

Nachschlagev / Erk: yes

**2048 004**

BGHZ: No

litU rhG § 2 para. 1 sentence 2; UrhG § 3

Hazelnut

The legal protection of 3 processing of a work  
the music is according to the new copyright law of  
September 9, 1965 (Federal Law Gazette X 1273) from the same advance  
Settlement depending on the law for the protection of  
Works of literary and xon art from 1901 0

BGB §§ 242 Cd, 387, 398, 413

Who is the right to be legally vested  
(here: GEMA) for the exercise of transferred copyrights  
injured, the user can claim damages  
The company does not raise any claims or objections  
its legal relationship with the original owner of the  
Linked copyrights reserved <>

BGH, Urto Vo 3o November 1967 - lb Z & 123/65 - HG Berlin

LG Berlin

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# FEDERAL COURT OF JUSTICE

IN THE NAME OF THE PEOPLE

## JUDGMENT

Announced on

November 30, 1967  
2 ug.

J u s t i z t e r  
as a clerk  
the office

in the litigation

the £ GmbH, represented by its  
Managing director L adislaus V ^ 1 0, cl

Defendants and judges,

- Prosecutor: Attorney Prhr \*

against

the GEMAG esellsch aft for musical performance  
and mechanical diver sity, repre sented by  
their board of directors Br \* h \* c 0  
Street A. - A,

B <

Plaintiff and defendant

- Legal counsel: Lawyer prof  
and **Dr0**

and the federal judge Pro Sprenkmann, AXff, Br »Simon  
and Prof "Pr" BökeXraann

recognized for right:

Pie revision against the UrteiX of the 5o ZiviX -  
Senate of the Kammgergericht in BerXin from  
9o JuXi 1965 is at the expense of the accused  
rejected »

Note: Parts of the collection of judgments an

By law

Pie KXägerin is a exploitation company for  
RausicaXic copyrights »It has the legal form  
of a business association within the meaning of § 22 BGB »  
It takes on the basis of contracts or its rte iX te r  
VoXXmacht.en the performing rights and the mechanical  
Reproduction rights of composers, text poets and  
MusikverXeger in the Federal Republic of Germany PeutschXand true »Pie  
your transferred mechanical viewing rights  
the KXägerin to the Bureau InternationaX de X \* Edition Me-  
canique (BIEM), which is the legal form an er so ci§ t 6 c iv ile  
owned under French law and its seat in P aris  
has transferred for evaluation »GeseXXschafter des BIEM  
are the national copyright law enforcement laws X creating  
ten »Pie plaintiff is out with effect from January 1st, 1961  
left the BIEM »

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~ 3 ~

The composer Pranz Jo sef B j ^ ^ ^ is a member  
the plaintiff 'He finished with her? which then the name  
leads 3 regarding the transmission se in er mecha  
niche duplication rights in 1947  
carry «

The defendant produces records "S et Okto  
In 1954, she also sold that of the C arl  
G esellsch aft mbH? Manufac- tured boards «You  
is th e gang in terms of legal relationships  
to the plaintiff and to P "J" at their site

le kicked «

Breuer sat in November 1953 on behalf of the  
Carl GmbH that likes a free folk song flSohwarz-  
hazelnut II is brown for brass orchestras and men  
Choir for a group that was held on November 16, 1953  
recordings made by the defendant on the Odeon  
Schallplatte 0 20 471 is sold "Für the range  
he mentions 150 DM «He transferred all of his  
Rights according to the more detailed provisions of those signed by him  
Declaration dated November 23, 1953 on the predecessor in law  
of the defendant "

The defendant reported the inclusion of Die des "Schwarz  
The hazelnut is brown at the plaintiff, without  
as the person responsible to indicate: "The plaintiff made himself st  
that the arrangement of B ^ | ^ came from? and shared the Be  
sued in November 1954? that the recording liz enz -  
ought to be «In the following period the par  
Do you have no results about it? whether the defendant of the plaintiff  
owed fees for the Schallplatte «The font change  
initially ended with a letter from the plaintiff dated 21  
March 1956o The defendant did not reply to this letter

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Page 5

she still took the license statement obtained there from the rG  
By letter of April 180, 1961, the plaintiff turned  
in again to the defendant and asked for recognition of the  
Protectability of Editing. What the  
Defendant rejected 0

The plaintiff submitted that the processing  
from the result is shown in dividuelles  
and artistic activity and therefore rightful  
"The defendant is therefore not allowed to act  
if they are processing without paying licenses and  
Without your, the plaintiff, permission is required and  
spread "

The plaintiff has borne

1p to condemn the defendant to avoid it  
A fine of the cognizant report  
the monetary fine in an unlimited amount or  
Detention for up to 6 months,

the S cha ll p la tte OBEON 0 20 471 "black-brown  
is the naze hut", prepared by Franz Jo ser

B. to A vailable, disseminate and  
it or the tapes on which it is based  
to be sold or to be sold for the purpose of the broadcast  
to sell;

!> 2o to condemn the defendant for providing her information  
to give how many copies of the items listed under no  
For the plate mentioned above, it is produced and sold  
width and how often this plate and  
the appropriate tapes for the purpose of  
Has rented or sold the consignment;

3 \* assert that the defendant pledges  
i & t, to prevent yo u r damage that your r  
from unauthorized duplication and  
Distribution of the bulletin board and awarding of the  
P la tte or 'of the corresponding tapes for  
Purposes of the broadcast

The defendant moved to dismiss \* you  
replied that from elaborate arrangement  
se i a re in craftsmanship that derives from the origin  
I am not protected.

The contract between the plaintiff and  
Breuer from 1947 did not find any  
Pending assignment of rights, future copyrights. That's why  
In all cases, you, the defendant, have any copyrights  
B reuers acquired at the right admission, namely  
on the basis of the contract dated November 23 , 1953.

The action of the plaintiff is always up to the case  
Objections to the inadmissible exercise of rights:  
his contractual commitments to the be  
K lay, across from hurt, the plaintiff  
a s to be countered by his trustee.

The defendant had the objection of going back  
Increase retention rights and asserted that they  
long to meet the claims  
not ve rp flic h tsei, up to B ^ 0 | ^ \* hr compensation  
I have achieved. The objection is effective because of the trust  
Obtained between and the plaintiff too  
thos opposite. In addition, they expect their 3

compensation claims against B ^ p ^ against the lawsuit claims on.

The regional court has over the protective capacity of the Processing of Evidence collected by solicitation an appraisal of the understanding of German composers sten federation, which is eligible for protection, and an expert report by Professor Dr. Of them v ern e in t. Thereupon it has the action with the grounds rejected that the step ized processing of B \*

- 6 -

no self-creative achievement and therefore copyright I am legally protected.

