (GEMA works -Nr .: ...) as well as "T ..." (GEMA-Werk-Nr. ...), and towards the plaintiffs re 1) and 2) in relation to the works "B ..." (GEMA Plant no .: ...), "D ..." (GEMA plant no .: ...) and "E ..." (GEMA plant no .: ...),and to the plaintiffs re 1) and 3) in relation to the works "K ..." (GEMA work no .: ...), "G ..." (GEMA work no .: .. .), "H ...)" (GEMA works no .: ...), "W ..." (GEMA works no .: ...) and "D ..." (GEMA -Work no .: ...) and towards the plaintiffs re 2) and 4) in relation to the work "E ..." (GEMA work no .: ...) and towards the plaintiffs re 1) and 5) in relation to the work "Br ..." (GEMA work no .: ...);

9. to convict the defendant 1), to the claimant 1) an amount of € 35,536.89 and to the claimants 1) and 2) an amount of € 9,324.91 as well as to the claimants re 1) and 3) an amount of € 13,266.53 and to claimants 2) and 4) an amount of € 4,537.78 and to claimants 1) and 5) an amount of € 3,549, 00 to be paid plus 5 percent interest above the base rate since April 17, 2007;

10. to determine that the defendant 1) has to compensate the plaintiffs for any further damage that the plaintiffs according to number 1 have suffered and / or will arise in the future as a result of the inadmissible evaluation of the works described in number 1, including the Damage incurred by the plaintiffs and / or will arise in the future because the music works mentioned were not registered with GEMA with the stipulation that the plaintiffs were the authors, namely plaintiff re 1) with regard to the works "S ..." (GEMA Plant no .: ...), "J ..." (GEMA plant no .: ...), "Ic ..." (GEMA plant no .: ...), " Sp ... "(GEMA works no .: ...)," I ... "(GEMA works no .: ...) and the work" T ... "(GEMA works No. ...) as the author of the composition and as a lyricist, with regard to the works "B ..." (GEMA work no .: ...), "E ..." (GEMA work no .: ...), "D ..."(GEMA works no .: ...)," K ... "(GEMA works no .: ...)," G ... "(GEMA works no .: ...), "H ...)" (GEMA works no .: ...), "Br ..." (GEMA works no .: ...), "W ..." (GEMA Work no .: ...) and "D ..." (GEMA work no .: ...) as the author of the composition, as well as the second plaintiff with regard to the work "E ..." (GEMA -Work no .: ...) as the author of the composition and with regard to the works "B ..." (GEMA work no .: ...), "E ..." (GEMA work no. : ...) and "D ..." (GEMA-Werk-Nr .: ...) as lyricist, as well as the plaintiff re 3) regarding the works "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA works no .: ...), "H ...)" (GEMA works no. ...), "W ..." (GEMA-Werk-Nr .: ...) and "D ..." (GEMA-Werk-Nr .: ...) as lyricists, as well as the plaintiff re 4) with regard to the work "E ..." (GEMA -Werk-Nr .: ...) as lyricist, as well as the applicant to 5) with regard to the work "Br ..." (GEMA work no .: ...) as a lyricist;

11. To condemn defendant 1) to pay an amount each to claimants 1) to 5) to compensate for the non-pecuniary damage incurred by the plaintiffs through the unauthorized use of their respective works in the works according to claims 1) to 5) , the amount of which is at the discretion of the court, but to the plaintiff 1) an amount of at least € 10,000.00, to the plaintiff re 2) an amount of at least € 2,500.00, to the plaintiff 3) an amount of at least € 2,000.00, to the applicant 4) an amount of at least € 500.00 and to the claimant 5) an amount of at least € 500.00, plus 5 Percent interest above the base rate since pending,

and

to condemn the defendant to 2) to pay the claimants 1) to 5) an amount each to compensate for the non-material damage incurred by the claimant through the unauthorized use of their respective works in the works according to claims 1) to 5) Amount is at the discretion of the court, but to the plaintiff re 1) an amount of at least € 15,000.00, to the plaintiff re 2) an amount of at least € 2,500.00, to the plaintiff re 3) an amount of at least € 2,000.00, to claimant 4) an amount of at least € 500.00 and to claimant re 5) an amount of at least € 500.00, each plus 5 percent interest above the base rate since pending.

12. Defendants 1) and 2) are convicted of declaring their consent to the deletion of all work registrations with GEMA with regard to the works mentioned in item 1 in favor of the plaintiff, namely in favor of the plaintiff re 1) in relation to the works "S ..." (GEMA-Werk-Nr .: ...), "J ..." (GEMA-Werk-Nr .: ...), "Ic ..." (GEMA works no .: ...), "Sp ..." (GEMA works no .: ...) and "T ..." (GEMA works no. ...), and in favor of plaintiffs 1) and 2) in relation to the works "B ..." (GEMA work no .: ...), "D ..." (GEMA work no .: ...) and "E ..." (GEMA work no .: ...), and in favor of plaintiffs 1) and 3) in relation to works "K ..." (GEMA work no .:. ..), "G ..." (GEMA works no .: ...), "H ...)" (GEMA works no .: ...), "W ..." (GEMA works no .: ...) and "D ..." (GEMA works no .: ...) and in favor of plaintiffs re 2) and 4) in relation to the work "E ..." (GEMA work no .: ...) and in favor of plaintiffs re 1) and 5) in relation to the work " Br ... “(GEMA works no .: ...);

13. To condemn the defendant to 1), to give the plaintiff to 1) information about the real names and addresses of the authors K. ... and Mr. T., and to give the claimant to 2) information about the real names and address of the authors Mr. R. and Mr. E.-H .;

14. to convict the defendant re 1), to the claimant re 1) an amount of € 5,520.00, and to the claimant re 2) an amount of € 2,547.00, as well as to the claimant re 3) an amount of € 2,574.00, as well as to the plaintiff re 4) an amount in the amount of € 1,680.00, and to the plaintiff re 5) an amount of € 1,536.00, each plus 5 percent interest to pay the base rate since pending, as well as to convict defendants re 2), to the plaintiffs re 1) to 5) for the entire hand an amount of € 10,567.20 plus interest at the rate of five percentage points above the base rate since pending pay.

The defendants request

reject the complaint.

The defendants deny that the plaintiffs are composers or lyricists of the above-mentioned titles in the "DS" group. In particular, the defendants deny that the plaintiffs are hiding behind the pseudonyms of the members of "DS". Incidentally, due to the above-mentioned “Recording Contracts” (Annex B 5), all possible copyrights to which the plaintiffs are entitled are held by the company SC., So that the plaintiffs are already not actively legitimized.

The defendants further deny that parts of the plaintiff's sound recordings were used in the disputed sound recordings of the second defendant. Even if such use had taken place, the defendant would have had no knowledge of this. Defendant 2) has an extensive "sound database" in which he collects various musical components (beats, samples, sounds, etc.),

most of which he receives from producers who are friends. Therefore, he does not know where the individual sounds in the database actually come from. When creating the database, however, he made sure not to consider any sounds to which third party rights exist. He also pointed out to the respective "transmitters" of the sounds that they had to be free of third party rights.

Incidentally, the allegedly adopted sound sequences are music of the simplest kind, which cannot be protected by copyright and which is also based in some cases on centuries-old musical forms. Even if sound recordings were to be taken over, the second defendant would have changed them in tempo, rhythm and timbre and the connection with rap rhythms and a new vocal melody in such a way that any elements taken over fade. The defendants also submit two reports on the lack of protectability of any transferred elements and on the question of any free processing of these elements: The report by Mr H. (Annex B 1 / Defendant 1) relates - as a reaction to the report by Mr P. (Annex K 6) - only on three of the disputed music titles, the expert opinion of Mr. W.

The defendants also claim that between the company SC. and the second defendant a legally binding agreement on the use of alleged "samples" had been reached. The unsigned contract between AR and the defendant to 2) (Annex B 1) documents the content of the oral agreement. It is harmless that this contract was not signed, as an oral agreement had already been reached beforehand, which was then confirmed by e-mail. The plaintiffs were also informed of the content of the discussions with the second defendant and had given their consent.

Finally, there is no entitlement to reimbursement of warning costs, as the warnings issued in view of the negotiations that have already taken place with the company SC. were not required. Also, no multiple fee could be charged, since the plaintiffs - if they were members of the "DS" group - were a company under civil law.

The defendants also complain that the subject of the dispute is otherwise pending. Please refer to the procedure under the reference number 310 O 155/08 at the 10th Civil Chamber. There, among other things, the plaintiff and the second defendant are arguing about the violation of the rights of the record producer or the plaintiff's rights to their performances.

For further facts and disputes, reference is made to the pleadings of the parties together with the annexes and the minutes of the oral hearing from November 18, 2009. In a letter dated February 20, 2009, the plaintiffs received the court by post on February 23, 2009 and sent them to the defendants in the party business, quantifying the application for a declaration originally made under section 14). With a brief dated August 28, 2009, which was received by Defendant 2) on September 3, 2009 and Defendant 1) on September 9, 2009, the plaintiffs have withdrawn the threat of coercion originally requested under items 6), 8) and 13) of the lawsuit , Claim 10) based alternatively on principles of enrichment law and supplements the Claim 11) with their respective “minimum request” with regard to monetary compensation.

The parties submitted several unsolved pleadings.

REASONS
The admissible action is justified from the scope apparent in the operative part and otherwise unfounded.

A. The action is admissible.

I. The Hamburg Regional Court is responsible for the decision of the legal dispute. The subject of the proceedings is a violation of copyrights to compositions and texts or their connection through the evaluation of the music titles specified in the applications. This is an unlawful act in which, in addition to the general place of jurisdiction, the special place of jurisdiction according to § 32 UrhG is opened (Kefferpütz in Wandtke / Bullinger, UrhG, 3rd edition 2009, § 105 Rn. 8), whereby the plaintiffs between Both places of jurisdiction are entitled to vote in accordance with § 35 UrhG. According to § 32UrhG, the court in whose district the offense was committed is responsible. This is any place where even an essential element of the offense has been committed, i.e. not only the place of inspection but also the place of success (Kefferpütz, loc. Cit. Rn. 13; Zöller / Vollkommer, Civil Procedure Code, 27th edition 2009, § 32 Rn. 16). Since the titles in dispute are offered for sale nationwide on sound carriers, e.g. nationwide for downloading via the Internet, and defendant 2) also gives concerts in Hamburg, there is in any case a risk of first inspection with regard to distribution, making publicly available and performing to and in Hamburg . The Hamburg Regional Court is therefore in accordance with Section 32ZPO locally responsible (see Kefferpütz, loc. Cit., Rn. 15) Insofar as the plaintiffs also object to the act of evaluation in Austria and Switzerland, Art. 2, 5 No. 3 EuGVVO apply (or the provisions of the Lugano Convention with the same content). From these provisions it follows that legal violations of foreign copyrights committed in another Member State can be asserted both in the Member State in which the respective defendant is based and in the State in which the damaging event occurred (Schricker / Katzenberger, Copyright, Commentary, 3rd edition 2006, before §§ 120ff. Rn. 172).

