

Wüsthoff v. ZDF

Title :

Further development of the " today " jingle as free editing

Chain of standards :

UrhG §§ 2 I No. 2, II, 3 S. 1, 10 I, 23 S. 1, 24 II, 97 I.

Decision name :

" Today" jingle

Editorial principles :

1. For the assessment of the question , whether it be in the " now " - the theme song of the year 2009 by a replica in the sense of § 23 German Copyright Act or to an intrinsically creative composition according to § 24 of the Copyright Act is , is the scope of the protected older work in the Version from 1980/1984 ascertain . Depending striking the nature of the used plant is , the more less are the inherited peculiarities in the then created work fade . Conversely, true, that a work of lesser character rather in the nachgeschaffenen work rises as a factory special own imprint .

2. For the definition , whether a (non-free) treatment or a free use is present , are the similarities and not the differences or deviations significantly . Even if the ol der work (here : version of the years 1980/1984) clearly than presenting the new composition used should , are the comparison of the two Notenbilder and the listening test for a major , if by copyright relevant melodic or harmonic similarities exist ; this is to be answered in the negative here .

Final judgment :

I.

The appeal of the applicant against the final judgment of the Regional Court of Munich I from 26.04.2013, Az. 21 O 15733/12, is rejected .

The extension of the action is dismissed .

II.

The plaintiff has to bear the costs of the appeal proceedings .

III.

This judgment as well as the regional court judgment are provisionally enforceable . The applicant can the enforcement of security i

n the amount of 110% of the enforceable amount avert , if not the defendant prior to the enforcement of security in the amount of 110% of about executing amount guaranteed .

and following

Decision :

The dispute for the appeal process is to € 60.000, - fixed .

Reasons :

I.

The applicant , a music publisher , makes against the defendant claims to injunctive relief , information and determination of the obligation to compensation for breach of copyright because the production and dissemination of since the year 2009 broadcast "the Today Fanfare" asserted .

The so-called . " Fanfare - Blues" (music sheet in Appendix TW 7) was in 1962 in order the defendant for the news program "Today" from the composer KW created . The RB publisher with this to the machine TW 5 submitted publishing contract from 05/13/1962 closed . In the following years was the "ZDF Fanfare" repeatedly modernized and contemporary taste adapted . In the period 1980/1984 - the times of the parties thereto differ - was the fanfare of the composer himself revised (Appendix TW 18), 1998 was the fanfare -Blues in the version of 1980 again revised and re- orchestrated (Annex TW 8).

In the year 2009 commissioned the defendant , the Dutch music production company M.- M. with the

" Modernization " of the theme song for the programs of the "Today" family . The M.- M. submitted composition (in the following : the theme song 2009) was at the GEMA - under the serial numbers - 10905696, -5697, -5698, -5702, -5707, -5708, -5709, -5710 and -5711 reported . The Today- theme song in 2009 is since the year 2009 without the consent of the composers W. in the Second German television broadcast . The applicant has in the first instance claims made , the theme song is an illegal processing of W. created fanfare Blues in the 1980 version , in the alternative, the individual seven blocks (f LGU p. 3).

By final judgment of 26.4.2013, on its actual findings regarding taken is , has the regional court Munich I, Az 21 O 15733/12 that. Lawsuit by partial Done statement , with which the applicant applied for has:

I.

The defendant is sentenced ,

1. it at avoiding one for each case of infringement to be fixed administrative fine up to EUR 250,000 - - substitute administrative detention - or administrative detention of up to six months , with the administrative detention of the respective directors of the defendants to enforce is , to refrain from the "ZDF Heute "- Music titles that match the GEMA work numbers :

- a) Work number 10905696, ZDF Today Journal Version
- b) Work number 10905697, ZDF Heute Journal Opening
- c) Work number 10905698, ZDF Heute Journal Ending
- d) Work number 10905702, ZDF Today 100 seconds
- e) Work number 10905707, ZDF Today Voice Over
- f) Work number 10905708, ZDF Today endless loop
- g) Work number 10905709, ZDF Today topic separator
- h) Work number 10905710, ZDF Today Opening
- i) Work number 10905711, ZDF Today Ending

based lie according to the plant TW 1, to send and / or the public accessible to make ;

2. The applicant information about the origin of the above to I.1. described music tracks to provide , as well as on the costs ;

3. The applicant on the scope of the above under I.1. described actions bill to place , and indeed under submission of a list with indication of the number of Abspielvorgänge under nomination

- a) the data of the individual playback processes
- b) the respective playing time

II.

