

## In re Sparkasse

Hamburg Higher State Court

3 U 47/00

09/25/2003

### **Order:**

Upon appeal by the defendant, the judgment of the LG Hamburg, civil chamber 8, dated January 21, 2000 is amended.

The action in the version presented in the appellate court is dismissed.

The dependent cross-appeal of the applicant is rejected.

The class bear the costs of the legal dispute in both instances.

The judgment is provisionally enforceable.

The plaintiffs can avert the enforcement by providing security in the amount of € 6,000, if the defendant does not provide security in this amount before the enforcement.

The revision is not permitted.

and decided:

The value of the subject of dispute is set at a total of € 27,798.43 (= DM 54,369) for the appeal proceedings, of which € 27,585.73 (= DM 53,953) is due to the appeal of the defendant and € 212.70 (= DM 416) to the Cross appeal of class ..

### **Facts:**

**1** The class are composers and together they composed the advertising jingle “When it's about money - Sparkasse” (sound recording: Appendix K 9). The tone sequence, which is regularly underlaid with this line of text, was produced by the students in 1993 on behalf of the advertising agency S-..., the jingle has been registered with GEMA since January 21, 1994 under the database number 3,000,000 (Appendix K 1).

**2** The defendant is a composer and music producer. On behalf of the advertising agency S-... he produced various "Sparkasse" advertising music using the tone sequence of the jingle and inserting new middle parts (sound recordings: Appendix K 8) and registered the advertising music with GEMA (Appendix B 1 and B 3) . P.... Musikverlag GmbH (hereinafter: P.-GmbH) has registered further “Sparkasse” advertising music from the

defendant with GEMA (Annex B 2). The entries were made with GEMA in accordance with the registrations.

**3** The plaintiffs see their copyrights being violated by this and claim against the defendant for omission, deletion, accounting and determination of the obligation to pay.

**4** On December 3, 1993, the class had agreed the following with the advertising agency S-... (Annex K 2):

1. The ... (Kl.) Are the originators of the music with the working title: Sparkasse jingle "When it's about money - Sparkasse".

2. The ... (Kl.) As the author of the above music expressly consent to their original music being edited by third parties.

3. The authors of the above music also agree that their work in processed and / and unprocessed form - can be combined in any way with other musical works of third parties. "A.-..." receives a one-time fee of DM 15,000 + VAT for the usage rights to this composition.

4. The composition is registered with GEMA by the authors. The authors are named in all further publications ... "

**5** The defendant produced the "Sparkasse" advertising music in accordance with the order from the advertising agency S- ... in the versions "Classic Version", "Sparkasse: Pop / Mainstream", "Sparkasse: Unplugged", "Sparkasse: Rock", " Folk version ". In these advertising music, the tone sequence "When it's about money - Sparkasse" is only used as the beginning and end (as the so-called intro and outro), whereby the instrumentation and the rhythm are different according to the individual tracks. The middle parts of the advertising music come from the defendant. In the "Classic version" the tone sequence of the class is used three times.

**6** The defendant's GEMA registrations relate to the "Classic Version" (Appendix B 1) and "Folk Version" (Appendix B 3) advertising music, the GEMA registrations by P.-GmbH relate to the "Unplugged" versions , "Rock" and "Pop / Mainstream" (Appendix B 2).

**7** The class submitted:

**8** Your composition "When it's about money - Sparkasse" shows the level of design required for a copyrighted musical work. The defining melody part is not a plagiarism of the title "Wouldn't it be good" (N-xx K-..., 1984, Appendices B 4-6). The correspondence of the tone sequences is disputed, the tone sequence according to Appendix B 4 is not an authorized staff.

**9** The defendant claims - as the GEMA registrations showed - for the middle parts of the advertising music to have its own author's claim as a composer and thus claims that the middle parts produced by him have a protectable character, so that there is a work connection with their - the class - composition. However, the changes and additions made by the defendant did not have the character of a work, they were only adaptations that remained within the scope of § 23 UrhG and also did not give rise to a copyright holder's right under § 3 UrhG. The middle parts are just arbitrary, computer-controlled "surfaces" (clichés) made of handcrafted rhythm parts over which the spoken text is placed , the defendant's versions have

no creative content, their - the Kl. - melody remains the defining element and goal of the arrangement (cf. the report of the expert P.-... commissioned by the class: Appendix K 11).