The appellate court has another s Obergutach ten obtained from P rofessor Dr. Br. H. C. F ^ m ^ o the se r has come to the conclusion that the processing go beyond a mere routine design and in Their peculiarity has personal traits. The defendant is the submission of a width obtained from you The lecturer's opinion on theory and music science senschaft Anton faced.

The court of appeal, which in the oral Ver plot the stepping vinyl record and two other versions of the song on the S cha llp la tte n E le c tro la S 41 036 (MEin Lied, d three i, v ie r! M) and Columbia C 83 656 ('fHoch on the yellow wagon1') the claim was upheld in full.

With the revision approved by the court of appeal the defendant seeks the restoration of the lawsuit dismissive judgment of the regional court. The plaintiff asks et Rejection of the legal remedy.

Reasons for the decision:

I. If there is no violation of law, the appellate court has the Authority; the plaintiff to assert the claim claims yes.

1. The court of appeal has the contract between the

then the name leading plaintiff and the mecha  
dated June 30, 1947 that  
Niche copyrights also with regard to the e r s t  
future Works created by him equal to that

- 7 -

Would have transferred the effect to the plaintiff in advance.

This contract states, among other things:

"Power of attorney for mechanical pike.

The undersigned hereby submits  
all at the time of the conclusion of the contract  
his existing, created or  
acquired works his entire copyright  
te, so far the same are on the production  
of all kinds of sound carriers. . . for the purpose of reproduction  
for the ear. . . of the \*\*\*

The transfer takes place without guarantee of over  
supporting the fact that it is present at the present time  
and already published works die mecha  
niche pike still owned. **He** pledges  
however, the For Fixing  
die se r pike all the information they need  
give. The undersigned acknowledges that the  
Transfer of the same copyrights to is  
Nothing in or with other authors  
creative works as well as the works that he  
w ill acquire on the same terms as  
listed below, tacitly to th e  
"Stagma" investigates and assumes the guarantee there  
for the fact that no ver  
additions will be met. . . .

The is justified, the transferred to you  
Pikes of the undersigned in each relationship  
commercial exploitation and asserted against third parties  
to make this authorization to third parties  
te r to transmit. . . "

a) The court of appeal lays down the ud ar, the interpretation  
the contract, which is not unambiguous according to its wording  
according to §§ 133, 157 BGB result that the transition of the pike  
"quietly w eig en d", i.e. without a transfer act p e the  
Author and without acceptance or even knowledge of  
the work creation on the part of the plaintiff was supposed to be successful. In  
Such a case can only be legally ruled by him  
The author 's obligation to transfer is fully valid  
lic h can be spoken if you have the opportunity  
should be retained, possibly elsewhere

- 8th -

the right to dispose of. Bas just got  
not be the p a ll so lle n, since the transferring the "Ge  
while "had to take over the future  
No rights to make any dispositions. Both ew ew  
The advance transfer also corresponds to that of par  
what is wanted is best, as it is the exploitation price  
Se lls cha fit as soon as possible to exercise the rights of your w ith  
to perceive g le der effective,

The appellate court puts in a statement of support  
shows that the plaintiff will then also be the owner of the affected  
the rights of your member would have become if  
the contract is only a legal liability  
for the "silent" transmission. Ban would be  
assume that this commitment, there a  
special transfer act and an agreement  
on the outside would not have been necessary when creating the  
Processing fulfills and thus the rights to the plaintiff  
would have transferred. At this point in time he would also be here  
was still authorized because the processing before the 16, No.  
November 1953 it was determined while the trans  
declaration of conformity towards the defendant to whom  
this could support all in their rights, first the Batum  
of November 1933 wear

b) There are no attacks against this interpretation  
R evisions are unfounded.

In the case of the plaintiff's ^ contracts with her members  
it is a matter of typical contractual conditions that are applicable to  
a multitude of contracts as contractual conditions  
are seen and their sphere of activity over the area of a  
District Court, your interpretation is  
therefore freely verifiable in the audit institute (see I. BGH  
GRUR 1957, 611, 612 - Bel am i).

The interpretation of the contract by the appellant  
 Legal advice. If the appeals court to the  
 'W ith the declaration in connection with the purpose of the  
 Transmission infer that the transmission of the  
 future works coming into being  
 Pike unreacted for mechanical diversity  
 The time of the conclusion of the contract is as follows  
 this is not legally objectionable. E vision unites  
 that the pike transition, because about the time of the quiet  
 silent transfer in the contract it is not stated that  
 in all cases when you register for processing  
 in the case of the plaintiff, all were successful. That is  
 to counter that it was given according to the contract  
 Interpretation of the court of appeal in particular further  
 Declaration of transfer not applicable after creation of the work  
 you have rft, since then it is already with the emergence of the pike  
 at the time of creation of the work the pike on you  
 The plaintiff has passed over (see l. HGZ 140, 232, 245 ff -  
 Sound film; 153 \* 1 \* 8 - S chall p la tt en radio communication).  
 Incidentally, the same would apply if one were in this  
 points of the grounds of assistance of the court of appeal were found,  
 after the fulfillment of the obligation to transfer  
 the pike in future works according to the wording of Ver  
 wear it, r 8 tillsch v / eig en d ,, ought to happen. Because you can  
 te have no other meaning than that it should be after the Ent  
 standing of the work no special act of transfer  
 need more. The result would therefore be the same  
 The same result occurs as with assumption e in earth  
 prior assignment: the transfer of rights to the actions  
 R in would be ready with the creation of the work full  
 draw, Otherwise, the interpretation by the Be  
 Court of Appeal also the need of the agents of  
 Commercial music performances with the help of S ch all  
 Plates or tapes made afterwards and dam it

R eichsafety (RGZ op. cit. 140, 250 f) ° Das R eichs  
 righteous w ith right pointed out that it lies in the  
 In te re sse a ll r el ects that the right is over  
 transition without any further special transfer declaration  
 the verwertungsgesellschaft vol lz ie he, so it is not  
 loyal members who have a mere commitment to  
 Transfer not possible, otherwise via the rights

dispose or rely on the fact of unsuccessful  
Transfer could invoke. It is right to consider  
free that the court of appeal this of the agreement  
from 1947 underlying contract target for their export  
decisive action.

Thus the assumption of the appellate court, the Klä  
because of the mit closed contract  
the mechanical multiplication rights also with regard to the  
works created by Breuer only after the conclusion of a contract  
recruiting, not legally open to attack «.

2. “During their membership in the PIEM, the lawsuits would have  
r in, as well as the other national sales companies  
the mecha transferred to them by their members  
Niche multiplication rights to BIEM for evaluation  
carry on. The BIEM w ith th e in te rn a tio na le n  
Association of Phonograph! See In du strie amalgamated  
S cha llp lte rn a n orm al contract ve re in ba rt that  
has been changed repeatedly. The national exploitation  
S u lled c o pts are entitled as per the standard contract  
Representatives of BIEM signed the standard contract with the in their countries  
to conclude the opera ng s cha llp la tte next to the  
collect the remuneration from them and transfer them to the  
To distribute authorized persons.