The defendants, who both have their registered office or place of residence in the city of B., can therefore also be sued in a court in the Federal Republic of Germany for the evaluation of the music titles at issue in Austria and Switzerland. The local jurisdiction of the Hamburg Regional Court follows from Section 32 of the ZPO.

II. The action does not conflict with any other lis pendency of the subject matter of the dispute (Section 261 (3) No. 1 ZPO). This would require that the same parties opposing each other in this legal dispute already have a lawsuit pending on the identical subject of the dispute. Since the defendant to 1) is not involved in the proceedings before the civil chamber 10 (Az.: 310 O 155/08), the objection to other lis pendens could only concern the defendant to 2) anyway. But also in relation to the defendant to 2) is in the process 310 O 155/08another subject of dispute pending. According to the prevailing bipartite definition of the subject of the dispute, the application and the cause of the action, i.e. the underlying circumstances, are decisive for determining the subject of the dispute (Zöller / Greger, ZPO, 27th edition 2009, § 261 Rn. 9, Zöller / Vollkommer, loc. Cit., Incl. Rn. 60 ff; Musielak, ZPO, 7th edition 2009, introduction margin no. 69). While the legal dispute here concerns the infringement of the plaintiffs' copyrights to compositions or texts, the plaintiffs justify their claims in the proceedings before the civil chamber 10 with a violation of their ancillary copyrights. Even if the claims are thus - partly - aimed at bringing about identical legal consequences, they are based on different circumstances in life, so that the facts are not identical.

B. The action is well-founded to the extent shown in the operative part and otherwise unfounded.

I. The claim of the claimant 1) asserted under number 1) for omission against the defendant 1) and the defendant 2) or only against the defendant 1) according to § 97 para. 1 in conjunction with §§ 2 para. 1 No. 1, No. 2, 9, 15 ff. UrhG is only partially founded.

1. The application is sufficiently determined within the meaning of § 253 Paragraph 2 No. 2 ZPO. In view of the comprehensive evaluation of the title at issue by the defendant, it is not necessary to restrict the application to specific forms of use.

2. Like the other plaintiffs, the first plaintiff, as a French citizen, also enjoys the protection of the German copyright law for all of his works in accordance with Section 120 (2) No. 2 UrhG.

3. With regard to the title "S ..." (GEMA-Werk-Nr .: ...) and "J ..." (GEMA-Werk-Nr .: ...) the plaintiff makes against both Defendant 1) and defendant 2) assert an injunction because of the use of the titles "L ..." and "L ... M ... B ...". The claim is justified.

a) The accepted parts of the work are protected by copyright.

aa) In the case of musical works, there are no high demands to be made of creative idiosyncrasy. According to this, it is sufficient if the composer's formative activity - as is regularly the case with hit music - shows only a low degree of creation (Dreier / Schulze, Copyright, 3rd edition, § 2 marginal number 139, BGH GRUR 1968, 321 , 324 - hazelnut; BGH GRUR 1981, 267 , 268 -). The creative achievement can result not only from the melody, but also from its processing, for example from the structure of the tone sequences, rhythm as well as from the instrumentation and orchestration. The decisive factor is the overall impression resulting from the interaction of these elements (Schricker / Loewenheim, loc. Cit., § 2 Rn. 119; BGH GRUR 1991, 533, 535 -, OLG Munich GRUR-RR 2002, 282 -). The required level of design can result from the overall impression, which is so decisive, even if the individual elements, taken by themselves, only show a slight degree of individuality, e.g. through the combination of common stylistic devices (BGH GRUR 1991, 533, 535 -). Outside the scope of copyright protection, on the other hand, lies the purely manual activity and the use of what belongs to the musical common property (Schricker / Loewenheim, aaO § 2 Rn. 120; BGH GRUR 1981, 267, 268 -). According to these principles, the protectability of parts of the work must also be divided (Schricker / Loewenheim, loc. Cit., § 2 marginal number 122). Tone sequences or sound images that already have individual features due to their scope, their variety, the rhythm as well as the selection and composition are protected by copyright (Schricker / Loewenheim, loc. Cit., § 2 Rn. 122). Decisive for the assessment of the height of creation is the opinion of the public who are somewhat familiar with musical questions and are open to it (BGH GRUR 1981, 267, 268 -). Taking into account the statements in the party reports, the chamber is in a position to take the position of the relevant public here.

bb) Taking into account the above standards, the section in question from the composition of "L ..." (7min16sec to 7min28sec) is protected by copyright. According to its overall impression, which the Chamber has gained based on the score (see report by Mr W., Annex B 3 / Defendant 1)) and the auditory impression of the passage, the passage concerned is an individual tone sequence with a recognition effect, which at least in the specifically chosen

instrumentation and rhythm as well as due to the use of the characteristic trill figure on the counting time “3 and” creatively peculiar in the sense of § 2Paragraph 2 UrhG is. Insofar as the defendants adopt the statements from Mr. W.'s report that the passage “was created entirely by hand and based on pre-existing formulas”, this is not relevant. In particular, no concrete examples of previously known works are given that have the previously known one-bar ostinato figure of the upper part in its concrete design with the already mentioned trill figure.

cc) The same applies to the two affected, each four-bar passages of the piece "L ... M ... B ..." (1min02sec to 1min12sec and 2min03sec to 2min14sec), especially for the second passage, which has an additional middle part is enriched. Already this instrumentation, combined with the individuality given here with recognition effect, leads to the fact that the passage goes beyond a school-like application of harmony rules. The upper part of the first passage is melody in the classical sense with an individually expressive arc of tension, in the second segment the three-part counterpoint is condensed into five-part counterpoint.

b) Complainant 1) is actively legitimized as the composer of the pieces "L ..." and "L ... M ... B ...".

aa) According to the extracts from the register of the French collecting society company S. (see Appendix K 2), the plaintiff re 1) is the composer of the title "L ..." and "L ... M ... B ... ". In view of these registrations, simply denying the defendant's authorship is not sufficient. Rather, the defendants should have presented specific circumstances from which it emerges that the entries made by the company S. are incorrect. Since it does not depend on the author's designation on the individual sound carriers of the group "DS", it can also be left open whether the plaintiff to 1) is a member of the group "DS" with the pseudonym "A." Since the active legitimation of plaintiff re 1) with regard to the injunction claim 1) already follows from his position as a composer, it can also be left open at this point

bb) The active legitimation of the plaintiff re 1) is not excluded by the fact that the plaintiff re 1) his rights to the company SC. has transferred. With the “Recording Contracts” of 09/25/1999 and 06/18/2005 as well as the “Copyrights firm license sale contract” dated 12/18/2003 (see Appendix B 5), the members of the “DS” group only have the rights to the sound recordings to the Company Company SC., However, does not transfer the rights to the compositions and texts. This follows on the one hand from the express designation of the first two contracts as "recording contracts" - i.e. "recording contracts" (tape takeover contracts) - and from the wording of the rights transfer clauses, which expressly only transfer the rights to the "master tapes", "Records" or "any kind of performance solicited or authorized by the company" (cf. Section 3.a. of the two “Recording Contracts”, Annex B 5) or the “master recordings” (Section 4 of the contract of 18.12. 2003). In addition, there is the scope of the transfer of rights to company SC. also from the clarifying "Side letter" of April 7th, 2008 (see Annex B 5), in which it is confirmed that - only - the rights from §§85 , 86 UrhG at company SC. lie.

c) Defendants 1) and 2) used the contentious passages in the titles "S ..." and "J ..." composed by the claimant 1) in the form of unfree processing within the meaning of § 23 UrhG by these titles were copied and distributed on sound carriers (§§ 16 and 17 UrhG), made publicly available on the Internet (§ 19a UrhG) and - by the defendant re 2) - were listed (19 UrhG).

aa) For the production of the title “S ...”, the defendant to 2) took over a sound recording of the above-mentioned passage from “L ...” and for the production of the title “J ...” from the above passage "L ... M ... B ... Defendant 2) - as in all cases in which parts of the plaintiffs' titles were taken over -" looped ", ie over the entire length of" S. .. "or" J ... "played repeatedly one after the other. The Chamber is convinced that this is based on its own auditory comparison and the party reports submitted. In particular, the expert opinion by Mr W. is informative, who - as the defendant's expert - states that the comparison of the pieces in question leads him to assume that the second defendant took individual passages from the plaintiffs' pieces. In any case, this is his “subjective hearing impression” (see Appendix B 3 / Defendant 1), pp. 1 and 2). This is fully in line with the result of the auditory comparison by the Chamber. The takeover of the sound recordings, which the Chamber believes, implies taking over the composition on which the recordings are based. Since the plaintiff to 1) his injunctive relief with regard to the titles "S ..." and "J ..." in any case to a use of his can support the composition on which the sound recordings are based, it can be left open at this point whether his texts were also used.

bb) The title "S ..." does not represent free use of the adopted passage from "L ...". Free use within the meaning of Section 24 (1) UrhG can primarily be justified by the distance to which the new work should be holds the borrowed own personal features of the protected older work. In this case, free use presupposes that, in view of the uniqueness of the new work, the borrowed personal features of the older work fade. This is usually done by the fact that the personal traits borrowed from the older work recede in such a way that the older work only appears as a stimulus for new, independent work, that it is only weak in the new work and no longer relevant in terms of copyright Shimmering through (BGH NJW 1993, 2620, 2621 -, BGH GRUR 1999, 984 , 987 -; OLG Munich GRUR-RR 2002, 281 , 282 -). When these standards are applied, free use of the passage from “L ...” is ruled out here, regardless of whether the passage is the melody that characterizes the piece “L ...”. In particular, the transposition by a minor third (see expert opinion by Mr. F. (p. 9, Appendix K 31) as well as the associated slightly changed tempo does not allow the passage from "L ..." to fade behind "S ..." Since the character of the passage, in particular its instrumentation, is rather still recognizable, the modifications by Defendant 2) are in the area of unfree use within the meaning of § 23UrhG. The connection with the spoken word of the defendant to 2) and the drumbeat does not change anything, especially since these only start after the first bars. There can be no question of fading behind the chant. It must also be taken into account that in addition to the passages taken over from "L ..." - as with all of the disputed titles of the defendant 2) - there are no other instruments apart from the drums and thus no further instrumental parts that superimpose the passages.

cc) The same applies to the use of the passages from "L ... M ... B ...", which are only a quarter tone higher in the title "J ..." (see expert opinion MP, Annex K 6). Here, too, spoken vocals and drumbeats only set in after a few bars, so that the passages from "L ... M ... B ..." - almost unchanged - can initially be heard separately.

dd) The defendants used the passages at issue here in the form of unfree processing within the meaning of § 23 UrhG by duplicating and disseminating these titles on audio carriers (§§ 16 and 17 UrhG), making them publicly accessible via the Internet (§ 19a UrhG) and - by the defendant 2) - were listed (19 UrhG).