It is noted , that the defendant committed is , the applicant all damage to replace , of her by the under I. 1. designated actions emerged is and the future still arise is .

III.

The defendant is convicted , the applicant 1,569.00 € (net) plus interest in the amount of 8 percentage points above the base rate since pendens to pay .

rejected .

For justification is in Ersturteil run : Neither at the fanfare -Blues 2009 still in the with the head of claim attacked , at the GEMA reported songs IN QUESTION it is to edits or alterations of the work of KW in the version of the fanfare -Blues 1980/84 in the sense § 23 of the Copyright Act , but to new compositions , which at best as free uses of the originally KW composed the Today theme song considered to be could , so that the applicant neither injunction - even compensation claims would be entitled . The question , whether it be at the fanfare in 2009 and the -Blues in detail by the applicant challenged songs to non-free machining of the work of KW IN QUESTION or but to free uses , can the Chamber of its own competence to decide . The obtaining of an expert opinion needed it not .

The chamber possesses the required own expertise to the decision of the dispute without recovery of a judicial expert opinion, since they constantly with copyright lawsuits - also in the field of music - dealing was. The Senate was the decision of the chamber without obtaining an expert opinion in a different lawsuit not objected (LG Munich I, FOR 2010, 913 and OLG Munich, AS 2011, 928).

The in fact (pp. 3) reproduced individual building blocks of the fanfare -Blues KW had to be taken not protectable because they the requisite level of creativity lacking. While were in musical works, the requirements to the creative peculiarity low, so that z. For example, with pop music only a relatively low degree of peculiarity is sufficient (BGH GRUR 1991, 533, Brown Girl II) and short tone sequences could also enjoy copyright protection (BGH GRUR 1988, 812, 814 - A bit of peace). Under the aspect of the so-called small coin enough regularly a low degree of sculpting work of composers to one for the protection lower limit requisite creative power to affirm, because the requirements to the design height in the area of musical creativity not so highly placed are likely (BGH 1981 267, 268 - Dirlada; GRUR 1988, 811 - Fantasy). The protection of small coin should, however, not to lead, that in copyright impermissible way individual notes, chords, rhythms or style elements monopolized would. The Senate did in a simply designed and is constantly repeating sequence of five tones a copyright protection denied (OLG Munich, FOR 2000, 408, 409 - Green Grass Grows). The same applies to a two-bar, simply structured and partially known sequence of tones (LG Munich I, ZUM 2003, 245, 247 - Get over you). Turning to these standards on by the applicant presented modules (machine TW 17), IN QUESTION, it is at the individual building blocks not to personal intellectual creations in the sense of § 2 para. 1 no. 2, para. 2 of the Copyright Act.

Both a basic beat in 4/4-stroke, in which the district then into eighths or sixteenths divided are (Block 1), as well as the in fanfare - and what the fourth terms, also the siren - common use of a fifth and a fourth (block 2) one after the other are common elements of style, which no own personal level of creative TO ISSUE. The same applies for the use of a Septimentons (block 3), as well as for the use of three consecutively following orchestra blows to a constant tone (block 7), which in other respects in the composition of 1980/1984, so as to the applicant itself in the plant TW 28 records have, do not vorkomme. The in block 4 set forth tone sequence from five (G, C, A, C and G) or. at the "omitted" variant 4 (G, C, A, G) notes that in the "new" version by a Tontausch taken was his should, enjoy the absence of individuality no legal protection. The same applies for the of four tones existing tone sequence in block 5, which made the final of the theme song from the years 1986-2001 originated. The used, stylized Morse signal - Block 6 - IN QUESTION it is to a world-spread style element in theme songs for news programs (see. Installation in Appendix B 4).

However, NOT TRADE it is in the melody of fanfare -Blues of 1980/1984 (Annex TW 28) to a personal intellectual creation in the sense of § 2 para. 2 of the Copyright Act. They consist of two pure, concatenated fourths of G to C, where a small third of A highly to C, a large second from G to A and a pure quart of C (descending) to G follow.