The plaintiff was a representative of the BIEM with the  
Defendant the BIEM standard contract in the fits of 1952  
and closed in **1956** .

The plaintiff is effective January 1, 1961  
retired from the BIEM. She submitted that it  
be th e mechanical multiplication rights of BIEM  
been transferred back to you \*. The defendant has this  
He kicks in and replies that this is one of the reasons why the plaintiff felt bad  
the active legitim ation for the lawsuit claims, because they are  
I no longer belong to the BIEM and the questionable rights  
if they still belong to the BIEM.

The Court of Appeal has stated that this is the case  
Rights reverted to the plaintiff, even if  
A special act of transmission by the BIEM is not  
present \* Because the plaintiff is practicing mechanical pike  
Its members have been in essence for several years

unchallenged. After the defendant in the first right  
I admitted that they lacked the authority of the  
Plaintiff because of her resignation from the BIEM no longer  
want to assert, and after you also in the appeal  
rightly no longer said he came back  
it is also necessary to go into this question in detail.

These statements are also made by the revision  
Attacked without success.

The appellate court has the right to injunction  
not as the revision means, according to Art. XIX (3) des  
BIEM standard contract as justified, but rather  
according to § 36 BitUrhG iV .m. § 1004 BGB. However, it would stand  
the claim of the plaintiff on the basis of this law  
consent only if the mechanical rights of  
BIEM would have been transferred back to you. Bas has that  
Court of Appeal without infringement of legal proceedings  
th rightly assumed. Benn and we have the par  
can be entered into before the conclusion of the first legal move  
which reached in the second instance to the court files -

th main contract of November 28th / November 11th December 1963  
closed (printed by Schulze, copyright in  
of music 3. A ufl. P. 332 ff), who is definitely yours  
Legal relationships with the BIEM-HormalVertra  
has occurred. Already from the fact that the Be  
k lay this contract with the plaintiff,  
I give you the assurance that you will buy back the rights through  
the plaintiff is no longer stepped. In addition, lets  
also the submission of the defendant in the second instance  
no doubt about the plaintiff's power of disposal  
detect.

It is therefore not objectionable under these circumstances  
stood if the court of appeal had the authority of the  
Plaintiff b ejah th at.

II. The arrangement of the song, fBlackbrown is the  
Hazelnut "has been created by the appeals court as its own  
.sche performance in d iv id ue lle r question and therefore according to  
Section 1 (1) no. 2, Section 2 (1) LitUrhG a ls u rh eb  
lic h protected.

1. To this end, it should be introduced that the term  
the self-creative achievement in musical work  
works far should be interpreted, as is also the case with  
Works of the Literature it always happens.

The regional court's view that a lawsuit  
capable of machining only high-quality creations  
It is not possible to see artificiality in origin  
be complied with as they are based on today's conditions  
does not do justice to the field of entertainment music.  
In view of the mass consumption of this music by Rund  
radio, television, film and through channels - and sound  
Band sales, which has a mass production of  
Musical works, in particular also of arrangements in

widest sense, correspond to, love when applying de rart  
high standards a considerable part of everyday music  
without legal protection. The consequence would be that the  
Produce your music to the aim of the economic  
Success would not be involved, although this success also  
among those newly herges which were newly created in large numbers and in progress  
Machinings regularly not carried out on the by the  
Possible for processing Version of the piece of music  
rest. Because this determines the character in Hegel  
and therefore also the pulling power of the piece of music in the public  
cum. In view of the mass production of Schlager  
and entertainment music should also include the meaning of the ori  
ginal melody should not be overestimated. The corresponding  
In many cases, creative creations are diminished.  
Even with the original work of this area, it will  
like Prof. Moser say, many times about "sounding In du striede pro  
products "act without thereby impairing their protective ability  
would be doubtful.

2. If these statements of the appellate court too  
may be misleading in some points, so are  
However, contrary to the view of the revision in the result  
free from real error.

Like the context of the statements of the vocation  
reveals right, this does not represent the -  
Righteously not too cheap to end - take into account that the term  
the personal conscientious creation has to be added further  
hen is where as a result of increased valuation opportunities

a "mass" production of corresponding works takes place  
find. Rather, it assumes that during the test,  
whether a musical editing is possible as a personal matter  
Creation is to be seen, just as with scriptures none  
too high requirements are to be set and that these before  
Suspension can also be given if you see how

Music is called hit and entertainment music, um  
a shapely activity of low artistic rank  
h an de lt • There is no legal objection to this.

According to the law affecting the copyrights of works by  
Literary and Tonkunst (LitUrhG) from 1901 enjoyed writing  
works and works of music art have legal protection,  
if it is a personal creation of its originator  
there you put n. That's how I got on with protection  
Original works, in particular of scriptures, accepted,  
that the amount of mental activity is not affected under the circumstances  
Particularly high requirements are to be set (see BGH GRUR  
1961, 85, 8 ? to no. II 1 b - Piffik u sD o se; RGZ 129, 252,  
255 - O perette guide; 123? 120, 123 - Bridge to J ense its;  
116 , 292, 295 - address book; 108, 62, 65 - hiking map; 81, 120,  
123 - Cooking recipes). He was also interested in music  
knows that there is the so-called small coin (Ulmer,  
Copyright and Publishing Law 2, Ed. P. 125; A lfe ld, Das Ur  
copyright to works of literary and musical art 2. Supplementary  
§ 1 *Arm* \* 34 p. 56). On the special literary or  
Artistic inclination, on the other hand, was not an issue (Ulmer loc. cit. p. 116;  
T rolle r, Im m aterialgüterrecht, Basel and S tu ttg a rt 1959 vol. 1  
P. 395 ff, in sb es. 397 u. 410 f; Schramm, the creative one  
Performance p. 206). This is what the revision v recognizes,  
with the commencement of the new Copyright Act (UrhG)  
dated September 9 , 1965 (Federal Law Gazette I 1273) "after filing the revision  
not changed. As in the justification to § 2 of the director  
draft (= § 2 UrhG) are explicitly highlighted  
has been, so are still works of little  
creative value, the so-called le in e coin, protection  
enjoy (see left also Ulmer, U fita vol. 45 p. 21). Also the  
Editing of an already existing work enjoys ur  
h e legal protection if you have a personal spirit  
ge creation of the worker. The prerequisites, the  
In this regard, they are the same as

with an original work (Troller aaO p. 453; Hoffmann, The Bern Convention, 1935, p. 58 f).