**10** By generating his person as the author / composer for his arrangement of her - the Kl. - work through the middle parts and their connection with her - the Kl. - work directly encroach on their copyrights (§ 97 UrhG). The defendant tries with the simple, not self-creative arranging of her - the class - work the recognition of her - the class - authorship acc. To dispute § 13 UrhG and to push yourself into this position in order to gain the directly related economic advantage of the GEMA royalty payment as a composer. The registrations violated her - the Kl. - moral right.

**11** In order to be able to derive a plant connection approved in accordance with the agreement (Annex K 2), there would have to be two protectable plants that could be connected to one another. The defendant could only get into a position worthy of protection and claim a share in the GEMA royalty if the middle parts were actually produced.

**12** With the agreement (Annex K 2) they - the class - would not have given up their copyrights and the associated GEMA remuneration. The GEMA collective agreement usually provides for a share of 1/12 of the author's remuneration incurred by the original authors in the performance and broadcasting rights for the editor; it is undisputed that no other participation has been agreed. The GEMA remuneration from the use of the original work was not lost; The agreement covers the rights of use to the original version for broadcasting the jingle on radio, television and possibly in the cinema, i.e. the production of the original jingel and the unlimited bayouts (broadcast), but not the author's rights to be remunerated via GEMA .

**13** Nothing else applies to the “jazz version” produced by the defendant, and the defendant was also commissioned in this respect to broadcast the radio spot as well (Annex K 13).

**14** The applicants have requested

1. to condemn the defendant to refrain from using the work of class "When it comes to money - Sparkasse" with GEMA- as the author / composer or co-author and / or editor when avoiding certain means of regulation Work number 3,000,000 titles produced

a) Sparkasse jingle "Classic"

b) Sparkasse jingle "Mainstream"

c) Sparkasse jingle "Unplugged"

d) Sparkasse jingle "Rock"

e) Sparkasse jingle "Folk"

f) Sparkasse jingle "Jazz"

to designate and to register these titles with copyright management societies and / or other authorized users as their own composition or to have them registered or to be registered as a processor of the named works;

2. to condemn the defendant to consent to the deletion of his author's designation as a composer (in accordance with section 1.) at GEMA and / or other copyright management companies and / or other authorized users;

3. ...

4. To condemn the defendant to bill the claimant for the copyright fees received from the exploitation of these titles by submitting the original statements of the copyright management societies and to pay the portion of this fee due to the class as a composer.

**15** The defendant has requested

reject the complaint.

**16** The application also announced in the application of 30 March 1998,

(3.) To condemn the defendant, to give the class information, which other titles using the work "When it's about money - Sparkasse" GEMA work number 3,000,000 and under which name these were registered with copyright management companies, the parties agreed upon the information provided by the defendant in the hearing on November 18, 1998 (p. 38).

**17** The defendant submitted:

**18** The claims made are unfounded. In order to enable him to freely use the class's jingle in the form of a processing and / or work connection, the advertising agency S-... had the right to process and work connection as well as all rights of use with the agreement of December 3, 1993 (Annex K 2) let the resulting compositions cede. In exercising the processing and work association rights transferred to him - the defendant - by the advertising agency S- ... he had the advertising music "Classic-Version", "Pop / Mainstream", "Unplugged", "Rock" and "Folk Version" composed.

**19** The middle parts are eligible for protection, and there is no justified doubt in the opinion of the party (Annex K 11). Contrary to the claims of the class, they were not created on the computer or using ready-made computer sequences, but were composed with the help of guitar or piano, and the compositions were then recorded with live musicians.

**20** According to the agreement (Annex K 2) he - the defendant - was entitled to link the works and to merely process the work of the class, the restrictive argumentation of the class was incorrect.

**21** The GEMA registrations objected to were correct in terms of content (Annexes B 1-3), the registration of P.-GmbH (Annex B 2) was carried out independently by the company. He - the defendant - did not make any other registrations and, to the best of his knowledge, no further registrations were made by third parties.