In contrast, there is the melody of the new composition of the year in 2009 (TW plant 28; Annex B 2) on the top of a small Quint from C to G to which is as triad a C connect

(See . The red -listed three tones in the system TW 28), a large second from the C back to B, because then a pure Quart from F up to the B , and it then from a large second from F to G. In both tunes lined up but different intervals at different sites together , with the result , that the melody just not taken , but newly created been had. This was the author KW in the result itself as seen , like himself from his letter to the defendant from 03.31.2011 (Annex TW 10) follows , in which he complained was , that in the wake of the changeover to the new studio, the music logo

" Today" disappeared was, and only remnants of the morse idea still it reminded , as the cinema sound of current music (Fanfare 2009) the symbolic power of traditional Today- subject not grown was.

In the in the relief sought under I.1 mentioned works IN QUESTION it is therefore not to a machining of the work of the author KW

The work with the GEMA Nr.10905696 leg hold not even the whole fanfare of trumpets Blues in 2009, but the there reproduced melody consists only of the notes F, B, F and G. lack protective ability of the individual from the applicant represented building blocks come it out , whether individual components taken been had , not to.

The same applies to the work with GEMA No. 10905697. Here, too , the melody only consists of the tones F, G , F and B.

In the work with GEMA No. 10905698 , the fanfare has a completely different melody than the fanfare blues 2009, as it can be heard from Appendix B 2 and noted in Appendix TW 28 . A violation of the fanfare Blues 1980/1984 was the extent of the applicant does not put forward have been .

Also the work with GEMA no. 10905702 contains not the entire melody of fanfare Blues in 2009, so that the under a) set out applies .

In the work with GEMA no. 10905707 missing the beginning of the melody of the fanfare Blues 2009. On the use of individual building blocks can a copyright not supported are .

The work with GEMA no. 10905708 contains a Dauermorseton as a continuous loop , which by one octave between the one-lined and the two painted "C highlighted is" . Also here support the applicant the claims made copyright infringement in not permissible way to the protection of individual building blocks .

The work with GEMA no. 10905709 (topics separator) contains a very short sequence with a shaded C and then several times repeated one-lined C so that the under) g is said referred to could .

The work with GEMA no. 10905710 (Today-Opening) contains indeed the whole fanfare of trumpets Blues in 2009, they put but a new composition is .

The first notes of the fanfare were missing in the work with GEMA No. 10905711 .

Against the her on 03/05/2013 undelivered final judgment of the Regional Court of Munich I has applicant on 30/05/2013 appeal lodged and this (after extension of the deadline to 08.05.2013) with brief from 01.08.2013 justified .

It makes asserted , that they to assert the copyright claims of the composer KW right of action was. Even if the composer KW GEMA as perception entitled all rights to his works in advance ceded would , so that the with the applicant completed music publishing contract empty run , as the defendant under Notice on a decision of the Supreme Court asserted doing , would remain the copyright , if he third exclusive rights granted have , in relation to the claims made injunctive relief in any case then actively legitimized , if the remuneration of the originator of the income of the owner of the exclusive right depends . The music authors KW have the applicant the editing rights to all plant varieties of fanfare -Blues granted (see Section 8 of the.. Publishing contract from 05.13.1962, plant TW 5; § 2 4 of the. Music publishing contract from 08.30.1998, plant TW 27). The editing right is , however, not the subject of the GEMA Deed and will therefore not by GEMA perceived .

In the alternative, which was applicant entitled , in ways gewillkürter representative action due to an authorization of Mr W. from 31.07.2013 against the defendant to proceed . The prerequisites for the arbitrary litigation status are present . A self-interest of the composers KW on action success was given because of this in the case of success also by GEMA as composer or Mitberechtigter the currently used ZDF title music recognized and according to the work of recovery attributable GEMA distributions participate would . The own legitimate interest of the applicant in the legal action resulting to it , that the with the lawsuit sought clarification of the dependence of since 2009 for use reaching ZDF theme song in the case of the action success to lead would , that distributions of GEMA, which the publishing part omitted , to flow to the applicant .

The applicant should respect all versions of fanfare -Blues, including the version of the fanfare -Blues II from the year 1998 (Annex TW 27), as a music publisher reported . In other respects embrace in relation to a musical work closed music publishing contract and the further work of variants , without that for each individual variant , a new music publishing contract closed will have to .