After that, however, it is not legally possible if the court of appeal assumes that during the examination, whether the editing of a y / erke of music is personal The worker's own creation is not to be considered higher standards are to be applied and that the award of ur h e legal protection is not created if th e shaping artistic ac tivities of the operator only low artistic rank. From this point of view the view of the appellate court is also not objectionable stood that it was allowed in view of the mass production of song and entertainment music the importance of The original elody in this area was not overridden because, in many cases, the creative on which it is based In case it will only be minor «Since the processing of one Work of the music regularly the melody of the processed Y / erkñös recognizable takes over (see l. § 13 Abs. 2 LitUrhG, Section 24 (2) UrhG), as long as Bear Be ite rs to take over the melody unchanged personal ge istic creation of the worker only in other means of musical formation than that reveal the melody.

III. The court of appeal then states in detail, the reasons why it was editing the song *B VOXXQT* as a personal violin, creation adheres to you.

1. It is based on the assumption that only the simple Melody of the song was given and that its e Bear Editing does not relate to any other orchestral version of Lie des an sch was e.

With the given simple melody, it works Selection of the instruments, the composition of the orchestra

to extract a its own creative feature in *B draw* ,  
 The large number of possibilities that exist here  
 Sets its a criterion For the ability to protect,  
 The selection influences the sound and character of the music  
 piece withly and often, as far as it is not  
 be given, an artistic decision of the Be  
 a r b e r s dar »On this point, the expert opinion  
 ten of the Board of Directors of the German Composers' Association  
 followed, consequently the occupation of the orchestra of  
 I have my own messenger for processing \*

With regard to the overall character of the processing  
 I have the hearing of the plattte the right to do it  
 guided tours by prof o reveal that the version  
 slimy, cool and maybe also a bit ordinary  
 cher se ia ls th e completely slie dha fte template, this version  
 got Breuer through a different rhythm and through  
 Corresponding use of the K langm ittel e rre a d arin  
 lie a self-creative achievement, that's where it comes from  
 does not care whether the version of B reuer is of the rank  
 and remove the style of a fully artistic object  
 and in this respect a analysis is presented. Because against  
 the view of prof f, It is irrelevant whether one  
 Processing of a high artistic level, whether they  
 be correct and tasteful i. If P ro f, With  
 Rightly take the view that the tapering of the rhythm  
 Must \* increase the force and instrum entation and  
 If the choral setting is effective, that speaks for itself  
 a self-creative achievement, because strength and us  
 The processing of the processing is good for the economic success  
 the slab is crucial. But it would be unfair  
 Done, the one on whose musical form  
 These are essential for the successful evaluation  
 Businesses were not based on the success.

For the question of self-creative achievement i  
 Is it really important? oh the worker in the  
 Easily known or loved ones  
 Putting in means o is decisive? that B ^ fl ^

What did you say in a way and combination?  
which is not given in any Yfeise «, hence the  
Explanations of the opinion of D ^ IHH P & er view  
not opposed to the Senate "

Then all go into the appraisal of Prof \* Fe ile re r  
Exercise of the right measure and come to the right one  
Result? that there is a self-creative achievement \*  
How did the hearing of the S cha llp la tte show? be you  
to follow this expert? that the ear  
processing also in individual cases (B läser-Z w i-  
shouting? Accoroon movement? Design of the song movement  
and the introduction ss)? the as traits of their own  
A risc performance can be viewed • Appropriate grade  
for the form of the rhythmic  
and for the occupation «,

Correspondingly Pro f «F ^ ^ ^ also d arau fh in,  
that a comparison with the song compositions on the S ch all  
p la tte n E le c tro la E 41 036 (nA song? three? v ie r! ")  
and Columbia 0 83 656 ("Up on the yellow car") k la r  
let recognize? that in the song processing an e rh eb li  
There is plenty of room for maneuver in d iv id ue ll  
is there? the B ^ ^ P dadu rc h worn out? that he -  
Is there a simple accompaniment to marching songs? v / ye you this  
on both platters - one according to rhythm and  
C character changed form chosen and selected in detail  
have fü b rt «

2o This assessment is **subject to legal** review  
**Stand**

a) It is decisively based on Brof's opinion  
Fl

The revision is attacking this appraisal «because it  
the term of self-creative achievement re la tiv ie re  
and subj ectively interpreted <, but because of objective characteristics  
to go out? Already misunderstand the starting point of the  
Opinion on the concept of processing in copyright law 0

This attack is not justified «

Prof o le gt in the face of opposing  
Opinions in the reports of the Executive Board of the German  
Composers Association and by Prof, dar? that in  
Looking at the artistic evaluation of Volksliedbe  
different points of view of the evaluator possible  
lic h be? if not a music-sociological consideration  
these different possibilities as a whole  
Recognize circumstances. For the assessment according to the litera  
tur rh eb errech tsg esetz does it matter? whether a personal  
licly cherished creation or just a handcrafted lei  
stung present? d «ho whether the operator in an erpe rs ö n li  
An artistic decision is made in the processing  
self-creative form given and not only to one  
handcrafted special features attached to the specified set  
have (S, 2 and 4 = GA II 76? 78 ) 0 on the sub jectiv e art  
le ric valuation does not matter here «one in d iv id ue lle  
Self-creative processing can also be given?  
\io the individual does not appreciate the artistic value high »

This starting point of the opinion is correct  
against the view of the revision with the "at the Beur  
Division of applicable legal standards completely  
(cf. \* above for section »II 2)» As far as in  
the expert opinion ve re in ze lt from the sub jek tiv en sc hö p fe ri  
the operator's decision is the speech? h and elt  
it does not say, for example, how the revision must be a sub  
depending on feature 9, the assessment must be taken into account  
tig en isto Rather, the expert understands this  
te r the Bear's personal creative choice  
be ite rs 3 v / ie his statements in cohesion clearly  
to be recognized »

It is therefore not right to object to ;, v / enn  
the court of appeal takes the view *that* the property  
pay attention to Prof \* P ^ BHB from the standards to be applied-  
go o

b) It is a question of whether there is already a bare choice  
the\_ instrument ^ and\_ the ^ 2usamraenstellung\_ of the\_ orchestra

As to be able to produce such self-creative achievements  
»Because the court of appeal is assuming that it is not  
gone that a protectable service in this respect only in  
the type and manner of use of the individual instruments  
te, i.e. in the implementation of the instrumentation and  
Orchestration can be discovered »For this reason  
Neither does the objection of the revision, the Beru  
The appeals court overlooked the fact that B ^ m Qi was in charge  
of the Hanseatic Orchestra was known from the start  
be what instruments and in what number he is the one  
individual instruments could have been used »because even in  
this P all b lie b, as the court of appeal with right  
has assumed there is still enough leeway for the possibilities  
you can choose from among the available instruments  
Different drips and their use in detail  
Way to perform »