**22** Furthermore, it is disputed that the original composition of the class (the advertising jingle "When it's about money - Sparkasse", Annex K 9) or the sequences of three to seven seconds of the tone sequence used are themselves works that can be protected. The tone sequence can be found in the well-known and successful hit "Wouldn't it be good" (N.-xx K.-..., Appendices B 4-6), which was composed in 1984.

**23** He - the defendant - is not aware of the “jazz version”. It may be that the agency S-... commissioned the arrangement of a “jazz” version of the class’s jingle in March 1996 (Appendix K 13), perhaps a corresponding layout was made at that time. However, he had not registered a “jazz version” of the original jingle, nor was he aware of any registration of such a title by third parties.

**24** The claim to 2.) is too vague. Invoicing and determination of damages could not be required; Even in the case of an - assumed - incorrect GEMA registration, there is no damage, the rights of use have been completely assigned to the agency S-... by the contract of December 3, 1993 against the one-time fee.

**25** The Regional Court raised evidence of the level of copyright for the composition of the applicant and the middle parts added by the defendant in his advertising music (decision of 15 January 1999). Because of the result of the taking of evidence, the expert opinion of the judicial expert Professor Dr. phil. EM-... of April 30, 1999 (sheet 54 ff.) Together with the supplementary report of August 13, 1999 (sheet 76 ff.).

**26** By judgment of January 21, 2000, the District Court granted the action in part, namely the application for an injunction to 1.) with regard to the designation and registration as the author / composer of copyrighted parts of the work with regard to: "Classic Version", "Folk Version" and "Unplugged" and with regard to the creation of an editor's copyright and the registration as an editor with regard to: "Folk-Version", "Unplugged", "Rock" and "Pop / Mainstream" (cf. the verdict on I. 1. and 2.) .

**27** To the extent of the conviction to cease and desist pursuant to the verdict on I. 1. and 2. the LG also granted the cancellation request on 2.) with regard to the designation as author, composer or arranger at GEMA, with the exception of the designation of the editor for the “folk version” (cf. the verdict on II. 1. and 2.). The application for accounting and the application to determine the obligation to pay - cf. the claim to 4.) - the LG has granted with regard to the GEMA registration with regard to the titles: “Classic-Version“, “Folk-Version“, “Unplugged“, “Rock“ and “Pop / Mainstream“ (see the verdicts to III. and IV.).

**28** Otherwise, the LG dismissed the action. Reference is made to the judgment for all details.

**29** The defendant appeals against this judgment, insofar as he has been convicted. The plaintiffs appeal against the judgment with the dependent cross appeal, insofar as the application for an injunction with regard to the title “Sparkasse: Jazz” (designation as the processor) has been rejected. The parties' appeals have been filed and substantiated in due form and time.

**30** The defendant repeats and deepens its submissions at first instance. He defends the judgment of the LG, insofar as it has dismissed the action. He also adds:

**31** He was not famous for any legal status that did not suit him. In any case, only the GEMA registrations would be considered as the basis for a reputation - and only insofar as they can be attributed to him - because his procedural submissions otherwise only serve legal defense. The GEMA registrations are not objectionable. The advertising music created by him - the defendant - with the middle parts inserted by him are subject to copyright protection (evidence sheet 182; cf. the report by the expert Dr. S-...: Appendix B 7), im Incidentally, the lawsuit would also be unfounded if one assumed the central parts were not eligible for protection. In addition, it is disputed that the Kl. Owners of the copyrights to the registered

advertising jingle (Annex K 1), because this is in turn an adaptation of the original from the sixties (sheet 183), it is also disputed that the composition of the Kl. Or the short sequences used in the advertising music are protectable.

**32** The applicant's cross appeal is unfounded. He - the defendant - did not register a "jazz version" or had it registered, and he did not know whether the title was registered by third parties. Nothing else emerged from the order placed by the agency S-... (Annex K 13), in particular not that he - the defendant - was famous for a part of the work that could be protected in connection with that version. Incidentally, such a notoriety would not be illegal either, the added middle section is eligible for protection (evidence sheet 191).