True did the district court accepted , that the melody of the " fanfare - Blues" (machine TW 28) copyright protectable was; to wrong it was , however, to the result reached , that the melody is not in the new composition of the Today theme song 2009 adopted been had. The applicant do to the extent the types of music experts Max D. whose report (Appendix BB 2) to own and put them of their grounds for appeal based . This was portrayed , that the fanfare -Blues to in the 80s in 1962 formative elements expands been had. In the late 1990s version of W. / Wa . is the basic structure of the " fanfare -Blues II" compared to the older versions further differentiated been and was now a three-piece structure obtained . This look at the appraiser than for his expert opinion relevant basic variant of the form of protection . Furthermore , the last three beeps of the Morse code formed a new specific rhythm (so-called "clave formula"). The " fanfare - Blues II" of the 90s put therefore a processing and expansion of the " fanfare -Blues I" in the version of the 80's is .

Inaccurate have the district court also for the assessment of eligibility for protection only isolated to the " building blocks " lifted , not but to the sum of the components in their interaction and their teeth at the respective compositions .

Launched by the defendants submitted reports P. had the injury form only with the 80-year version of the " fanfare - Blues" and also only with a section of it - the middle part of the transcription missing - compared . With the version of W.
/ Wa . have to P. not involved , although just this version is relevant because the Morse logo with its specific gearing in the form of the clave formula in the form of infringement taken will .

One of the plaintiff's interest in establishing a finding is based on the fact that it would continue to be recognized as the beneficiary with regard to the distribution of dividends to the publisher 's share .

The applicant has the appeal in relation to the original head of claim I 1. d), f), g) and i) withdrawn and the action in respect head of claim I. 2) (information) with the consent of the defendant for finished declared and requested now :

I.

The defendant is - under amendment of the contested judgment - convicted ,

1. it at avoiding one for each case of infringement to be fixed administrative fine up to EUR 250,000 - - substitute administrative detention - or administrative detention of up to six months , with the administrative detention of the respective directors of the defendants to enforce is , to refrain from the "ZDF Heute "- Music titles that match the GEMA work numbers :

c) Work number 10905698, ZDF Heute Journal Ending

e) Work number 10905707, ZDF Today Voice over

h) Work number 10905710, ZDF Today Opening

based lie according to the plant TW 1 and Annex B 2, to send and / or the public accessible to make ,

2. the applicant about the scope of the above under I.1. described actions bill to place , and indeed under submission of a list with indication of the number of reproducing operations under nomination

a) the data of the individual playback processes

b) the respective playing time .

II.

It is noted , that the defendant committed is , the applicant and the composer KW all damage to replace , of these by the under I.
1. designated actions emerged is and the future still arise is .

III.

The defendant is convicted, the applicant 1,569.00 € (net) plus interest in the amount of 8 percentage points above the base rate since pendens to pay .

The defendant sought rejection of the appeal .

The applicant had of her claims made claims at first instance explicitly with a violation of the fanfare -Blues 1962, as amended by 1980/1984, alternatively with a violation of individual " building blocks " justified . As far as in the appellate instance for the first time a violation of the - first instance undisputed - exclusively by HG Wa . in the year 1998 revised and completely re-orchestrated version of the fanfare -Blues (hereinafter " fanfare -Blues 1998") rebuke , IN QUESTION , it is to a supplementary application , which according to § 531 para. 2 ZPO inadmissible was. The presentation of the facts was delayed , especially since the claimant's submission that she had already dealt with all work variants of the composer W. in the first instance - therefore also the version W. / Wa . from the year 1998 - was appointed to be incorrect . Rather have the applicant on explicit demand of the District Court in the oral hearing on 06.03.2013 clarified , that only the infringement of fanfare -Blues in the 1962 version of 1980/1984 claims made will .

Also went the versions in the matter failed . Contrary to the opinion of the applicant come there not sure of, if the fanfare -Blues in its entirety copyright protection enjoy , but whether the allegedly acquired engine parts for themselves taken work character in the sense of § 2 para. 2 of the Copyright Act protection possessed . The versions of the system BB 2 submitted private opinion intervened in other respects not by since they both legal reviews contain as well as of false attachment facts went out because the analysis on the basis of the fanfare -Blues 1998 made been had. The processing of the fanfare -Blues 1998 is , however - which in the first instance unquestionably been is - solely by HG Wa . takes place . The applicant or . that of their submitted private expert opinions could be , therefore, in terms of enforcement of copyright violations so far not on the presumption in § 10 para. 1 of the Copyright Act called . N have the opinion , however, emphasized , that between the theme song and the fanfare in 1998 - Blues matches due to the typical style of modern news theme songs existed . A certain style enjoy but no copyright protection. (sh. versions in the calling response from 10/24/2013, p = 24/41 Bl. 166/173 d. A.). The criteria set up by the plaintiff for determining the individuality of advertising jingles are also unsuitable (see comments on Bl. 174/175 of the d. A.). If the Senate it out , that it is for the individual " building blocks " or . " Elements " to copyright protected works components of the instrument models 1962, 1980/1984 and 1998 of fanfare -Blues IN QUESTION , will the alternative claims made , that it is so far to a free use of the sense of § 24 German Copyright Act IN QUESTION .