As far as the revision means? that instrumentation and  
Orchestration? from a few classic exceptional cases high  
artistic rank aside? no personal intellect  
Let creation appear? Because it's all about musik ali  
fine craft? But is it not a question of God's creation? can  
which are not complied with in this general unit \* if this  
Neither are activities all to be carried out in every P  
have to lead proper creation? so is it recognized?  
that instrumentation and orchestration? the according to § 12 Abs \* 2  
No. \* 4 LitUrhG expressly reserved to the author? re  
Services that can be regularly protected are (cf. \* Ulmer loc. cit. p. 140  
Uo 216; Preiesleben? Law and music? Sun 14; Hubmann? Ur  
copyrights and contract law 2 0 revision \*? S \* 103; W ollenberg? Expert  
te n of the five Prussian chambers of experts for authors  
right Sun 107) o

As far as the revision violation of §§ 402? 406? 410  
2PO complains? because the court of appeal in this context  
the appraisal of the board of directors of the German Composers Association  
band has honored? she can't be successful \* The  
R evision complained? the report does not reveal? if  
the undersigned board member? the s te llv er  
step the president? the remaining four board members  
attached to the assessment and to the composition of the property  
eighth w ith w ithed \* The appeals court did? after this  
it his view? the choice of instruments and  
the composition of the orchestra se ia ls self-creative

Feature to consider? with your own explanations  
justified? added? that on this point there is also the  
Appraisal of the ^ Board of Directors of the German Composers Association  
Followo There is no procedural flaw \* Because the declaration  
the president of the association? Prof \* Werner such as  
of the other three board members Hugo H ^^ PPP? Gerhard  
vmm and Werner are in the O rig in al to the judicial

21st

files have been filed (GA I 194-197) «In the declarations  
by Prof «E ^, and it means that the  
Represents the Presid en t to sign the report  
was authorized, but that the consent was given  
n is confirmed with the report, for that of the unter  
Signing responsibility to the trial court  
take over « shared in his letter,  
that he had taken a close look at the par titu r and with the property  
Pay attention to the fact that you agree to the creation  
of the expert opinion by the presiding president  
of the association, there are literally no concerns »  
The district court also has the opinion of an institute  
fo r economic observation as admissible evidence  
seen (RGZ 167o 171 f - Alpenm ilch; BGH IM ZPO § 402  
Mr. 16; see «also OLG Munich GRUR 1956, 579 f;  
Baumbach-Lauterbach 29 "Auf" Übers "before § 402 ZPO note" 1 A)>

Apart from the fact that it is a procedural flaw  
not preferred, this would be as can be seen from the following  
results, not relevant to the decision «

c) The revision is further opposed to the fact that the Be  
the call has been accepted by an own creator  
cal performance, namely through different rhythms and  
through appropriate use of the language, he will  
It is enough that the intensification of rhythm 1 th e s to ß force  
and that the instruments and the choral setting are effective  
be, but this will be for economic success  
the S cha llp la tte will be decisive in the vote «The revision rebukes  
(§§ 139? 526 Paragraph 2 ZPO) that the appellate court does not  
P ests on the economic success of the P la t  
I have met “You overlooked the appeal  
Appropriate to the attacked wording only for expression  
has brought, the rhythm of processing and its w ir-

- 22nd

Effective instrument can be used for business  
Success can be important among other factors »So  
however, the appellate court does not have the economic authority  
Lich success of recovery as a prerequisite for the  
Copyright protection viewed »A collection of evidence over  
the height of the paragraph of the cupboard was required  
after not »

d) Also the other statements that make up the vocation  
In detail, after hearing the relevant Be  
work and two further arrangements of the song tra  
cha llp la tte n based on the appraisal  
from Prof » has met, do not reveal  
that the term u rh eb is justifiable  
would have misunderstood »

3 » Accordingly, the Court of Appeal's acceptance, the Be  
Editing of the song by B ^ l p meet the requirements of the law  
meet the copyrights to works of the literature and sound  
art from 1901 lower protection requirements  
Not objectionable for reasons of pike »

4 » The revision wrongly agrees that after the submission of the  
R evision came into force on January 1, 1966, new origin  
bergesetz (UrhG), which according to § 129 para »1 sentence 1 also applies to the  
works created prior to his entry into force are to be used,  
Unless the author is not at this point in time  
Legally protected are all due to the protection of Bear  
more stringent requirements »

According to § 3 UrhG edits of a work, the  
personal common creations of the processor are like  
Independent works are protected »This translates into § 2

Paragraph 1 sentence 2 of the LitUrHG \*, according to which a processing of the  
 B earbeiter as the author applies (definition of § 3 RegBntw  
 UrhG \* BI Brucks »IV / 270)» Because also according to § 2 Abs »1 sentence  
 2 LitUrHG enjoyed a processing., As stated above \* only  
 then you can obtain legal protection \* if you have a personal e  
 actual creation of the worker represented (RGZ 153 \*  
 71 \* 76 iiiioV / oNachv / o; Ulmer \* Copyright and Publishing Law 2 «  
 Aufl » So 140) a Therefore the view of the revision cannot  
 BE FOLLOWED \* The former law has been given to the worker  
 badly attached to the property of a copyright holder and  
 so that every processing grants legal protection \*  
 while the new law only has such processing  
 Protection to be allowed \* the p e r s i t y of your origin  
 Geistical creations that are shaped over and over are "Rather are  
 the prerequisites for granting the u r h e b a r e met  
 Lich protection for processing in both laws  
 the same"

5 » For the embossing, whether processing within the meaning of § 2  
 Paragraph 1 LitUrHG or § 3 UrhG present t \* it is contrary  
 In view of the revision, irrelevant \* that after  
 Distribution plan of the plaintiff for the m echanical distribution  
 Inapplicable to the editor of a work that is free of the public order  
 Inexpensive it is set up as the operator  
 legally protected work (cf. »the case of Schulze \* Ur  
 heberrecht in der Musik \* 3 »Auf) S »203 ff \* 227 ab  
 printed distribution plan for B § 3 Para »1)» Because for the  
 Term of processing to be determined by law  
 are the principles of the plaintiff's distribution plan  
 irrelevant »

IV »The court of appeal has the right to omission  
 rightly according to § 36 LitUrHG i »V» mo § 1004 BGB {see »  
 Section 97 (1) UrhG) as well-founded \* because the

sued the plaintiff regarding the processing of  
 Breuer is entitled to the right of mechanical variance

have violated and act unauthorized if s th e  
Such processing has been carried out without the plaintiff's permission  
ge and spread »