**33** Incidentally, GEMA has so far only accounted for the "Unplugged" version to him - the defendant - and distributed the royalties in accordance with its accounting principles (page 247 ff.). The accounting principles of GEMA (see p. 247 ff.) Did not represent the class correctly.

**34** The defendant requests that

dismissing the complaint in its entirety, amending the ruling of the regional court, and dismissing the plaintiff's cross-appeal.

**35** The applicants apply

to reject the appeal of the defendant, as well as to condemn the defendant by means of a cross appeal,

(I. 3) to refrain from acting as arranger of the title produced using the work of class "When it's about money - Sparkasse" with the GEMA work number 3,000,000

"Sparkasse: Jazz"

to designate third parties and / or to induce third parties to register the defendant as the processor of this title version with copyright management companies and / or other authorized users.

**36** The applicants repeat and deepen their submissions in the first instance and defend the regional court judgment, insofar as the action was upheld. They also state:

**37** The LG wrongly dismissed the action for an injunction with regard to the "Jazz Version". The demo cassette (Annex K 8) and the letter from the advertising agency S-... (Annex K 13) prove that the defendant presented himself to this agency as arranger of the "jazz version" (evidence sheet 172). The concept of arranging describes a copyrighted service, accordingly the defendant is also famous for a copyrighted service. According to the defendant's previous behavior, there is a risk of a corresponding registration and registration with GEMA. Incidentally, their (the class) investigations at GEMA had shown that the defendant had registered as a processor of the original music (the class) with regard to the "jazz version" (sheet 240 with evidence).

**38** The defendant's attacks against the expert report of the first instance are unfounded, and obtaining a top report is out of the question (cf. on report by Dr. S-...: Bl. 198 ff.). The LG rightly condemned the defendant. As a result of the GEMA reports complained about, they -

the class - would be disadvantaged in the distribution of GEMA royalties (sheet 239 ff., Appendix K 19-25, sheet 254 ff. With evidence).

**39** With regard to the further submissions of the parties and the attachments submitted by them, reference is additionally made to the entire contents of the file.

**Reasons for the decision:**

**40** The defendant's admissible appeal is successful in the matter. The admissible dependent cross-appeal of the class is unfounded.

**41** Accordingly, if the action has not been dismissed by the district court - unopposed by the plaintiffs -, the regional court judgment must be amended in full, including the application for an injunction made with the cross appeal.

I.

**42** Subject matter of the claim re 1.) in the version acc. The verdict on I. 1. and 2. of the LG - and only in this way is the application for an injunction defended by the claimants in the second instance - is not, according to the statements of the LG, the general prohibition against being the author, composer or processor of the parts of the work at issue to call. Rather, the subject of the prohibition is the accusation of the defendant that the middle parts or adaptations created by him are copyrighted works, i.e. either own musical works created independently of the original work of the class (§ 2 UrhG), free use (§ 24 UrhG) or adaptations (§ 24 UrhG) 3 UrhG).

**43** The same applies to the complaint to I. 3.) still filed in the appellate instance regarding the “jazz version”.

II.

**44** It is to be admitted to the defendant that the injunctive relief according to the verdict on I. 1. and 2. of the regional court judgment and the motion on I. 3.) give rise to serious doubts about their specificity and, accordingly, their admissibility.

**45** It is recognized and therefore does not need to be deepened that claims are to be interpreted not only according to the wording but also with reference to the reasons; the same applies to judgments taking into account the facts and reasons for the decision, in particular when interpreting the terms used in the prohibition (cf. . BGH WRP 2000, 506 - Sanssouci Clinic).

**46 In its** verdict on I. 1. and 2., among other things, with regard to the title “Sparkasse: Folk-Version” produced by it - the same applies to the other versions - the LG has prohibited the defendant,

(I. 1.) to designate himself as the author / composer of copyrighted parts of the work using the work of class "When it comes to money - Sparkasse" ... and to register these titles with copyright management companies and / or other authorized users as their own compositions or to register.

(I. 2.) to boast of an editor's copyright because of the use of the work of class "When it's about money - Sparkasse"... produced titles... and to register or register as a processor of these titles with copyright management companies and / or other authorized users allow.