Next will the lack of locus standi of the applicant to the claims made versions of fanfare - Blues 1980/1984 and 1998 reprimanded . It understand is not of itself , as the applicant contends doing , that a music publishing contract , which is on a specific musical work refer , then each and the other plant

varieties mitumfasse . It will deny , that any , by the processing of fanfare -Blues 1998 when Mr Wa . resulting rights to the applicant passed were . The applicant could also not foreign rights of composers W. or of Mr Wa . prozessstandschaftlich in own name claims to make . The declaration of status of litigation submitted by Mr. W. for the first time in the appellate instance as Annex BB 1 was late . In addition , the applicant did not submit that Mr Wa . for judicial enforcement authorizes been to be.

As far as the applicant with its principal claim to I.1) a failure of the transmission and / or the public making available in the application designated music by Massive Music desire , BE REDUCED these rights exclusively at GEMA, since both Mr. W., as well as Mr. Wa . in the time of the signing of the publishing agreements already GEMA members have had , so that any transfer of rights to the applicant into the void left was. Without success occupations to the applicant so far to the decision 797 of the BGH 1992 - ALF, which the author , the exclusive rights to his work a development company granted have , in addition to the latter itself entitled is, claims for violations own claims to make , as far as he one own legitimate interest in the legal pursuit of these claims have . For the one which was applicant unquestionably not the originator of the different versions of the fanfare - Blues, the other which is representative action Declaration of Mr. W. (Annex BB 1) late and therefore does not allow ; from Mr. Wa . lay no representative action statement before . In other respects is also in terms of the coveted omission no legitimate self-interest of the applicant given because they by the omission in its own legal and economic legal position not strengthened will .

The representative action statement of Mr W. virtue of the locus standi as far also therefore not be justified because this is not co-author of the fanfares was -Blues 1998th The conditions of co-authorship are presently not met since no common business creation vorliege . This put a collaboration among the participants ahead . Because it is precisely in joint work that co-authorship can be distinguished from editing . It is therefore necessary to have a common plan, a common will and a common goal to create the corresponding work . Such a coordinated cooperation between Mr. W. and Mr. Wa . have but just not been present . Instead, call the applicant itself the fanfare -Blues 1998 as " editing by Mr Wa ." (Cf. . Application page 4). Lord also W. themselves have in that of the applicant on CD (9 Investment TW) submitted telephone interview stated , that any cooperation between the two composers taken place , but Mr Wa . " A new version made " have , which he in hindsight agreed to have ("1999 was the Today- music by H.-G. Wa . Fundamentally revised and re- orchestrated " , machine TW 8, page 5). The fanfare blues 1998 is therefore a re-creation dependent on the original work in the form of an adaptation by Mr. Wa .

The applicant had also an otherwise ownership of rights in the processing of fanfare - Blues in 1998 by Mr Wa . - in the form of a closed chain of rights - not proven . The music publishing contract presented as Annex TW 27 is not suitable as evidence , since the contracting party is not the plaintiff or RB KG, but the sole proprietorship "R. B. "is . This was the plaintiff in the appointment before the Senate on 03.04.2014 confirmed . The applicant did , however, neither the legal successor of

the proprietorship of Mr. B. still one in this context, allegedly carried out rights transition to the applicant - which the defendant denied going - proved . A succession follows is especially not from that of the applicant as plants TW 2 and TW 3 submitted commercial register extracts . For this is only apparent , that one RB KG - the evidenced by the HR statement already in the year 1952 there have - in the RB GmbH & Co KG changed been had. When RB KG IN QUESTION there is , however, not to a single company , so that the contract of the sole proprietorship of Mr. B. not with the conclusion of the contract of RB KG equated be could .