1" As far as the copyrights come into effect  
new copyright law to another  
is available according to Section 137 (1) sentence 1 UrhG  
the acquirer the corresponding rights of use (§ 3 1)  
to "This determination is based on the fact that in opposition  
to the laws currently in force the copyrights as  
Such a thing is no longer transferable »Rather, he can  
The originator is now excluded or included in another  
Grant multiple rights of use (§ 3 1 UrhG) »At a glance  
however, that only the violation is not for use  
rights according to § 97 UrhG claims to omission and  
The revision holds the cancellation  
of the contested judgment and the remittal of the  
Legal disputes to the appellate court for righteous,  
so it could check whether the plaintiff was involved  
and B ^ ^ p into one  
simple or exclusive rights of use  
to reinterpret tragühg "

Berne cannot be effected »With *the* author  
right to reproduce by transferring  
of the work on (the sound carrier is based on the previous  
as under current law to an exclusive warrant  
right of decision (see »for the old legal status: BGHZ 8 ,  
94; 17, **269**; Ulmer loc. Cit. P. 256; - UrhG § 15 Abs »1 Nr» 1,  
Section 16 (2)) "This exclusive ver  
tu ng sre chth at the plaintiff, however, in the Be  
right to yield not for own use, but

transferred to the perception, so that the plaintiff is her r  
se it is able to exploit this right  
by granting rights of use «, The  
Plaintiff therefore takes the exclusive right of use  
the worker was true (so for the previous Hechts  
BGHZ 15, 339, 346 - In d eta; see »Section 1, Paragraph 1 of the Act  
on the exercise of copyrights and related rights

Property rights of September 9, 1965? BGBI I 1294) «Your r  
Right of exercise is therefore an exclusive pike

(Ulmer loc. Cit. So 372) «, since the defendant, however, as at  
in conclusion the arg eleg tw is, a right of use neither by  
the plaintiff was still admitted by the BIEM, injured  
you the exclusive right of use of  
Perception all lies with the plaintiff «,

whose

**2o** With Hecht the court of appeal also accepted  
that the defendant according to Art, XIX (3) of the BIEM standard  
Contract does not affect you according to Arto II of the contract  
I am granted permission to create a variety of functions  
pieces and can be called upon to distribute them  
not to the signs made by the plaintiff  
tion of the work as a license, but rather the  
X izen deliberately tbe steps and declined payment \* There  
it was in that of the parties after the excretion of the Klä  
G erin from the BIEM signed main contract of 28 \*  
November / 11o December 1963 in § 23 (1) means \* that the  
The conditions of this contract are authoritative, as long as the  
M e rst to enter into action t this contract admitted  
M aterly elaborated m atres w ith protected f or the plaintiff  
The appeals court has to reuse the tempo repertoire  
also rightly assumed that this new treaty contained in it  
Of course, the registration process has not been prepared for the ready  
The works registered when he entered into action. This Be  
Opinion was also not attacked by the revision »

**Vo** The court of appeal also has the right to  
wnd? §st settlement, the ^ compensation-  
Nf lic ht g e r e ctio ns c motions considered as well founded \*

**Io** The appellate court ruled on this  
The defendant claimed that the plaintiff was entitled to  
right of negligence verle tz t \* by the  
S o rg falt is neglected in traffic  
be \* to the industrial traders of musical origin  
high demands are to be made «, Bie Be  
k lay te would not have seen the very obvious and  
not to be dismissed out of hand view of the expert  
standing committee of the plaintiff on protection  
Ability to edit B ^ g ^ may be disregarded \*

If there were doubts, she would have the evaluation without  
The plaintiff must refrain from giving her consent \* especially since she  
had the possibility \* the license fees under  
Reservation of reclaim after legally binding deed  
to settle the dispute in your favor \* Ba  
If you haven't done that \* take the risk in you  
version not confirmatory decision of the step  
your bast \* Benn either he is the complainant of the poss  
It was only known \* that your view was incorrect  
se in could \* or .you have \* if that isn't the case  
This would be the case \* also in this respect, the required s o rg falls except  
pay attention \*

P a lls the defendant finally accepted  
so \* that B ^ pp was able \* to do something  
Copyright - by its declaration of November 23rd  
Transferred in **1953** \* so you would have been lazy  
traded «. As a commercial advisor of musical  
Rights she should have reckoned with the possibility that  
B i ^ P p M itg lio d of the plaintiff se i and any valuation

rights have already been transferred to them, namely in  
in advance or at the time of creation of the work «.

2o These explanations are also correct  
Review stood »

The case law of the Federal Court of Justice,  
according to the tongues of copyright infringement  
In the case of exceptionally stored balls, the answer is no  
can, the revision can not be called with success  
In the case of tr ict it is not a difficult one,  
H o cbs tri hly not yet clarified legal question, too  
the one opinion to be designated as ruling  
not yet available eb ild et h at (BGHZ 17, 266, 295 f - Grundig;  
18, 44, 57 f - Potocopy; BGH GRÜR 1964, 91, 94 - «Sound  
band he advertising) 0 Because for the coining of the musical bear  
Processing would have been carried out by the R eichsgericht S tellu ng genom  
men (RGZ 153, 71 ff) »Otherwise, the embossing depends on whether  
a processing is legally protected  
VIEW OF THE WIDE RANGE OF POSSIBILITIES, GIANT SHEEP  
fens crucially on the actual circumstances of the

SOME CASES DEPLE \* The original that has meanwhile come into force  
The law of the law has no change on this point  
brought o No other circumstances are discernible either,  
which is called the defendant's behavior  
whether the defendant at the time of the  
Conclusion of the contract of November 23, 1953 with  
has accepted or may have assumed that  
B is not a member of the plaintiff is contrary  
the view of the revision is irrelevant ", because she would have  
on the occasion of your registration of the record recording eb e  
the plaintiff learned from you that whose mit  
was lucky and that the plaintiff was licensed  
the mechanical diversity to which they are entitled

Rights asserted, If the defendant didn't care  
Manufacture and distribution of the plate from the front. That's how it is  
Regarded by the court of appeal as negligent  
**been**

3 « The first speech raised by the revision  
the statute of limitations is not justified, The Revi  
sio nm unites **5** since the complaint on November 23, 1961 the defendant  
had been delivered, will the speech be accepted? so  
W ith the statement of information and the statement of the p est  
on sales and other uses of the s ch all  
p la t e r t e n t **9** th e obtained before 23 »November **1958**  
\* In the appeal procedure, the objection from § 50  
LitUrbGr cannot be levied «. Therefore she must now  
more can be collected according to § 102 UrhG «,

This cannot be complied with, the revision is  
admit **9** that the objection of limitation in the appeal  
can be levied in court; because to this  
The point in time was the period of limitation in terms of the damage  
Compensation claim due to unlawful dissemination?  
the according to § 31 Abs «, 2 LitUrbGr e r s tm it the 3rd age of the last  
t would have begun a legal act? not once  
started.