**47** According to the express determination of the LG in the reasons for the decision, the defendant is not to be generally prohibited from referring to himself as the author, composer or arranger in connection with the "Sparkasse" advertising music in question, but - as stated - to be famous that the central parts or adaptations created by the defendant are "copyrighted work".

**48** The prohibition therefore does not concern any specific information, e.g. B. on a GEMA registration form the entry: "Composer". In terms of material law, this takes account of the fact that it depends on the context of the respective utterance whether someone who describes himself as a composer also claims that what he has created is protected by copyright. On the other hand, the prohibition is apparently intended to affect all information which, in terms of content, means such a reputation. So what is actually forbidden for an enforcement remains rather unclear.

**49** The cease and desist requests - the gem. the regional court verdict on I. 1. and 2. and the application on I. 3.) acc. the cross-appeal - but are to be rejected from a substantive point of view as unfounded, with the question of admissibility being deferred due to the lack of danger of being inspected or due to the lack of violation, because according to the statements under III. to VI. the infringement cases complained about - the GEMA registrations - and the other complaints (cf. under VII.) are not unlawful and accordingly would not justify an injunction against their being made. In this respect, the question of the permissible generalization of the injunctions can remain open.

III.

**50** The GEMA registration made by the defendant relating to the "Sparkasse" advertising music in the "Classic Version" (Annex B 1) is not unlawful in the absence of a contrary prohibition standard.

**51** 1.) The GEMA registration form (Annex B 1) shows the relevant facts and circumstances.

**52** (a) As the LG assumed quite naturally in its facts, it follows from the registration that the advertising music lasts a total of 30 seconds and that it has a portion of a sequence of 3 seconds from the tone sequence composed by the class and that otherwise the advertising music comes from the defendant.

**53** In the GEMA registration for the "Classic Version" (Annex B 1), the classes are named in line 4 and expressly stated as the "originator" of the Sparkasse jingle "When it comes to money, Sparkasse". This jingle is listed in the "Original Title" section for a period of 3 seconds. The duration of the advertising music is given as 30 seconds, the defendant is listed under the heading "Composer".

**54** (b) It is undisputed that these details correspond to the actual circumstances. This also applies to the defendant listed under the heading "composer", because as the LG has already correctly stated - albeit with a different objective - the defendant is in the literal sense "composer" of the advertising music he has registered. He created the middle part of

the advertising music himself and combined it with the parts from the tone sequence as the beginning and end.

**55** The applicant does not dispute that the defendant created the middle section himself. Because even if - as the Kl. Claim - the middle part could be correctly described as any computer-controlled surface (cliché) made up of handcrafted rhythm parts and should therefore be assessed as not eligible for protection, the middle part nevertheless came from the defendant ., according to which he would have composed the middle section conventionally with guitar or piano.

**56 2.)** Contrary to the opinion of the Regional Court, the GEMA registration complained of by the defendant does not violate § 97 I sentence 1 UrhG.

**57 (a)** As far as the "Classic-Version" of the Defendant is concerned with the concrete use of the original jingle of the class as a beginning and ending part (a total of three times this tone sequence) on the one hand and the connection between this and the middle part of the Defendant on the other , a violation of copyrights of the class - subject to the protectability of their composition - is out of the question. In this respect, there can be no illegality with regard to the GEMA registration of the defendant.

**58** With the agreement dated December 3, 1993, the applicants ceded their rights of use to the composition of the tone sequence "If it's about money - Sparkasse" to the advertising agency S-... and expressly agreed to any processing of the original music and any connection with it other musical works by third parties (Appendix K 2).

**59 (aa)** Therefore, the argument used by the class of "shortening, processing or suppressing" their original composition cannot be accepted. Because even the use of only 3 seconds of the original music of the class in the "Classic Version" is covered by the contractual agreement with the granted possibility of any editing. This does not stand in the way - as the class objected - that all of the original advertising music created by the class (like the other versions of the class with a duration of 20 seconds, see Appendix K 17) is a "protected original work" is, according to the agreement (Annex K 2), the defendant is also entitled to shorten the processing.