d) These uses are illegal because the plaintiff to 1) had not granted the defendants any rights in this regard. In particular, the defendants cannot plead that they are using it based on an

agreement between the company SC. and the defendant to 2) is permitted. It is irrelevant whether the company SC., Which in turn only owns the rights to the sound recordings (see above), has even been authorized by the plaintiff to 1) to enter into an agreement with the defendant on the use of the composition or text poetry to meet 2). An agreement between company SC. and the defendant to 2) is in any case not sufficiently demonstrated. The draft contract submitted as Annex B 1 (by the defendant to 2)) does not contain a full description of the contracting parties and the subject matter of the contract, nor a date or a signature. There only the label “AR” is indicated without an address, which is only a brand of the company SC., But not a legally operative sub-unit. The titles to which rights are granted are also not fully designated. The oral agreement claimed by the defendants has also not been presented in sufficient detail. The submitted e-mails from 09/27/2007 (Annex B 2 / defendant re 2)) and from October 8, 2007 (Annex B 3 / defendant re 2)) speak against a binding agreement that has already been reached. In Appendix B 2, reference is made to the document attached to the e-mail as a “draft of a revised settlement for master rights”. In addition, additional titles are requested. Appendix B 3 also mentions the draft and that the contract is to be completed (“I want to finalize this now too”), from which it follows that it has not yet been completed by then is. Finally, the rule of doubt in §154Paragraph 2 BGB that an agreement between company SC has not been reached. If afterwards a notarization of the intended contract has been agreed, then in case of doubt the contract has not been concluded until the notarization has taken place. “Notarization” in the sense of this provision is also the establishment of a privately written document (cf. Palandt / Ellenberger, BGB, 69th edition 2010, § 154 marginal number 4). The formal agreement can be made by conclusive agreement, e.g. by exchanging draft contracts (Palandt / Ellenberger, loc. Cit.). The text of the submitted draft contract (Annex B 1 / Defendant re 2), Section 3 (1), Section 4 (3) and the email dated October 8, 2007 (Annex B 3 / Defendant re 2)) results here clearly that the contract was intended to be signed. Since this did not take place, a contract according to §154 para. 2 BGB has not been concluded. This is also confirmed by the fact that it is undisputed that the license in the amount of € 24,500.00 provided in the draft contract as consideration for the granting of rights was never paid. Since an agreement between company SC. and the defendant re 2) has therefore not materialized, the alternative declared challenge by the plaintiff re 1) no longer matters.

e) The defendants are passively legitimized. The passive legitimation of the defendant 1) follows from the fact that GEMA has given them to GEMA for the two works "S ..." (GEMA work no.: ...) and "J ..." (GEMA work no .: ...) is registered as the original publisher. Although this cannot be taken from the printouts submitted from the GEMA register, in which the original publisher is not listed in detail (cf. Annex K 5), it results from the plaintiffs' undisputed submission. The passive legitimation of defendant 2) results from the fact that he is registered with GEMA as both a lyricist and a composer with regard to the works mentioned (see Appendix K 5).

f. The risk of repetition is indicated by illegal use. To dispel this presumption, it would have been necessary to submit a serious, open-ended, unconditional and adequately punishable declaration of cease and desist (cf. Schricker / Wild, Copyright, 3rd Edition 2006, Section 97 Rn. 42), as requested without success.

2. With regard to the titles "Ic ..." (GEMA works no .: ...), "Sp ..." (GEMA works no .: ...), "I ... "(GEMA-Werk-Nr .: ...)," T ... "(GEMA-Werk-Nr .: ...) makes the plaintiff to 1) an injunction because of the use of passages from the titles" ", "", "" And "" only apply against defendant 1). In this respect, the claim is partially justified.

a) With regard to the title "T ...", the claim is unfounded. Because the affected passage from the piece "" (1min25sec to 1min33sec) is not a work of music according to § 2 under copyright lawPara. 1 No. 2 UrhG. The passage comprises only two bars, each consisting of a full note in the bass part and two half notes in the upper part, with the upper part belonging to the two chords in E minor and C major on the bass. The mere addition of the additional tone f sharp 'as a "non-chordal passage note" (cf. p. 10 / expert opinion Mr. W., Appendix K 3 / defendant to 1)) is not sufficient here to lift the passage out of the area of musical common property. It should be noted that individual tones and chords must remain free in the general interest, otherwise there would be an unacceptable hindrance to creative work (Schricker / Loewenheim, loc. Cit., § 2 Rn. 122; Bullinger in Wandtke / Bullinger, copyright, 3 . Edition 2008, § 2 marginal number 71). The instrumentation is also unable to give the passage marked sufficient peculiarity. The single sounding of a bell is not sufficient.

b) The passages from "" (2min24sec to 2min32sec as well as 2min40sec and 2min48sec) also do not have the individuality required for copyright protection. The passages, which are almost identical, both have only a very simple structure (fifth pendulum movement hey, harmonization through the counter-sounds in C major / E minor). In view of the uniform quarter note rhythm in which the notes b and e sound alternately, the upper part does not have any recognition effect either. Finally, the instrumentation (piano and strings) is also not sufficiently individual to justify the protection of the passage in accordance with Section 2, Paragraph 1, No. 2, Paragraph 2 of the Copyright Act.

cc) It is different with the affected passages from the piece "" (0min26sec to 0min35sec and 1min01sec to 1min10sec). Even if the passages only comprise two bars, they have a recognition effect due to the rhythm. The individual character is reinforced in the second segment by the upper part (violin) with decorative notes (see p. 9, expert report by Mr. F., Appendix K 31). But also the first segment (0min26sec to 0min35sec) has sufficient individuality due to the different rhythms of the different voices.

dd) The two - four bar - passages of the piece "" (0min00sec to 0min16sec and 0min33secs to 0min49sec) are also sufficiently individual. Despite the simple instrumentation and rhythm of the first passage, protection according to Section 2 Paragraph 1 No. 2, Paragraph 2 UrhG is also achieved with this passage. This is especially true of the second passage, which builds on the first and adds a string section with its own melody and counterpoints.

c) Complainant 1) is also actively legitimized as the composer of the pieces "" and "". That he is the composer of these pieces can be seen from the extracts from the register of the company S. (see Annex K 2). Complainant 1) does not have these rights as a composer to the company SC either. transfer. Whether the plaintiff re 1) can demand cease and desist from “” and “” based on rights as a lyricist, because his active legitimation already results from his position as a composer.

d) Defendant 1) used the passages mentioned from "" and "" in the context of the evaluation in the titles "Sp ..." and "I ..." in the form of unfree processing within the meaning of § 23 UrhG, by duplicating and distributing these titles on sound carriers (§§ 16 and 17 UrhG) and making them publicly accessible via the Internet (§ 19a UrhG).

aa) A takeover of recordings of the two passages from "" and "" in the titles "Sp ..." and "I ..." is certain based on the submitted party reports and the auditory comparison of the Chamber.

bb) Defendant 1) cannot successfully invoke free use within the meaning of § 24 UrhG. Even if transposing the original from “” to E minor “brightening” the dark timbres is achieved, the transferred passages in “Sp ...” are still clearly recognizable. Again, spoken chant and drum beat only set in after a few bars, so that there can be no question of the music of the original stepping back behind the rhythmic spoken chant. The same applies to the passages from “I ...” taken over from “Even if the original has been transposed up an octave, it remains clearly audible behind the spoken word and drumbeat.

e) The uses were unlawful, as they took place without the corresponding rights granted by the plaintiff to 1).

f) Defendant 1) is registered with GEMA as the original publisher of the titles "Sp ..." and "I ..." and is therefore passively legitimized.

g) In the absence of the required declaration of cease and desist, there is ultimately a risk of repetition.

II. The application made under number 2) by plaintiffs 1) and 2) for the failure to evaluate the title "B ..." (GEMA work no .: ...) against defendants 1) and 2) or on failure to evaluate the titles "E ..." (GEMA-Werk-Nr .: ...) and "D ..." (GEMA-Werk-Nr .: ...) against the defendant re 1) is justified according to § 97 Abs. 1 UrhG in conjunction with §§ 2 Abs. 1 Nr. 1, Nr. 2, Abs. 2, 9, 15 ff. UrhG.

1. Because of the title "B ...", plaintiffs 1) and 2) have a right to cease and desist against defendants 1) and 2) because of the use of two sections from "".

a. The compositions of the disputed passages of "" are each protected as works of music in accordance with Section 2, Paragraph 1, No. 2, Paragraph 2 of the Copyright Act. Both passages (3min02sec to 3min13sec and 3min29sec to 3min40sec) already have sufficient individuality with recognition effect due to their instrumentation (including the use of a glockenspiel, see p. 3f.

The text of "" is protected as a linguistic work according to § 2 Abs. 1 Nr. 1, Abs. 2 UrhG. Only minor requirements are placed on the protectability of song texts, so that even the triple-line banal text of a Schlager refrain as a so-called small coin still enjoys copyright protection (Dreier / Schulze, loc. Cit., § 2 marginal number 87). Even if the text of “” is therefore quite short, it has sufficient individuality against the background of the existing immense design freedom due to the form and content chosen. The Chamber can judge this on the basis of the original text based on its own language skills; otherwise, this is confirmed by the translation provided.

b. Plaintiffs 1) and 2) are also actively legitimized.

aa. The active legitimation of plaintiff re 1) follows from his position as a composer of "" (cf. excerpt from the register of company S., Annex K 2).

bb. The active legitimation of plaintiff re 2) follows from the combination of his text with the composition of plaintiff re 1) within the meaning of § 9 UrhG.

The title "" represents a work combination within the meaning of § 9 UrhG - consisting of a work of music and a language work (cf. on the work combination of text and music: OLG München ZUM 1991, 432, 433 - Hans. OLG NJW-RR 1995, 238, 239-). The second plaintiff wrote the text for the piece "" after the excerpt from the company S. (cf. Annex K 2). Through the deliberate combination of composition and text, the plaintiffs 1) and 2) form a copyright exploitation community, from which, according to § 242 BGB, certain loyalty and care obligations result (cf.Hans. OLG, NJW-RR 1995, 238, 239 -). In principle, the connected works remain usable independently, so that they can also be used separately outside the connection. However, it follows from the duty of loyalty that the work connection establishes for the authors involved that this use does not endanger the purpose of the previous connection and must not compete with it. For example, the author of a text that has been linked to a composition may not use his text with another composition, because this would contradict the previously agreed purpose of using the song unhindered (cf. Dreier / Schulze, § 9 marginal number 25; Ahlberg in Möhring / Nicolini, UrhG, 2nd edition 2000, § 9 Rn. 20). If the defendant to 1) would have wanted to acquire usage rights to the composition at issue, so the plaintiff to 1) could not have simply granted this without the consent of the plaintiff to 2), since the other use of the composition could endanger the evaluation of the work connection. If the second plaintiff could take action against a use that the first plaintiff would have allowed the first defendant without his consent, he can - even more so - take action against a use of the composition that neither the first plaintiff would have allowed) nor the second plaintiff have allowed.