However, the defendant can also according to the regulation of  
Copyright law, the objection of statute of limitations is not valid  
assert w ith success.

According to § 102 Paragraph 1 UrhG- annual claims for damages  
what in three years from that point in time? in which the  
Victims of the damage and the person responsible for the rescue  
Got a lot of knowledge? regardless of this knowledge  
in thirty years from the commissioning of the plot, Für this

The regulation based on § 852 BGB applies, insofar  
it depends on the beginning of the statute of limitations  
agree, in the same way as the reason for § 852 BGB  
So that the right term of the statute  
no bullets are to be played, the civil-  
Rather, legal appreciation to the individual un  
must be linked to permitted acts (HG JW 1912, 31? RG2  
134, 335, 338; BGH NJW 1954, 1033) \*

The regulation of § 102 Abs. 1 UrhG applies after  
§129 Abs. 1 UrhG also for before the entry into force of the  
UrhG-Rechtsgeetz arising claims. she is  
but only to be applied under the condition that a verjäh  
deadline, which is not already before the in teract of the  
Copyright law according to the previous regulations  
started to run the earliest smith it was in force  
if the Copyright Act is to be met.

This B restriction of the application of § 102 UrhG  
the legislature has not expressly ordered  
But it is the same as in the copyright law  
to infer from common thoughts that without an express  
lic heg escal regulation rights and claims that  
according to the previous law have arisen, not changed  
de rt and shortened. The  
\* 1 transitional provisions of §§ 129 ff UrhG, especially law  
Regulation, e.g. also the regulation of § 132 Abs. 1 UrhG,  
according to which the in § 40 para. 1 sentence 2 and in § 41 para. 2 UrhG  
mentioned periods of 5 years or 2 years earliest s  
Begin with the entry into force of the Copyright Act.  
Would be one before the ingress of the Copyright Act  
lying knowledge of the last person of the damage and of  
of the person who is responsible for the starting time for  
the course of the period of limitation according to § 102 Abs. 1 UrhG  
giving, then the replacement would have to be owed, even if the

"30 -

Claim even before copyrights come into effect  
law. would have been pending, many times the poss  
Now with success the objection of the statute of limitations  
also in those cases in which this  
Objection up to now is not possible. Such a B ee in Trä ch ti  
Ready to go into action under the Copyright Act  
the claims of the copyright holder can  
neither from the wording nor from the meaning of § 102 UrhG  
be taken,

VI, Finally the court of appeal ruled that  
the assertion of the right to cease and desist against the  
Complained by the plaintiff against the principle of trust  
and belief (§ 242 BGB), or the defendant ge  
a right of retention with respect to the claims  
stand e or the defendant any claims for damages  
against Breuer against the plaintiff could "

The appellate court has disagreed that it could  
stay open as to whether face the defendant  
the point of view of the guarantee or for other reasons  
I duly made the sc had en substitute, Benn the plaintiff,  
which the author's certificate perceives in trust  
sicl v based on their independent stance towards theirs  
M embers are not allowed to oppose such claims  
sen.

This assessment is subject to legal verification  
was standing .

When setting off two claims according to § 387  
BGB precedes the reciprocity of claims. About Gläu  
If he of the one claim must therefore be the debtor of the  
whose requirement se in. According to recognized jurisprudence depends  
the question of whether the debtor has a claim whose form el  
The owner is a trustee, to offset with a he

he is entitled to claim against the trustor  
 ti glist, from the special type and design of the  
 Trust relationship (BGHZ 25, 360, 367). After that  
 can include the considerations involved in debt collection for  
 the admission of offsetting speak, depending on the case  
 then a corresponding legal assessment right  
 finished when the trustee has passed the claim  
 one concluded in one's own name with a colleague  
 Business justified, but only within the framework of a trust  
 Acted in accordance with the instructions of  
 The trustor in the manner of an employee.  
 It must be added that taking into account all r  
 Circumstances the appeal that the claim is formally  
 arose in the person of the trustee, trust and  
 Faith (§ 242 BGB) is refused.

The Court of Appeal has here ruled free of any errors of right  
 inferred, depending on the dependent and dependent the control  
 the trustee vis-à-vis the settlor, the more  
 Rather, it will be justified, taking into account  
 all circumstances in good faith trustee and good faith  
 Despite the formal separation, donors must be treated as unity.  
 The appellate court then states that the plaintiff fcoinel  
 dependent execution tied to individual instructions  
 person of their individual members according to the type of a rack  
 ten se i. Rather, let it be a business and economic association  
 Carriers of the pike of the whole with their m itg lied them  
 largely independent of. According to the statutes I.  
 The fiduciary administration of them lies with them  
 Valuation transferred rights of the over five thousand M itg l  
 of the. You can do everything to protect the pike I  
 e rd e rly (§ 2 para. 2 of the statutes). So she can I.  
 w pus transferred the rights un ter others or their loading I  
 Prohibited use without your individual member I.  
 forbidding this in the individual case or for the sake of the I  
 Use. The assertion of the legal I  
 The w ills of the members are not met by individual I

languages or even instructions from the member to the complaints  
 r in, but through the designated association bodies,  
 in particular by the general assembly (§§ 5 and

10 of the Articles of Association), which also includes amendments to the Articles of Association and the distribution plan. Wake up  
 Distribution plan addresses the distribution of the revenue  
 m e in a l l l l l ularly of the for support and care  
 sums to be expended for the purposes of purposes (§ 18 of the Articles of Association),  
 what further taking into account the deduction of the  
 v / aging costs of the plaintiff have the consequence that a  
 Individual members do not or not without further information  
 those amounts were paid out in full that  
 from the exploitation which flowed into the works  
 In these circumstances, however, there can be no suggestion that  
 between the plaintiff and her member just one  
 formal separation exists and that the plaintiff is after  
 Good faith as a union with treat let s  
 must sen.