**60 (bb)** The same applies to the inserted middle section of the defendant, even if one assumes with the class that the middle section as a mere sound surface cannot be protected by copyright or if the advertising music of the defendant is therefore not an independent creation - in relation to him comes to. Because it remains an adaptation of the original composition of the class if what was added by the defendant should not have the character of a work in terms of copyright law or if the defendant's work result should not be protected by copyright due to the lack of its own design level. And this type of processing is covered by the agreement.

**61 (cc)** Insofar as the middle section of the defendant in the "Classic Version" should have a protected work character, the connection with the three-tone sequence from the original music of the class would again be contractually permitted.

**62** The applicant's argument that the work connection granted by them only meant famous works by third parties (cf. p. 238 ff.) Cannot be upheld because such an interpretation of the contract - which was not shared by the defendant - in the contract and has not been expressly reflected in the other party declarations to be consulted and the claims have not provided any other tangible evidence for this.

**63 (b)** Contrary to the view of the LG, the designation of the defendant as a “composer” in the GEMA registration of the “classic version” does not infringe the copyright of the class (on their original music) even if one The conclusion to be drawn from this information is based on the assumption that what has been created by the defendant is protected by copyright.

**64 The** only decisive factor in this respect is that the applicant's authorship of the parts of the original music used by the applicant is not called into question by the defendant. The defendant's GEMA registration would not question the applicant's authorship even if what was created by the defendant should not be eligible for protection and the registration would be understood as an assertion that the middle section was eligible for protection. Rather, it is clearly and accurately expressed there that the class are the authors of the original music.

**65 (c)** For this very reason - contrary to the LG - nothing else results from § 13 UrhG.

**66** According to that provision, the author has the right to have his authorship of the work recognized. The GEMA registration takes this into account by naming the class as the author of the original title. The claimant's recognition as the author is not challenged by the fact that the defendant “processes” the composition of the class in the manner described above and in turn describes himself as the “composer” of the middle section, even if the defendant's actually not created should be protectable.

**67 (d)** Contrary to the view of the LG, the point of view of the rights of exploitation of the class protected by §§ 15 ff. UrhG does not apply.

**68** The copyright exploitation rights include the positive right of use and the negative right of the author to prohibit his work. The exploitation rights of the class are reflected in the agreement with the advertising agency S-... (Annex K 2), the GEMA registration complained of as such does not affect the exploitation rights of the class.

**69 (e)** A violation of the moral rights of the class, for example through the GEMA registration, is also out of the question.

**70** Such an infringement of rights does not result from the fact that the defendant referred to himself in the GEMA application as the “composer” of the middle section of the “Classic Version”, because the classes do not claim the middle sections - of course not - as “their work”. In this respect, too, the choice of words “composer” with regard to the middle section of the advertising music for the work of the class with its broadcasts and accordingly for the protection of their moral rights is not relevant, even if this middle section should not be eligible for protection.

**71 It** is not asserted that the advertising music, due to the way in which the defendant was processed - it is even described by the clients as “rude” - impaired the compositional work performance of the client, for example through an unacceptable distortion. The Senate was unable to obtain any evidence for this from listening to the “Sparkasse” advertising music that was the subject of complaint, nor from the expert reports submitted to the file.

**72 3.)** The complained GEMA registration of the defendant is also not illegal for other reasons, for example from the point of view of good faith (§ 242 BGB), even if one assumes that the middle part created by the defendant of the “Classic- Version ”should not be an

independent, copyrighted service and this could be inferred from the indication "composer" in connection with the naming of the defendant on the registration form (Annex B 1).

**73** A gem. § 242 BGB existing duty of mutual consideration could affect the defendant towards the class because the defendant used the "Sparkasse" advertising music in question on the basis of the agreement between the class and the advertising agency S-... (Annex K 2) created using the original music of the class. In any case, it could collide with these obligations at the outset if the defendant files a GEMA registration which ultimately gives him a higher share of GEMA royalties at the expense of the client than he would actually be entitled to under the GEMA provisions. According to the subject of the dispute, such a disadvantage of the class through the GEMA registration of the defendant does not matter, but whether the GEMA registration as such is illegal or not. But this is also to be answered in the negative.