The second plaintiff can thus independently assert claims due to the use of the affected part of the composition (see OLG Munich, ZUM 1991, 432, 433 -). The fact that the defendant to 1) only adopted the composition and not the text is irrelevant. The active legitimation of the second plaintiff follows from his position as part of the community of exploitation, which is also intervened in the case of a mere takeover of the composition (see OLG München ZUM 1991, 432, 433 -).

c) The two above-mentioned passages from "" have been used by the defendants 1) and 2) in the title "B ...".

aa) The board is convinced that sound recordings of the passages mentioned from "" have been taken over. The repetition of the sound recordings is clearly audible here at the beginning of "B ..." even for the musically untrained ear (Mr. F. alludes to this in his report when he says that the samples are often used by the second defendant) "Clumsily" were made, cf. S. 2 / Annex K 31). Since the transfer of the sound recordings - and the associated composition on which the recordings are based - interfered with the work combination of composition and text, it is irrelevant that the text of "" was not adopted.

bb) "B ..." does not represent the free use of the two passages taken from "". Defendant 2) has only transposed the passages upwards by a semitone. Nonetheless, both passages are still clearly recognizable, especially at the beginning of "B ...", as spoken vocals and drum beats only start again after a few bars.

cc) The defendants used the passages at issue here in the form of unfree processing within the meaning of Section 23 UrhG, by duplicating and distributing these titles on sound carriers (Sections 16 and 17 UrhG), making them publicly accessible via the Internet (Section 19a UrhG) and - by the defendant 2) - were listed (19 UrhG).

d) These uses are also illegal, since the plaintiffs 1) and 2) have not granted the defendants any rights of use for them.

e. The passive legitimation of Defendant 2) follows from the fact that he is registered with GEMA as a composer and lyricist with regard to the title "B ..." (GEMA work no .: ...) (see Appendix K 5). Defendant 1) 's passive legitimation results from the fact that it is registered with GEMA as the original publisher.

f. In the absence of the required declaration of cease and desist, there is a risk of repetition.

2. With regard to the title "E ..." (GEMA-Werk-Nr.: ...) and "D ..." (GEMA-Werk-Nr.: ...) the plaintiffs re. 1) and 2) only the defendant to 1) because of the use of excerpts from the titles "D ... M .." and "". In this respect, the claim is also justified.

a) With regard to the piece "D ... M ..", the use of two segments (0m40sec to 1min00sec and 1min20sec to 1min40sec) is in question. Both passages are copyrighted according to § 2Para. 1 No. 2, Para. 2 UrhG. The passages, which both comprise four bars, convey an individual overall impression, which results primarily from the instrumentation, especially the melodic violin part. Even if the defendant's appraisers point out that both segments are based on the Malaguena bass, widespread in Spanish folk music as well as in art music of the 19th century, with the associated, characteristic chord progression, they do not at the same time certify that the passages are necessarily predefined variants (cf. P. 11 of the report by Mr. W., Annex B 3 / defendant to 1) and p. 4 of the report by Mr. H. (Annex B 1 / defendant to 1)). Furthermore, no specific, previously known work of music or a previously known formula is named that corresponds to the specified passages. The two affected passages of the piece "" (2min24sec to 2min40sec and 2min56sec to 3min12sec) have, according to their overall impression, sufficient individuality with recognition value. In particular, the rhythm of the violoncello part in combination with the design element of the imitating two-part voice gives the passages their peculiar character; in the second passage it is enriched by the contrapuntal second violoncello part.

b) Complainant 1) is actively authorized as a composer of "D ... M .." and "". With regard to “”, this follows from the excerpt from the register of company S. (Annex K 2). With regard to “D ... M ..” there is no corresponding excerpt from the register of company S. (cf. Annex K 2). However, such a registration follows from the letter from GEMA dated November 13, 2007 (Annex K 30), since in it GEMA refers to a registration of the work for Plaintiff 1) by the company S. The active legitimation of plaintiff re 2) results from the connection of his text to "D ... M .." or to "" with the respective composition of plaintiff re 1). According to the excerpt from the register of company S. (cf. Annex K 2), the second plaintiff is the lyricist of "" and according to the letter from GEMA dated November 13, 2007 (Annex K 30), the lyricist of "D ... M .. ".2 para. 1 no. 1, para. 2 UrhG. The low requirements for the level of design of language works are again met here due to the content and form of the text. The second plaintiff can therefore appeal against the adoption of part of the composition due to the work connection within the meaning of § 9 UrhG.

c) The passages mentioned from "D ... M .." and "" have also been used by the defendant 1) in the title "E ..." or "D ...".

aa) Based on our own listening comparison with a clear result, the Chamber is convinced that sound recordings of the passages from "D ... M .." and "" have been taken over. Since this

intervened in the work combination of composition and text, it is irrelevant that the passages taken over are text-free.

bb) "E ..." does not represent a free use of the two adopted passages from "D ... M ..". Here, too, the passages from "D ... M .." (by an octave) were up transposed (see p. 5 / expert opinion by Mr. F., Appendix K 31, who describes the associated playback at double speed as the “Mickey Mouse” distortion effect). The two passages of "D ... M .." - especially the melodic violin part - remain clearly recognizable. Again, spoken vocals and drum beats only set in after a few bars, so that they couldn't overlay the composition at least at the beginning of "E ...".

In “D ...” too, the sequences taken from “” were not used freely within the meaning of Section 24 UrhG. The original of the plaintiffs was again transposed upwards (by a minor sixth). Nonetheless, the catchy melody of the sequences from "" remains clearly recognizable. In particular, this does not fade behind the spoken word and drum beat of "D ...", but is clearly perceptible.

cc) Defendant 1) has reproduced the above-mentioned compositions, distributed them on sound carriers and made them publicly accessible on the Internet (§§ 16, 17, 19, 19a UrhG).

d) These uses are illegal by the defendant, since the plaintiffs 1) and 2) have not granted the defendant 1) any rights of use.

e) The passive legitimation of defendant 1) results from the fact that it is registered with GEMA as the original publisher of "E ..." and "D ...".

f) In the absence of the required declaration of cease and desist, there is also a risk of repetition.

III. The application made under number 3) of the plaintiffs 1) and 3) for the omission of the evaluation of the titles "K ..." (GEMA-Werk-Nr .: ...), "G ..." (GEMA-Werk -Nr .: ...), "H ...)" (GEMA-Werk-Nr .: ...), "D ..." (GEMA-Werk-Nr .: ...) as well as "W ... “(GEMA-Werk-Nr .: ...) according to § 97 Abs. 1 UrhG in conjunction with §§ 2 Abs. 1 Nr. 1, Nr. 2, Abs. 2, 9, 15 ff. UrhG is justified.

1. The two passages - each comprising four bars - from the piece "" (2min46sec to 2min56sec and 3min06sec to 3min17sec), to which the plaintiffs are asserting rights, are copyrighted as works of music according to § 2 para. 1, para. 2 UrhG. Both have a recognition effect. This combined with the instrumentation, especially the piano part of the second passage (see page 8 / expert report by Mr. F., Appendix K 31) establishes sufficient individuality.

This also applies to the relevant passage made in the piece "" (2min32sec to 2min48sec). The individual overall impression is achieved here by the instrumentation and melody of the upper part. If the expert Mr. W. explains that the formulation of the upper part is based on transition figures that belong to the "musical basic vocabulary" (see p. 13, Annex B 3 / Defendant 1)), this is without a description of a comparable previously known Figure not understandable.

From the piece "" two four-bar segments (5min27sec to 5min38sec and 6min03sec to 6min15sec), which are supposed to have been taken over into the piece "H ...)", are at issue.

Both passages have the required individuality. In the first passage this is primarily achieved through the use of rhythm and in the second passage through the instrumentation (strings, singing voice, military drum).

From the piece "", two passages are also controversial (0min00sec to 0min08sec and 0min16secs to 0min24sec). The peculiar overall impression of the first passage results in particular from the instrumentation (use of a tubular bell) and the final note (c " 'instead of the F sharp' 'that is to be expected in the E minor scale). The peculiarity of the second passage follows from the violin part, which enriches this passage with contrapuntal.

From the piece "" there is a passage (3min01sec to 3min09sec) in dispute. This passage gets its peculiar character mainly from the guitar part and "instrumentation" (vocal part, guitar and strings). Even the defendant's appraiser speaks of “violations of the rules of composition and craftsmanship” with regard to this passage and thus just confirms that the sequence goes beyond the purely manual (see p. 28 / Appendix B 3 / Defendant 1)).

2. The active legitimation of the plaintiff to 1) with regard to the composition of the work parts from "", "", "" results from the register extracts of the company S. (Annex K 2). Complainant 3) wrote the texts for the named titles, which together with the respective composition represent a work combination within the meaning of § 9 UrhG. Due to the form and content chosen, the texts are protected as linguistic works in accordance with Section 2 Paragraph 1 No. 1, Paragraph 2 of the Copyright Act. The fact that the third plaintiff is the author of the texts can also be seen here from the corresponding extracts from the register of company S. (Annex K 2). The active legitimation of plaintiff to 3) results from the connection of his text with the composition within the meaning of § 9 UrhG.

3. The passages from "", "", "", "" and "" referred to in number 1 are also used by the defendants 1) and 2) in the titles "K ...", "G ..." "," Are you something (H ..., "D ..." and "W ...").

a) The Chamber is again convinced, based on the submitted reports and its own hearing impression, that the sound recordings of the relevant passages have been taken over. Since this interfered with the work combination of the composition on which the recordings are based and the text, it does not matter - with regard to the rights of plaintiff re 3) - that the passages concerned are free of text.

b) In "K ..." the two passages from "" are again only used unfree within the meaning of § 23 UrhG. The passages were taken over practically unchanged, in particular they were not transposed this time. They therefore remain clearly recognizable. This applies to the first passage in particular at the beginning of "K ...", where it is heard without chants and drums. The second passage, due to its formative piano part, clearly emerges from behind the drums and spoken vocals (which stop at the end).

Also in “G ...” the adopted passage is from “” - even if it was again transposed by a small sixth upwards (see p. 6 / expert opinion Mr. F., appendix K 31 as well as p. 12 / expert opinion Mr. W ., Annex B 3 / defendant to 1)) - recognizable. Again, there can be no question of an overlay of spoken word and drums, especially since both only begin after a few bars in which only the composition of the first plaintiff can be heard.

In “Bist Du was (H ...” both passages from “” were transposed by a minor third to E flat minor. Even if the drums have a very distinctive character in the processing of the second passage, this prevents this - like all the others Modifications - not the shining through of the original passages, so the percussion remains the only other instrument used and as such does not overlay the compositions of the plaintiffs.