Contrary to the view of the revision, it is in this one  
 Context is irrelevant that the plaintiff is in one  
 Syntax based on an older linguistic usage  
**der Veri / erungögboollöchaften atto uInkooo'obenuftl, iagt1,**  
 referred to. It does not follow from this that they  
 from the defendant's objections arising from its legal  
 Draws too have to counter it. The from  
 the plaintiff with closed contract is a ur  
 h e rightful contract of use of its own type. He knows  
 Elements of the order, in particular with regard to the tre u  
 manual transfer of rights, as well as the g e llsc ha fts-,  
 the B ien st and the agency contract  
 (BGH GRUR 1966, 578, 569 - GELU). That is true  
 Court of appeal when assessing the question of whether the  
 k was about against her due claims of  
 Plaintiff with success can oppose, first and foremost  
 dismissed so that the plaintiff in the relationship

h in regard to the manner in which the trustees operate  
 ric perception of the transferred by it  
 Usage rights are not bound by their instructions.  
 As the assertion of the will of the members, he inso  
 Far from through individual agreements with the plaintiff or  
 Even by instructions from the members, he passed on to the plaintiff  
 follows, but through the plaintiff's pre-existing organs,  
 in particular the general assembly, which also includes the  
 Resolutions on the details of the distribution  
 to stand plan, the difference between the Klä

gerin and its individual members  
The point is precisely what is important  
the assignment for the purpose of collection, in which the trust  
Dealers are regularly bound to the instructions of the trustor  
that is. Since the plaintiff over the right lawful groove  
to dispose of the rights of all of its members  
because of the dominance  
the position as a result of their extensive repertoire  
Obliged on the basis of your exercised rights  
anyone on request under reasonable conditions not  
granting rights of use or granting consents.  
According to general observations, this has already been valid until now  
Principle (see Ulmer op. Cit. P. 376) now has in § 11  
Perception legal recognition found. Shows here  
but especially the independence of the  
Complainant to her individual members. Straight  
in view of the plaintiff, also to the be  
complained about incumbent, but refuses to do so  
not in good faith (§ 242 BGB) if the plaintiff  
relies on the defendant that the  
You can assert a dispute against them in the present law  
made claims arose in your person and  
It therefore assumes any claims from the defendant  
the ratio R genuine with **B 00 &** n ic ht opposite  
may be.

Contrary to the view of the revision, it comes to this  
The situation does not depend on whether the distribution is  
The plaintiff's plan for the mechanical versatility  
right in contrast to their allocation plan for the allocation  
right to conduct and broadcast an individual distribution  
the income from the exploitation of the copyright  
The right of use of the individual member is provided for.  
If a licensee in the benefit plan in the copyrights li  
A processing company is not allowed to be in  
dividual transfer of the respective for the evaluated who  
no royalties received from an author but  
in essence on a lump-sum calculated point system  
If you rest, then this is all in itself in one circumstance  
the divergence of the law between  
the processing company and its individual employees  
members of the collection authority eight (BGH aaO GRUR 1966,  
569 left Sp) 0 Apart from that, Eiu öäß. ^ Nash of the revision

Unimpaired ruling by the court of appeal  
Part of the royalties paid by the plaintiff under the Articles of Association  
is used for support and supply purposes,  
in this respect, therefore, a completely individual distribution as well  
in the distribution of the plaintiff's income from the Ver  
Evaluation of the mechanical diversity is not legal  
statutory in fact, the fact that this would be recovery  
type the distribution in individual form takes place as at the in  
took the plaintiff out of the exploitation of the performance and  
Broadcast right, not opposed to the assumption that the Klä  
For the reasons set out above, it does not issue instructions  
depends on its members. Incidentally, it is now in  
Section 7 sentence 2 of the Perception Act stipulates that the distribution plan should do so  
Principle correspond to that of the significant works and  
To promote achievements. The consideration of the -  
This principle is an individual distribution of the  
Revenue earned by the plaintiff.

In addition, the plaintiff's complaint  
who oppose the opposition of possible damages  
The defendant's claims against Breuer are also rejected  
out. basically not violating good faith,  
because of the defendant's assertion of their claims  
this will not make it impossible. Because it is the  
Defendants not condemned their claims against  
right to assert and, if it is victorious,  
the requirement against the plaintiff for payment  
according to the distribution plan for him  
wear e to seize.

The revision can also not be followed if  
that this assessment of the legal relationships between the  
Plaintiff and her member on the one hand  
and between the plaintiff and the defendant on the  
whose side goes against the basic ideas of the law  
the exercise of copyrights and related rights  
rights dated September 9, 1965-violated. Hach this Ge  
In addition, the plaintiff is subject to the license (§ 1)  
and the state supervision (§ 18 ff). It has further  
including amendments to the articles of association, their tariffs and their  
Changes as well as the resolutions of the general meeting  
to inform the supervisory authority in writing immediately  
in (§ 20). Through this monitoring of the activities

However, the plaintiff is just as unlikely as by the according to § § 22,  
33 (2) BGB or the existing association  
Pursuant to Section 24 of the Perception Act, existing abuse control  
des B undeskartelam ts something in those treated here  
Right-wing drawing on the parties of this right  
meet and changed.

After all, there is no legal error in this either,  
that when examining the A rglisteinw the professional court  
of all in the self-reliance of the plaintiff as loyalty  
Handler dismissed from her members, against it

\*\*\*\*\*

J

I don't have the thoughts of legal security and the end  
assumed the character of the assignment in future  
te back tig tha t. It is ready for the exam  
the competence of the plaintiff has been highlighted  
(cf. above on item I 1) that the assignment  
U rh e legal rights of use with regard to future  
Works by the members of the plaintiff on them  
is no exception and that the assignment  
especially legal security is also important.

Accordingly, it is legally not objectionable  
if the appeals court has accepted the defendant  
There could be objections to Breuer based on her  
due claims of the plaintiff because of their se lb  
No permanent position vis-à-vis their members  
oppose it.

V II. In vain does the review refer to this  
§§ 27, 157 Abs. 1 Satz 2 UrhG the authorization of  
Plaintiff in doubts, the defendant also the rental  
the p otpourri wearing s cha llp la tte or there  
after producing tapes for broadcasting purposes  
th.

Already in accordance with Section 11 Paragraph 1 Clause 1 LitUrhG  
the exclusive authority of the author to exercise this  
promotional dissemination of the work to the commercial sector  
Moderate rental of a duplication piece without  
Consent of the author obtained or in the ver  
had been turned back. Section 27 of the UrhG is valid  
the rental of reproductions to the author  
a new claim only insofar as it is the author  
contrary to the current state of law in V e rv ie lfä lti

with its understanding on the market  
been brought in; a right to payment in the  
appropriate remuneration against the retired

A lot of items are available when renting  
The seller's profit-making purposes.

In the case of the subject of this law  
However, it is the case with the copies  
to without permission of the author and so it is legally illegitimate  
Produced copies, their distribution  
even if it is illegal. Even according to previous law  
but stopped renting without the consent of the Urheber  
holders' copies which have come into circulation  
represents an illegal distribution (cf. I. Ulmer loc. cit. p. 197).  
The plaintiff makes -therefore, as far as the claims are made  
on renting out the Schallplatten and after that  
Obtain set tapes, none first with the new one  
Claims based on copyright law apply.

VIIIo M e R e v i s i o n w a s w i t h t h e c o n s e q u e n c e o u  
R e j e c t § 97 Z P O 0

Kruger-Rieland

Sprenkman

A l f

Simon

Bökelmann