**74** For the assessment of the GEMA registration, the fact that the defendant acted in the interests of legitimate interests with the GEMA registration and that this registration is therefore not unlawful is decisive for the defendant's duty of consideration under Section 242 of the German Civil Code:

**75** The defendant created the "Sparkasse" advertising music, he is required to register it and he cannot be forbidden by means of an omission process - controlled "from outside", as it were, towards GEMA as the responsible body when registering to be called the "composer" of what he has created. This also applies in the event that what was created by the defendant should not be eligible for protection and the defendant's registration by choosing the word "composer" should not make this clear - or at least not at first glance. With the GEMA registration, the defendant as applicant claims a certain share in the royalties and it must be open to him - if only because of the constitutionally existing and protected basic right to unhindered communication with the responsible authorities and other institutions - there freely and unhindered from outside to present and to represent his legal position.

**76** Third parties directly affected by this, such as the claimants in the present case, also have the opportunity to represent and present a different point of view vis-à-vis GEMA. It is therefore irrelevant for the present legal dispute whether the result of the "Sparkasse" advertising music would result in a different distribution of the GEMA royalties if the defendant's processing was denied to be protectable; This distribution is not at issue in the present litigation. Any claims of the plaintiff against GEMA for a different distribution of the royalties remain unaffected.

IV.

**77** The GEMA registration made by the defendant regarding the "Sparkasse" advertising music in the "folk version" (Annex B 3) is also not illegal.

**78** 1.) From the GEMA registration form (Annex B 3), the relevant facts and circumstances emerge correctly.

**79** (a) The registration shows that the advertising music lasts a total of 30 seconds and that it has a portion of a sequence of 3 seconds from the tone sequence composed by the class and that the advertising music also comes from the defendant.

**80** In the GEMA registration for the “Folk Version” (Annex B 3), the classes are named in line 4 and expressly stated as the “originator” of the Sparkasse jingle “When it's about money, Sparkasse”. This jingle is listed in the "Original Title" section for a period of 3 seconds. The duration of the advertising music is given as 30 seconds, the defendant is listed under the heading “Composer”.

**81 (b)** It is undisputed that these figures correspond to the actual circumstances. This also applies to the defendant listed under the heading “composer”. He created the middle part of the advertising music himself and with the parts from the tone sequence of the class as the beginning and ending part (here different from the “classic version” a total of twice the tone sequence).

**82 2.)** The GEMA registration is not illegal. In this respect, reference is made to the above statements under III. referred to accordingly.

V.

**83** The GEMA registration made by P.-GmbH in favor of the defendant regarding the "Sparkasse" advertising music in the versions "Unplugged", "Rock" and "Pop / Mainstream" (Annex B 2) is also not illegal, In this respect, it can remain open whether and under what conditions claims against the defendant could be considered.

**84 1.)** From the GEMA registration (Appendix B 2: Broadcasting), the relevant facts and circumstances emerge correctly.

**85 (a)** The registration shows that the commercial music lasts a total of 20 seconds each and that it comprises a portion of a sequence of 6 seconds (for "Unplugged" and "Rock") or 5 seconds (for "Pop / Mainstream") ) from the tone sequence composed by the class and that the advertising music also comes from the defendant.

**86** In the GEMA registration of P.-GmbH regarding the advertising music in the versions "Unplugged", "Rock" and "Pop / Mainstream" (Annex B 2), their duration is specified as 20 seconds each, with "Unplugged" underneath. and “Rock” the note: “uses 6 seconds of the original 'When it's about money is about Sparkasse””, “Pop / Mainstream” says: “5 seconds”. In all three versions, the information “composer” follows, naming the class, under the heading “editor” the defendant is given. In the "Unplugged" version, the defendant is still named as the "author of the remaining 14 seconds", while in the "Rock" and "Pop / Mainstream" versions the studio musicians concerned are listed as the "author of the remaining" 14 and 15 seconds respectively are.

**87 (b)** It is undisputed that these figures correspond to the actual circumstances. This also applies to the information “editor” and “author”, with which the defendant's contribution is described.

**88** It is true in the literal sense that the defendant describes himself as the processor, because in the versions in question the defendant created the middle parts of the advertising music himself and used the parts from the tone sequence as the beginning and end (here as in the “folk version”, the tone sequence is put together twice. Nothing else applies to the additional indication of the defendant as “author” in the case of “Unplugged”.