The passages from "" were transposed by a small sixth to C minor to underlie the spoken word and drum beats from "D ...", but they are also clearly recognizable. Again, chanting and drums only start after a few bars, at the end of "D ..." the chanting stops. At these points in particular, the recognition effect with regard to the passages from "" is particularly high.

In “W ...” the adopted passage from “” is also transposed upwards by a small sixth, so that there is a kind of “Mickey Mouse effect” here. Nonetheless, the passage remains clearly recognizable here - again especially before the onset of drums and spoken vocals.

c. The defendants used the passages at issue here in the form of unfree processing within the meaning of § 23 UrhG by duplicating and distributing these titles on sound carriers (§§ 16 and 17 UrhG), made publicly accessible via the Internet (§ 19a UrhG) and - by the defendant to 2) - were listed (19 UrhG).

4. These uses are also unlawful, since the plaintiffs 1) and 3) have not granted the defendants any rights of use.

5. Passive legitimation follows from the GEMA entries. The second defendant is with regard to the titles "K ...", "G ...", "Are you something (H ..." D ... "and" W ... ") as composer and lyricist, Defendant 1) each registered as the original publisher at GEMA.

6. In the absence of the required declaration of cease and desist, there is a risk of repetition.

IV. The application made under number 4) by plaintiffs 2) and 4) against defendants 1) and 2) for an omission of the evaluation of "E ..." (GEMA work no .: ...) according to Section 97 (1) UrhG in conjunction with Sections 2 (1) No. 1, No. 2, Paragraphs 2, 9, 15 et seq. UrhG is unfounded.

The two passages from the title "" (5min38sec to 5min49sec and 5min50sec to 6min02sec), against the use of which the plaintiffs here object, are not protected by copyright as a work of music according to § 2 Paragraph 1 No. 2, Paragraph 2 UrhG. Tone sequences that only consist of a few tones or chords are usually missing the protection from § 2Paragraph 1 No. 2, Paragraph 2 UrhG required individuality. Tones and chords must remain free in the general interest, otherwise there would be an unacceptable hindrance to creative work (Schricker / Loewenheim, loc. Cit., § 2 Rn. 122; Bullinger in Wandtke / Bullinger, Copyright, 3rd edition 2008, § 2 Rn 71). The first segment is limited to a sequence of four chords above the sustained note A in the bass and is therefore not sufficiently individual by the standards just mentioned. The second segment is still supplemented by transition figures compared to the first segment. However, an individual overall impression that goes beyond the first passage does not arise because the transition figures do not have a coherent melody character and no arc of tension. but only double the notes contained in the chords. The only exception is the b in bar 7, which within the triplet c'-b-c 'is just a so-called alternating note with only a slightly varying character. But that does not even meet the low protection requirements.

V. The claim of the plaintiff re 1) and 5) against the defendants re 1) and 2) to the failure to evaluate "Br ..." (GEMA work no.: ...) according to § 97 Abs. 1 UrhG in conjunction with §§ 2 Abs. 1 Nr. 1, Nr. 2, Abs. 2, 9, 15 ff. UrhG is again justified.

1. The two four-bar segments from "V ...", to which the plaintiffs 1) and 5) assert rights (0min00sec to 0min08sec and 1min03sec to 1min11sec), are in accordance with § 2Para. 1 No. 2, Para. 2 UrhG. It can be left open whether the upper part of the first segment comes from the centuries-old Gregorian chant (see p. 26 f./ expert opinion by Mr W., Annex B 3 / defendant to 1)). Even if you “think away” this upper part, the passage has a recognition value due to its additional elements (instrumentation and rhythmization). This follows from the fact that the choir part cannot be heard in “Br ...”, but the first passage is clearly audible (see below). The string part in particular is formative for the piece "V ..." and even gives the passage a melodic character.

2. The active legitimation of plaintiffs 1) and 5) with regard to the two segments of "V ..." does not result from an extract from the register of company S. (cf. Annex K 2), for which no registration has apparently taken place (see letter from GEMA dated November 13, 2007, Annex K 30), but from a registration with GEMA, in which the first plaintiff is registered as a composer and the fifth plaintiff is registered as a lyricist. The text of "V ...", which is exceptionally in English, is short, but given the low standards of the creative height of works of poetry (cf. Dreier / Schulze, op. Cit., § 2 Rn. 86 f.) In terms of form and content is copyrighted according to § 2Paragraph 1 No. 1, Paragraph 2 of the Copyright Act. Due to the work connection of the composition of the plaintiff re 1) with the text poetry of the plaintiff re 5), this can also take action against the interference in the work connection associated with the use of the composition.

3. The two passages from "V ..." mentioned above were also used in "Br ...".

a) Again, based on the party reports and its own hearing impression, the Chamber is certain that the plaintiffs' disputed sound recordings were taken over in "Br ...".

b) The modifications of the composition of "V ..." remain in the area of unfree processing within the meaning of § 23 UrhG. Both passages have been transposed upwards here, but still do not fade behind spoken word and drum beat, which again only come in after a few bars of "Br ..." and stop at the end. In particular, the melodic string part can be heard clearly. Even if the choir part of the first segment does not sound, both passages are still clearly recognizable.

c) The defendants used the passages at issue here in the form of unfree processing within the meaning of § 23 UrhG by duplicating and disseminating these titles on sound carriers (§§ 16 and 17 UrhG), making them publicly accessible via the Internet (§ 19a UrhG) and - by the defendant 2) - were listed (19 UrhG).

4. These uses are also unlawful, since the plaintiffs 1) and 5) have not granted the defendants any rights of use.

5. The passive legitimation results from the fact that Defendant 2) is registered with GEMA as a composer and lyricist with regard to the title "Br ..." and Defendant 1) as the original publisher.

6. In the absence of the required declaration of cease and desist, there is also a risk of repetition.

VI. The claim to information asserted under point 6) against the defendant 1) about the granting of exploitation rights to the disputed titles or about income from the exploitation of these titles is justified in accordance with §§ 242 , 259 , 260 BGB to the extent in to which the plaintiffs re 1), 2), 3) and 5) have a right to cease and desist pursuant to Section 97 (1) UrhG in accordance with items 1 to 4 of the operative part . Otherwise the claim is unfounded.

1. The application is sufficiently determined in the sense of § 253 Paragraph 2 No. 2 ZPO, in particular the period for which information is requested is sufficiently concretely limited by the addition “from the respective publication date”.

If the title "I ..." (GEMA work no.: ...) is missing in application 6), this is obviously due to an oversight. The title in motion to 10), which is aimed at determining damages, is expressly mentioned. It can therefore be assumed that the title will also be included in the right to information, which is intended to enable the subsequent quantification of the compensation. The application to 6) was therefore interpreted accordingly by the Chamber (cf. Musielak, ZPO, 7th edition 2009, § 308 ZPO Rn. 3).

2. Die geschuldete Auskunft bezieht sich auch auf Auswertungshandlungen außerhalb Deutschlands. Erst aufgrund der Auskunft darüber, in welchen Territorien außerhalb Deutschland noch ausgewertet wurde, können die Kläger prüfen, ob eine Anwendung des Schutzlandprinzips dazu führt, dass sie für die entsprechenden Auswertungshandlungen auch in Deutschland Schadensersatzansprüche geltend machen können.

3. Contrary to the opinion of the defendant, the claim to information about all income that the defendant 1) has achieved by granting rights is not aimed at an impossible performance. The information expressly excludes those evaluation rights that are exercised by GEMA. The reasons why the defendant 1) should not be able to provide information about her income has not been comprehensibly explained.

4. The prerequisites for a claim for damages from § 97 Abs. 1 UrhG, the numbering of which the information is intended to serve, are to the extent that the plaintiffs can demand an omission according to items 1. to 4. of the operative part.

a) By using the titles "S ..." (GEMA work no .: ...), "J ..." (GEMA work no .: ...) , "Sp ..." (GEMA works no .: ...), "I ..." (GEMA works no .: ...), "B ..." (GEMA works No .: ...), "E ..." (GEMA works no .: ...), "D ..." (GEMA works no .: ...), "K .. . "(GEMA works no .: ...)," G ... "(GEMA works no .: ...)," H ...) "(GEMA works no .:. ..), "D ..." (GEMA-Werk-Nr .: ...), "W ..." (GEMA-Werk-Nr .: ...) and "Br ..." illegally in the copyrights of the plaintiffs intervened (see sections BI to BV).

b) The fault of the defendant 1) necessary for a claim for damages is given. Anyone who uses a possibly protected intellectual service of a third party must first ensure that they are authorized to use it. In this respect, there is an obligation to examine and inquire (Dreier / Schulze, UrhG, 3rd edition 2008, § 97 Rn. 57). Expert groups such as producers and publishers are subject to an increased duty of care (Schricker / Wild, Copyright, 3rd Edition 2006, Section 97 Rn. 52; Dreier / Schulze, loc. Cit.). Particularly in view of the fact that so-

called sampling, i.e. the adoption of parts from third-party sound recordings, is widespread in the field of rap or hip hop, to which the music of the second defendant can be assigned here (see BGH, GRUR 2009, 403, 405 - metal on metal), the defendant 1) should in any case have inquired where the samples in dispute come from. The "sampling" is also clearly audible in some places (cf. in particular the beginning of the title "B ..." and expert opinion by Mr. F., Annex K 31). In addition, the first defendant had to be aware that the second defendant could not have recorded all of the music for the titles mentioned in the previous paragraph (piano, guitar, strings, (female) voices). According to the party submission, it cannot be assumed that the second defendant would be able to compose or arrange himself. It was therefore more than obvious that the second defendant had used the help of third parties or advance payments from third parties in the production. In any case, this should have caused Defendant 1) to ask Defendant 2) about the origin of the music with which the titles are underlaid. If, according to the information provided by the defendant on 2), there are still doubts, it may not be used. Since the second defendant in this legal dispute is not in a position to state his right of use (see VII.3 below), it can be assumed that he could not have said more to the first defendant either. According to the facts, the defendant 1) therefore did not deal with the issue of rights of use in an appropriate manner. In doing so, she acted negligently. Since the second defendant in this legal dispute is not in a position to state his right of use (see VII.3 below), it can be assumed that he could not have said more to the first defendant either. According to the facts, the defendant 1) therefore did not deal with the issue of rights of use in an appropriate manner. In doing so, she acted negligently. Since the second defendant in this legal dispute is not in a position to state his right of use (see VII.3 below), it can be assumed that he could not have said more to the first defendant either. According to the facts, the defendant 1) therefore did not deal with the issue of rights of use in an appropriate manner. In doing so, she acted negligently.

VII. The claimant's right to consent to GEMA's disclosure of information against defendants 1) and 2) about the revenues to be billed by GEMA (insofar as these were not yet the subject of the GEMA billing as of October 1, 2007) is also in accordance with Sections 242 , 259 , 260 BGB to the extent that the plaintiffs 1), 2), 3) and 5) have a right to cease and desist in accordance with Section 97 (1) UrhG according to items 1 to 4 of the operative part . Otherwise the claim is unfounded.

1. The application is sufficiently determined within the meaning of § 253 Paragraph 2 No. 2 ZPO. In particular, it is sufficiently limited in terms of time by referring to the publication date of the works. The fact that the consent extends to the information that the defendants would receive themselves from GEMA results from the limited scope that consent from the defendant can legally only have and therefore does not require clarification in the application.

2. Insofar as the title “I ...” is missing in the request to 7), this is again clearly based on an oversight, so that the Chamber has also interpreted the request in this respect.

3. Defendant 1) is at fault for a claim for damages with regard to the evaluation of the titles specified in the operative part 1 to 4 (see VI.4.b) above. The second defendant also acted culpably. The reference to the fact that he has an extensive "sound database" with samples and sounds, most of which are sent to him by third parties, and that he has absolutely no knowledge of where the individual sounds actually come from does not exonerate the defendant 2). Even if the second defendant was "leaked" the sound recordings used here by third parties, which has not yet been substantiated and proven with regard to the concrete recordings, it would have to be taken into account that the defendant produced a total of 16

titles here, by underlaying these with - a total of almost 30 - samples with compositions by the plaintiffs. On the one hand, it is unlikely that the second defendant accidentally selected so many recordings by the plaintiff from his "sound database". On the other hand, it was also obvious that third parties had rights to this large number of recordings used. Anyone who may want to use protected third-party services must, however, inquire - possibly by asking - whether they are entitled to this (see above, cf. Dreier / Schulze, UrhG, 3rd edition 2008, § 97 Rn. 57). This is particularly true here in view of the extent to which foreign compositions have been used. Defendant 2) produced half an album ("V ...") by extracting parts from sound recordings or Composition of the plaintiff as permanent "loops" made the basis of his chant. Against this background, he could not be satisfied with pointing out to the alleged "transmitters" of samples or sounds that they had to be free from third party rights.

Although the plaintiffs have not yet made any claims for damages against the second defendant, GEMA must recognize a need for legal protection with regard to the information sought. In this way, the plaintiffs - for example on the basis of the information to be provided - can also later raise claims for damages against the second defendant.

4. The defendant's consent to GEMA providing information on all billable revenues is also required. A detailed billing is not available so far, apart from the GEMA billing as of October 1st, 2007, which is excluded from the operative part, so that the plaintiffs have not yet been able to quantify their claims in connection with rights that are exercised by GEMA.

VIII. Finally, the claim asserted under item 8) against the defendant 1) for the provision of information about the granting of exploitation rights to sub-publishers or about the thereby achieved and expected revenues according to §§ 242 , 259 , 260 BGB with regard to the titles specified in numbers 1 to 4 of the operative part are justified, otherwise unfounded.

1. The application is sufficiently determined within the meaning of Section 253 (2) No. 2 ZPO. The specification with regard to the period about which information is to be provided follows again by referring to the respective publication date of the title. Insofar as the title “I ...” is also missing in the request re 8), this is again based on an error, so that the Chamber has also interpreted the request in this respect.

2. Contrary to the opinion of the defendant 1), the application is not directed towards an impossible performance in that it includes proceeds that the defendant 1) is not yet aware of. Insofar as the plaintiffs request information about "future expected evaluation proceeds", this request does not, of course, refer to previously completely uncertain proceeds, but to proceeds from evaluations that have already been made, which have only not yet been paid to the defendant 1), but based on the reason have already arisen. This follows on the one hand from the wording “expected” and on the other hand also results from the fact that the plaintiffs want to prevent with their lawsuit the defendant 1) from re-licensing the disputed titles and thus generating proceeds for which currently none Basis exists.

3. The prerequisites for the right to information are also present, in particular the defendant 1) acted culpably in the evaluation of the titles specified in the operative part 1) to 4) (see VI.4.b) above.

IX. The claim of the plaintiffs 1) to 5) for damages according to § 97 Abs. 1 UrhG in connection with §§ 2 Abs. 1 Nr. 1 or 2 , 9 , 15 ff. UrhG asserted under point 9) is not founded.

The plaintiffs here expressly commit themselves to a calculation of the damages based on the license analogy (see in particular page 30 of the lawsuit of April 11, 2008 and page 71 of the brief of September 26, 2008). To calculate the appropriate license, according to the plaintiffs' submission, certain regulations of GEMA's distribution plans A and B should then be used for processing. It follows that the plaintiffs are entitled to 100% of the proceeds. The publishing share of defendant 1) of 40% reported in the information should therefore be extrapolated to an amount of 100%. This is the appropriate license that the plaintiffs could demand from the first defendant. This lecture does not have the coveted legal consequence.

In principle, the injured party has the right to choose between the three types of possible damage calculation - calculation by way of the license analogy, assertion of the specific damage and surrender of the infringer's profit (Dreier / Schulze, loc. Cit., § 97 marginal number 58). The choice of calculation based on license analogy is therefore not objectionable as such. However, it does not provide any basis for the plaintiffs' calculation.

The BGH justifies the allowance of the calculation of damages according to the license analogy with the equitable consideration that no one should be in a better position as a result of the unauthorized interference with copyright law than they would have been in the case of a properly sought and granted permission by the right holder (cf. GRUR 1972, 189 , 190 - wall socket II; GRUR 1990, 1008 , 1009 - license analogy). This - on the basis of fairness - made comparison with the proper licensee also determines the scope of the compensation to be paid according to the license analogy. The infringer should not do better, but not worse off than a contractual licensee (Dreier / Schulze, op. cit., § 97 marginal number 62).

The collective bargaining systems of the collecting society within the meaning of § 13 UrhWG provide a point of reference for the assessment of the appropriate license, as they reflect the participation that exploiters and authors consider appropriate in certain areas (cf. v. Wolff in: Wandtke / Bullinger , Copyright, 3rd edition 2008, § 97 Rn. 75; Dreier / Schulze, loc. Cit., § 97 Rn. 63). It can therefore be assumed that a proper licensee would also have paid the fixed tariffs. However, the plaintiffs do not base their calculation on GEMA's tariffs, but on GEMA's distribution plans. However, these have a completely different subject matter: While tariffs comprise only a fraction of the gross income of the users (cf. Dreier / Schulze, loc. Cit., § 13UrhWG Rn. 16 f.), Distribution plans regulate the internal distribution of the entire income among those involved (Section 7 UrhWG). They naturally do not take into account any costs and expenses that the respective user has in addition to the costs of acquiring rights. For this reason alone, it is not possible to determine on the basis of the distribution plans which license a proper, contractual licensee would have paid.

The application of the distribution plans by the plaintiff therefore leads - in the absence of costs and expenses - to the fact that the plaintiffs do not desire a fraction of the gross income of the defendant 1), but their entire turnover, which results from the information. Defendant 1), who could only have costs but no income per se with such a calculation, would thus be in a significantly worse position than a proper licensee. If it cannot be justified by means of the license analogy that the plaintiffs are entitled to payment of the entire publisher's shares listed in Annexes K 16 and K 17 (this would be the entire turnover of defendant 1)), then this applies even more to these, in addition, required shares from the composer or lyricist (60% of the total proceeds).

The “concept of compensation” (Hefermehl, GRUR 1972, 191), on which the license analogy is based, has its origin in the law of enrichment. The calculation of damage by means of an appropriate license is therefore consistent with the license in the right to enrichment (Schricker / Wild, loc. Cit., § 97 marginal number 60). A look at what the plaintiffs could demand from the defendant 1) from the point of view of enrichment law (on which the motion to 9) is not based, confirms the indecision of the calculation presented: About § 812 para. 1 sentence 1, 2. Old. BGB or § 816 Abs. 2 BGB the plaintiffs could demand the publisher's share as “something obtained”, but not the share of lyricist and composer. The defendant 1) could then also use § 818 Paragraph 3 BGB counter their own costs and expenses, so that the claim would be significantly below the figure in the application to 9).

Even if the plaintiffs would not base their quantified claim on the calculation according to the license analogy, but on the surrender of the profit of the defendant 1), they could not claim payment in the amount requested. Apart from the fact that the plaintiffs have expressly chosen the calculation based on the license analogy, the costs and expenses of the defendant 1) would also have to be deducted from the profit skimming (cf. Dreier / Schulze, loc. Cit., § 97 marginal number 67). The defendant's entire proceeds could therefore not be based on any of the possible calculation methods.

Since the plaintiffs did not submit any parameters other than GEMA's distribution plans for calculating the appropriate license, the claims for damages asserted under item 9) are entirely unfounded.

X. The application asserted under section 10) to establish the liability of defendant 1) to pay damages is justified in accordance with Section 97 (1) UrhG in conjunction with Sections 2 (1) No. 1, No. 2, 9, 15 ff. as far as the plaintiffs re 1), 2), 3) and 5) according to the operative part 1 to 4 can demand that the defendant re 1) refrain from evaluating the titles in dispute. If there is no injunction, the application is therefore unfounded.

1. Insofar as the plaintiffs refer to the evaluation “according to number 1” in the application re. As can be seen from the following list of the individual disputed titles, the intended determination of the damage is recognizable, which has arisen from the evaluations described in the applications for items 1) to 5).

2. Defendant 1) is fundamentally obliged to pay damages due to the evaluation of the titles mentioned in the operative part 1 to 4. The use is illegal and also culpable (see above).

3. The determination interest required for the application in accordance with Section 256, Paragraph 1 of the German Code of Civil Procedure (ZPO) is also present, since it is only partially possible to quantify the compensation owed on the basis of the information provided so far.

4. The claim exists only to the extent that the plaintiffs re 1), 2), 3) and 5) are also entitled to injunctive relief against the defendant re 1). Insofar as the application also extends to the damage that the plaintiffs have suffered or will suffer in the future because the titles specified in the operative part 1 to 4 were not registered with GEMA with “the stipulation of the authorship of the plaintiff”, it is therefore unfounded. Defendant 1) is only registered with GEMA as the original publisher, not as an "author". Therefore, it cannot be held liable for the fact that the musical works named in the operative part 1 to 4 have not been registered with

the “condition of the plaintiff's authorship”. In this respect, only defendant 2) could be claimed, who is registered as a composer or lyricist, therefore as an author.

XI. The claim of the plaintiff for payment of monetary compensation in accordance with Section 97 (2) UrhG against the defendants 1) and 2) applied for under item 11) is justified only with regard to the defendant 2) in the amount specified in the operative part and with regard to the defendants to 1) unfounded. As follows from the different levels of the specified minimum amounts, defendants 1) and 2) are not jointly and severally liable for the payment of monetary compensation by the plaintiffs, but side by side.

1. The claim to payment of monetary compensation asserted against the defendant 1) is entirely unfounded.

According to Section 97 (2) UrhG old version and Section 97 (2) sentence 4 UrhG new version, authors and certain beneficiaries of ancillary copyright protection can, if the infringer is guilty of intent or negligence, also receive monetary compensation because of the damage that is not pecuniary damage request if and to the extent that this is equitable. The question of whether monetary compensation is to be granted always requires an equity check based on the specific individual case.