**89** 2.) The rights of the class are not violated by the GEMA registration, even if the information "processor" and "author" should be understood to mean that what the defendant created in these versions is independent or protectable and this is actually true shouldn't be the trap. In any case, legitimate interests have also been acted upon to this extent. On the above statements under III. is referred to accordingly.

VI.

**90** The GEMA application and registration alleged by the class regarding the "Sparkasse" advertising music in the "jazz version", in which the defendant was specified as "processor" (page 240 with evidence) - this submission would be undisputed - also not unlawful. It can therefore remain open whether the defendant denies the other side's allegation or not.

**91** According to the claimant's own submission, the GEMA registration for this version also states that the client composed the tone sequence used and that the defendant is the "editor" of the middle section. In this respect, the facts would be no different from the other registrations. Reference is made accordingly to the above statements under V.

VII.

**92** Apart from the GEMA registrations relating to the defendant (Appendices B 1-3), there are no decisive factors that would justify a risk of inspection for the claims for injunctive relief.

**93** 1.) The LG wrongly accepted that although the GEMA registration form for the "folk version" lists the defendant as a "composer" but not as a "processor" (Annex B 3), there is a corresponding result Celebration of the defendant because he had filed his motion to dismiss.

**94** That this is not the case arises from the fact that the defendant only asserts his submissions in the process for legal defense, as he has expressly made clear in the second instance.

**95** Incidentally, the matter concerned would only be a corresponding registration with the custodial society, in this respect too, legitimate interests would be safeguarded. Reference is made accordingly to the above statements under V.

**96** 2.) It would also not be objectionable if the defendant should have referred to the advertising agency S-... as the "editor" or "arranger" of the "jazz version", as did the class in the agency's letter (Annex K 13).

**97** It depends on the context of the respective utterance whether it is also asserted that something created by the defendant is eligible for protection or not. The subject of the dispute does not focus on these circumstances, which is why it can also remain open as to how the processing contribution of the defendant is to be assessed in terms of copyright with regard to the amount of creation.

VII.

**98** The request for cancellation according to the verdict on II. 1. and 2. of the regional court judgment is also unfounded in the opinion of the Senate.

**99** It concerns the consent of the defendant to the deletion (1.) of his author designation as composer / author of the titles "Classic Version", "Folk Version" and "Unplugged" and (2.)

his designation as the editor of the title " Unplugged "; " Rock "and" Pop / Mainstream "at GEMA.

**100** The right to cancellation does not exist, in this respect reference is made to the above statements under III. to V. referred to accordingly.

VIII.

**101** The applications for invoicing and determination of the defendant's obligation to pay according to the statement to III. and IV. of the regional court judgment is in the opinion of the Senate also unfounded or - in the case of the application for a declaration - inadmissible.

**102** There are no pertinent claims against the defendant because the defendant's behavior - as stated - is not unlawful.

**103** Apart from that, the claim to invoicing is ineffective, because the defendant has submitted that GEMA only made a distribution in the case of the "Unplugged" version.

**104** In the case of the "Unplugged" version, the clients are also aware of the circumstances on which the distribution is based and could, if necessary, assert a payment claim against GEMA or the defendant.

**105** For this reason, the application for a declaration is inadmissible if an action can be taken directly for payment. In addition, it would remain unclear what this "share" should refer to when determining a duty to pay the share attributable to the class "as a composer". The controversial discussion between the parties has shown that the question of whether B. must include or subtract out the original music of the class as the processed part at the beginning and end of the "Sparkasse" advertising music, has not been clarified. The GEMA regulations should be decisive in this respect.

IX.

**106** After all of this, the defendant's appeal was well founded and the applicant's cross-appeal was rejected.

**107** The secondary decisions are based on §§ 91, 97 I, 100 I, 708 No. 10, 711 ZPO.

**108** An approval of the appeal has not been initiated (§ 543 II ZPO new version). As the foregoing shows, the case does not go beyond the application of established legal principles to the present facts. The case has no fundamental significance, the approval of the appeal is neither necessary for the development of the law nor to ensure a uniform case law.

**109** gardener RiOLG v. Franqué is on vacation and cannot sign Gardener Spannuth