According to established case law, compensation for immaterial damage through monetary compensation requires that there has been a serious violation of moral rights (BGH GRUR 1971, 525, 526 -) and that the impairment cannot be satisfactorily compensated for in any other way (BGH GRUR 1970, 370, 372 f. -; BGH NJW 1995, 861, 864 -). Whether there is a serious violation of personal rights depends in particular on the significance and scope of the interference, the type and nature of the violation, intensity and duration of the violation, also on the cause and motivation of the person acting as well as the degree of his fault (BGH NJW 1995, 861 , 864 -; BGH GRUR 1972, 97, 99 -, Schricker / Wild, loc. Cit., § 97 Rn. 78).

The requirements for the granting of monetary compensation are strict on the basis of previous case law (cf. OLG Hamburg GRUR 1990, 36 -). The individual case must then differ significantly from the normal case of an unauthorized transfer of services in terms of the overall circumstances to be taken into account. As a general, practically in every case to be used sanction against the disregard of the exclusive rights of the author in the unauthorized use, § 97 Abs. 2 UrhG is not designed (see OLG Hamburg GRUR 1990, 36 -).

In accordance with these standards, the plaintiffs cannot demand any monetary compensation from the defendant 1). The defendant 1) cannot be charged with a serious violation of the moral rights of the plaintiff. In particular, the intervention and fault of the defendant 1) are not sufficiently serious. The takeover and processing of compositions by the plaintiff was done by the defendant to 2) alone, without the knowledge and will of the defendant to 1). Defendant 1) restricts itself to evaluating the title at issue from a publisher's point of view. You can only be reproached for having relied on the fact that the second defendant only uses services in his productions that he is allowed to use.

The fact that Defendant 1) received the first indications of possible legal violations in April 2007 and nevertheless continued the evaluation does not change this assessment in the result. So at first only the company SC. turned to the defendant (see Appendix K 9), who then also negotiated a licensing with the defendant re 2). At that time, defendant 1) did not act in an increased degree of negligence in view of the ongoing negotiations with the only claimant

until then, by not stopping the evaluation of the title at issue. When the plaintiffs themselves turned to the defendant 1) in October / November 2007, the main evaluation phase was the title, most of which were first published in September 2006, already done. The intervention by the defendant 1) does not differ significantly from the “normal case” of an unauthorized transfer of services, especially since the role of the defendant 1) was limited to the evaluation of productions that the defendant 2) had delivered. In particular, Defendant 1), who is only registered with GEMA as the original publisher, could not easily have registered the plaintiffs as authors, since defendant 2) or other participants are registered.

2. On the other hand, plaintiffs 1), 2, 3) and 5) are entitled to payment of monetary compensation in accordance with Section 97 (2) UrhG due to the titles specified in the operative part 1 to 4. According to the amount, defendant 2) has to claim 1) € 61,000.00, to claimant 2) € 1,500.00, to claimant 3) € 2,500.00 and to claimant 5) 500, € 00 to pay. Insofar as the plaintiffs request a higher payment, the application to 11) is unfounded.

a) If the equity test carried out under the above criteria with regard to the defendant 1) leads to the result that monetary compensation cannot be awarded, the situation is different with regard to the defendant 2): All those circumstances are justified in his person , from which the interference with the copyrights of the plaintiff goes beyond the "normal case" in intensity and manner. This concerns on the one hand the takeover and processing of compositional parts of the plaintiffs and on the other hand the subsequent appearance of the defendant 2) as the “composer” of the disputed titles, in particular the corresponding registration with GEMA.

aa) Defendant 2) took over parts of compositions protected by copyright from a total of 13 pieces of music from the plaintiff, edited them unfree and evaluated them under his name. Only the extent to which the second defendant systematically "used" the plaintiff's works for his own productions shows a lasting lack of respect for the plaintiff's performance. By "dismembering" the plaintiffs 'compositions as well as transposing them and the "Mickey Mouse effect" associated with this, he disfigured the plaintiffs' works. In addition, the defendant put the compositions in a completely different context through the connection with his rap lyrics, against which the plaintiffs clearly have significant objections. Independently of, Whether the public criticism of the texts and the appearance of the second defendant is justified or not, it must be stated that the texts deal with clearly different subjects than those of the plaintiffs. The plaintiffs' texts are rather gloomy and depict a certain “cemetery atmosphere”. However, they do not contain any inhuman or glorifying passages like the texts of the defendant 2). Both the content and the language, in particular the numerous "strong expressions" used, mean that the texts are characterized by violence. Terms such as “homos”, “hooker”, “cunt”, “you piece of shit” or “freak” are used, which are generally considered discriminatory or obscene among the population. The defendant to 2) also describes himself, for example, as "Osama-Freund" or "Kanake", announces “I'll lock you up like Ms. K.” or raps about the size of genitals. By combining the plaintiffs 'compositions with these texts, the plaintiffs' freedom of resolution was to a large extent impaired. This applies both to the plaintiffs who composed the passage in question and to the plaintiffs who wrote the texts for the pieces from which passages were taken. The plaintiffs deliberately opted for a joint evaluation of compositions and texts (§ who wrote the texts for the pieces from which passages were taken. The plaintiffs deliberately opted for a joint evaluation of compositions and texts (§ who wrote the texts for the pieces from which passages were taken. The plaintiffs deliberately opted for a joint evaluation of compositions and texts (§9 UrhG). Defendant 2) intervened in this decision by taking over parts of the works connection and reconnecting

with his texts. The encroachment on the plaintiffs' freedom of resolution is not put into perspective by the fact that they are little known in German-speaking countries and that the passages taken over are therefore not necessarily assigned to them. The mere fact that the compositions of the plaintiffs were used to help the defendant 2) to success and recognition means an encroachment on their freedom of resolution. The second defendant cynically boasts of his success in the titles in which he uses compositions by the plaintiff (e.g. in "G ...", "I ..." or in "D ...").

Insofar as the second defendant intervened in the rights of those plaintiffs who composed the passages that were taken over, this encroachment is reinforced by the fact that the defendant has registered with GEMA as a "composer" himself. The defendant's activities were limited to digitally editing the plaintiffs' sound recordings and adding the drums. However, this does not make Defendant 2) a “composer”. Due to the incorrect registration with GEMA and the complete evaluation under his name, the second defendant has also adorned himself with foreign feathers and the plaintiff's right to recognition of authorship within the meaning of § 13UrhG intervened. It is also not contradictory to see a serious interference both in the fact that the compositions of the plaintiffs were combined with the texts of the defendant 2), as well as in the fact that the defendant 2) names himself as a composer. Rather, this is a consequence of the fact that the second defendant disregarded the rights of the plaintiff in several respects.

bb) The taking over and processing of the compositions in dispute by the defendant to 2) took place in any case in a grossly negligent manner, the decoration with foreign feathers intentionally. In view of the large number of passages extracted, especially from the plaintiffs' titles, it is unlikely that the second defendant selected recordings by the plaintiff from his "sound database" by chance. Rather, there is much to be said for a systematic exploitation of the plaintive albums. Whether the second defendant scoured the albums himself for suitable samples or whether these were leaked to him by producers who were friends, can ultimately be left to the test. Defendant 2) had to reckon in any case - especially in view of the large number of recordings used - that third-party rights existed in these. He therefore had to be aware that he could not base the recordings on his own productions without obtaining the appropriate permission. In particular, the second defendant also knew that he had not composed the music on which his productions were based himself and that he is therefore not a “composer”. In any case, taking over the recordings without permission was in any case highly inadvisable. The - incorrect - designation as "composer" was even deliberate. Behind everything stood - no other reason is discernible - one's own success and addiction to profit. that he did not compose the music on which his productions are based himself and that he is therefore not a “composer”. In any case, taking over the recordings without permission was in any case highly inadvisable. The - incorrect - designation as "composer" was even deliberate. Behind everything stood - no other reason is discernible - one's own success and addiction to profit. that he did not compose the music on which his productions are based himself and that he is therefore not a “composer”. In any case, taking over the recordings without permission was in any case highly inadvisable. The - incorrect - designation as "composer" was even deliberate. Behind everything stood - no other reason is discernible - one's own success and addiction to profit.

b) For the assessment of the amount of monetary compensation in accordance with Section 287 of the German Code of Civil Procedure, the significance and scope of the intervention must be taken into account (Dreier / Schulze, loc. cit., Section 97 marginal number 76). In

view of the lack of industry practice, it is not possible to use the usual usage fee (on which a supplement could then be granted) to estimate the appropriate compensation.

When estimating the appropriate monetary compensation, the Chamber took into account, in particular, that a systematic exploitation of the plaintiff's works by the second defendant took place, which it then - deliberately incorrectly - issued as its own performance. The titles referred to in the operative part 1 to 4 are also widely used, so that the interference with the rights of the plaintiff has taken place intensively on the one hand and has also helped the second defendant to achieve considerable economic success on the other.

That said, in all cases in which the second defendant has registered himself with GEMA as the composer of the titles specified in the tenor re 1. to 4., monetary compensation of € 5,000.00 appears for the respective plaintiff who actually created the composition used, and a monetary compensation of € 500.00 for the plaintiff who wrote a text for this composition, as appropriate.

The lyricists who are not composers at the same time can also demand payment. Joint litigation with the respective composer is not indicated, also in view of the work connection within the meaning of § 9 UrhG. By replacing the texts of the plaintiffs with other texts, the defendant re 2) encroached upon the lyricists' freedom of resolution and thus their moral rights, since he disregarded their right to refuse consent to such an evaluation. Rights resulting from such interference with individual moral rights can be asserted by the respective author alone.

aa) According to the above standards, the defendant 2) has to pay the plaintiff 1) monetary compensation in the amount of € 61,000.00.

aaa) Defendant 2) used copyrighted compositions of the plaintiff in 12 titles and registered himself as a composer with GEMA. These are the titles "S ...", "J ...", "Sp ...", "B ...", "E ...", "D ...", " K ... "," G ... "," Are you something (H ..., "D ...", "W ..." and "Br ...".) There is one for each of these uses Compensation in the amount of € 5,000.00 to be paid, resulting in an amount of € 60,000.00 in total. The amount of € 5,000.00 per title of the defendant to 2) applies, regardless of whether one or two passages from compositions of the plaintiff to 1) were used.

bbb) For two of the compositions used in the named 12 titles ("S ..." and "Sp ..."), the first plaintiff also wrote the text. Even if there is no case of a work connection within the meaning of § 9UrhG exists (cf. wording of § 9: If several authors have combined their works for joint exploitation ... “) and thus no interference in the work combination has taken place by omitting the text and adding a new text, the plaintiff is to be compensated for money to 1) to be paid. This is because there is an encroachment on the freedom of decision of plaintiff 1) to evaluate the respective composition in connection with a certain text. Therefore, an amount of € 500.00 per title is also appropriate here. It is also irrelevant that the defendant to 2) is only registered with GEMA as a composer and not as a lyricist with regard to “Sp ...”. The defendant to 2) is also here the one

A surcharge for the first connection of part of the composition of "L ... M ... B ..." with a text ("J ...") is not to be granted. The interference cannot be equated qualitatively with the cases in which a text connected to the composition was first removed by the defendant 2) in order to then connect the composition with another text. The decision to consciously evaluate a

composition without text may be protected as such. However, it does not lead to an increase in the monetary compensation to be paid for the violation of the rights to the composition.

bb) To the second plaintiff, the second defendant has to pay monetary compensation in the amount of € 1,500.00. In three cases, the defendant re 2) used compositions by the claimant 1), each with a text by the claimant 2) for the purpose of joint evaluation (§ 9UrhG) ("B ...", "E ..." and "D ..."). By removing and replacing the text of the second plaintiff here, his freedom of resolution to object to such a separate evaluation of the composition has been encroached upon. Therefore, an amount of € 500.00 per title has to be paid to the second plaintiff. Again it is irrelevant that the defendant to 2) with regard to a case ("D ..."), as evidenced by the GEMA registration, did not write the text himself and is therefore only registered as a composer. Defendant 2) is again the person who brought the composition into production and, in this respect, initiated the connection with the text.

cc) To the plaintiff to 3), the defendant to 2) has to pay monetary compensation in the amount of 2,500.00. The second defendant used copyrighted compositions by the first complainant in a total of five titles that were associated with the third party language works for joint evaluation within the meaning of § 9 UrhG ("K ...", "G. .. "," Are you something (H ..., "D ..." and "W ...". In all cases, Defendant 2) removed the texts of Complainant 3) and instead included the compositions own texts connected. A monetary compensation of € 500.00 per title is appropriate, so that a total of € 2,500.00 results.

dd) Finally, the defendant to 2) has to pay the plaintiff to 5) monetary compensation in the amount of € 500.00. The 5) plaintiff wrote the text for the composition that the 2) defendant used in "Br ...". Again, the defendant replaced the plaintiff's text with his own.

ee) The asserted claim to reimbursement of 5 percent interest above the base rate since pending lis pending (May 13, 2008) follows from §§ 291, 288 Paragraph 1 Clause 2 BGB.

XII. The application submitted under item 12) for approval of the "deletion" of the work registrations in favor of the plaintiff is to be interpreted, taking into account the clear request in the reasoning, that the consent of the defendant to their deletion and the entry of the respective plaintiff is sought. This request is justified insofar as the deletion of Defendant 2) as the composer and Defendant 1) as the composer's publisher and instead the entry of Complainant 1) with regard to the titles mentioned in items 1 to 4 of the operative part is desired. The further request regarding the share of the lyricist is rejected. In this respect, the respective entries of Defendant 2) as a lyricist and Defendant 1) as the publisher of the lyricist remain. The request is also rejected with regard to the titles "T ...", "E ..." and "Ic ...", as the compositions used here cannot be protected by copyright. It can be left open whether the second defendant is wrongly registered as a “composer” due to lack of protectability. In any case, the plaintiffs cannot take action against this, as there is no interference with their rights.

1. It is irrelevant whether the claim of the first plaintiff arises from the right to be named in accordance with § 13 sentence 2 UrhG or from an encroachment condition (§ 812 paragraph 1 sentence 1, 2nd alternative BGB). The prerequisites for both claim bases are met.

2. As evidenced by Section 4 Paragraph 2 a, Paragraph 4 of the GEMA distribution plan for the right to perform and broadcast, the processor of a protected composition is only entitled to receive rights if its processing has been approved by the author and GEMA has been notified.

Since the processing of the compositions of the first plaintiff was undisputedly not approved by the second defendant in the present case, the second defendant is therefore not to be involved in the composition as a processor. Accordingly, his registration as a composer with GEMA must also be deleted completely, provided that he is registered as a composer with regard to the titles specified in numbers 1 to 4 of the operative part. The same applies to the defendant 1), insofar as it derives its rights from the defendant 2) as a composer. It is therefore also to be deleted as the composer's publisher.

3. The defendants obtained the registration as composer or publisher of the composer in disregard of the claim of the claimant to 1) and thus intervened in his right under § 13 sentence 2 UrhG. Through this intervention, they have obtained a - conditional - legal position in relation to GEMA, namely the right to payment of the composer's share of the proceeds or the composer's share of the proceeds from the publisher.

4. Insofar as Defendant 2) is registered with GEMA as a lyricist or Defendant 1) is the publisher of the lyricist, the original entry remains. Involvement of the plaintiffs who wrote the respective text for the compositions used (ie the "original text") is not appropriate in the present case. The distribution rule that the lyricist of the "original version" is also involved in the evaluation of the composition with a different text version is based on the idea that a piece of music has become known in its original combination of music and text and the lyricist is accordingly also successful only the composition has to be involved (cf. Seibt / Wiechmann, GRUR 1995, 562, 563). The plaintiffs and the music they used are largely unknown in Germany. The success of the title at issue is largely based on the texts of the second defendant. This already follows from the fact that the titles belong to the genre of "rap" in which the language is in the foreground. Regardless of whether the criticism of the defendant's 2) texts is justified or not, it is precisely from these that the decisive pull of the title at issue is based. The success of the titles referred to in the tenor re 1 to 4 is by no means based on the familiarity of the original version of the music titles used by the plaintiffs. it is precisely from these that the decisive pulling power of the disputed title originates. The success of the titles referred to in the tenor re 1 to 4 is by no means based on the familiarity of the original version of the music titles used by the plaintiffs. it is precisely from these that the decisive pulling power of the disputed title originates. The success of the titles referred to in the tenor re 1 to 4 is by no means based on the familiarity of the original version of the music titles used by the plaintiffs.

XIII. According to Section 101, Paragraph 1, Paragraph 3 of the Copyright Act, the claim made by Plaintiff 1) against Defendant 1) for information about common real names and addresses is only valid with regard to the author “K. ... “justified, but otherwise unfounded. The claim also asserted by the second plaintiff against the first defendant regarding the real names and the respective addresses of Mr. R. and Mr. E.-H. is justified according to § 101 Abs. 1, Abs. 3 UrhG.

1. The applicant has to 1) of § 101 para. 1 of the Copyright Act against Defendant 1) a right of access to the names and addresses of "K. ... ". Defendant 1), as a music publisher, violates the rights of the plaintiff as a composer of “” through the mass exploitation of the title “I ...” on a commercial scale. It must therefore provide information on the names and addresses of the manufacturers of the copies in accordance with Section 101 (1) and (3) UrhG. This also includes the “K. ... ", which, as evidenced by the GEMA registration, was involved in the production of the title" I ... ".

As far as the plaintiff re 1) requests information about the name and address of Mr. T., the claim is unfounded due to the lack of legal protection. Mr T. is only registered with GEMA as a lyricist with regard to the title "Ic ...". The passage used in this title from a composition of the plaintiff re 1) ("") is not protected by copyright. There is therefore no legal violation that could trigger injunctive relief or claims for damages. At the same time, defendant 1) would not be passively legitimized within the meaning of Section 101 (1) UrhG, since it did not “infringe copyright” on a commercial scale.

2. The applicant to 2) of § 101 para. 1, para. 3 of the Copyright Act against Defendant 1) a right of access to the names and respective address by Mr. R. and Mr. E. H ..

Defendant 1) violates the rights of plaintiff 2), who wrote the texts for the compositions, by the mass evaluation of the titles "E ...", "Sp ..." and "D ..." on a commercial scale the title used here "D ... M ..", "?" and "" and whose rights to the work connection are thus interfered with. It must therefore provide information on the names and addresses of the manufacturers of these titles in accordance with Section 101 (1) and (3) UrhG. As Mr. R. and Mr. E.-H. Registered lyricists have in any case contributed to the production of the title and are in this respect "manufacturers" in this sense. The fact that it may already be the real names of the authors - which defendant 1) objects - is irrelevant because the defendant 1) according to § 101 Para. 3 No. 1 UrhG is obliged not only to notify the name but also the address and such notification has not yet been disputed.

XIV. The claim to reimbursement of costs in accordance with Section 97 (1) UrhG against Defendants 1) and 2) asserted under section 14) is only justified to the extent specified in the operative part, otherwise unfounded.

1. The right to reimbursement of the costs for the pre-judicial warnings exists according to the reason. In this respect, reference is made to the statements on injunctive relief and claims for damages.

2. With regard to the amount of the cost reimbursement claim, the basis of a 2.0 fee according to §§ 2, 13 , 14 RVG in conjunction with No. 2300 VV RVG (plus the flat fee according to No. 7002 VV) is appropriate in view of the complexity of the case. This fee is to be increased with respect to the claims that are asserted jointly by several plaintiffs, both with respect to the defendant 1) and with respect to the defendant 2) by a fee of 0.3 in accordance with No. 1008 VV RVG.

For the calculation of the fee, the Chamber has based the request for injunctive relief asserted with the warning in each case € 10,000.00 per title. For the requests for information and the determination of damages requested with the warnings, a distinction must be made in each case according to whether rights as a composer or as a lyricist are asserted. While a value of € 1,000.00 per title is appropriate for the information in the first case, a value of € 500.00 per title is appropriate with regard to the plaintiffs who invoke rights as a lyricist. The claim for the determination of damages is to be valued accordingly at € 10,000.00 or € 2,000.00. The right to cancellation at GEMA is to be assessed uniformly for all plaintiffs at € 5,000 per title.

With regard to the claims that plaintiff 1) has legitimately asserted against defendant 1) with the warning, an object value of € 312,000.00 is relevant (12 titles). With regard to the claims that plaintiff re 1) asserted together with plaintiffs re 2) and 3), an object value of € 52,500.00 was taken as a basis (3 titles each) and with regard to the claims that plaintiff re 1) with the

applicant to 5) has asserted an object value of € 17,500.00 (1 title). With regard to the claims that were asserted by the plaintiff to 1) against the defendant to 2) with the warnings, an object value of € 286,000.00 is relevant, otherwise the same object values apply as in relation to the defendant to 1).

The interest claim follows from §§ 291, 288 Abs. 1 Satz 2 BGB, whereby the date on which the specified payment application was served on the defendant is decisive with regard to lis pendens.

C. The submission of the parties in the briefs that have not been relinquished was not taken into account in the decision-making process in accordance with Section 296a of the German Code of Civil Procedure. The submissions in the pleadings did not give rise to the reopening of the oral hearing according to § 156 ZPO. Because the new factual presentation contained therein could also have been introduced into the legal dispute earlier.

D. The secondary decisions follow from §§ 91 Paragraph 1, Paragraph 2, 92 Paragraph 1 Sentence 1, Paragraph 2 No. 1, 709 ZPO.