Help

manner make the defendant contends , that no copyright relevant similarities between that of Mr D. in date feigned recording of the fanfare -Blues (in the version "1998 today clock") and the new day-theme song of the year 2009 existed . This illustrative also a juxtaposition of Notenbilder (sh. Versions in brief from 6.3.2014, p = 8.11 Bl. 217/220).

After conclusion of the oral hearing which applicant the brief from 25.06.2014 filed .

Because of the parties' arguments in other respects is on the appeals process exchanged briefs along with equipment and the protocol of the oral hearing before the Senate on 03.04.2014 regarding taken .

II.

The claimed . § 511, para. 1, Para 2 Nos. 1 ZPO instead exemplary and in other respects acceptable , in particular positive and timely inserted (§§ 519, 517 ZPO) and established (§ 520, para. 3, par. 2 Set 1 ZPO) appeal the applicant has - as far on this after partial withdrawal of the appeal and of matching portion Completed declaration of order sought I.2) (information) yet to decide was - the thing no success .

The applicant makes in the second instance of claims for alleged non-free processing of the amended 1980/1984 and in the way of the supplementary application - now in cumulative suit accumulation - the version in 1998 due to its own rights asserted . Alternatively , it asserts the claims in arbitrary litigation .

The applicant are not own exclusive rights to the " Today" - the theme song in the version of 1998/1999, even in the way gewillkürter process estates of the own name claims made claims of composers KW as co-authors of this work version to . As far as the applicant 's contractual claims in reference to the " Today" - the theme song in the version of 1980/1984 claims does , is it not actively legitimized . In terms of the way the representative action by the applicant in its own name claims made exclusive use rights of composers KW on the "Today" - the theme song in the version of 1980/1984, is it an injunction in accordance with §§ 97 Section 1, 23rd Copyright Act (head of claim I.1) not to because the impugned injury form any non-free processing of the "Today" - the theme song in the version of 1980/1984 represents . The applicant is also the alternative to a breach of the exclusive adaptation rights of the composers W. aided injunctive relief with respect to the - to the vocation still in dispute - GEMA serial numbers 10905698, -5707, -5710 underlying -

" Building blocks " not too . In the absence of an act of infringement , those with the claims I. 2), II. And III. claims made subsequent claims also unfounded .

In detail :

1) As far as the applicant with the appeal in the first line of its own claims for breach of her contract granted editing right on the " Today" -Fanfare in the version of

1998/1999 asserted does , is it up to a supplementary application , in the second instance only under the conditions of § 533 ZPO allowed is . Since the applicant claims the violation of exclusive usage rights to a different working version (1998/1999) supported to be , is it located to a supplementary application , which because of change of plea by the determination 533 ZPO of § only permitted is , if the action change relevant is (no. 1) - as a consent of the defendant indisputably not present - and on facts supported be can that the court of appeal its decision anyway to § 529 ZPO basis to place has (no. 2).

a) In the evaluation , whether the action change relevant is , is a consideration of the mutual interests of the parties to make , wherein in the first line largely on the viewpoint of the process efficiency remedy is . Here is it solely on the objective assessment of

(see BGH NJW 2009, 2886). The conditions are in dispute before because of the inclusion of the version of the recognition melody of 1998/1999 in the examination of the plaintiff side argued made claims through the Senate a final clarification is carried out so that a further dispute avoided would .

b) The supplementary application is also on paw supported that the Senate of his decision to § 529 ZPO basis to place has.

On the 90-version of the " Today" -Fanfare supported claims were indeed already the subject in the first instance procedure , as the applicant and the work version of the fanfare - Blues from the year 1998/1999 to the subject of her lecture made has (cf. . Application S. 4; Annex TW 8 magazine "Practice of Music Lessons "). She has claimed made claims but not on this work version supported , but on the express demand of the District Court of the protective form of the fanfare -Blues in the 1962 version of 1980/1984 limited (see . Protocol of 03.06.2013, p = 2 Bl. 68 respectively . Bl .. 82 d. A.). Logically has to the District Court in its judgment , whether the new " Today" - the theme song in 2009 , a non-free machining of copyright protected fanfare -Blues the composers W. or a free use is , only with the KW edited version of the fanfare - Blues from the year 1998/1984 respectively . the components (Appendix TW 17) explained . This change , however, nothing to it , that the supplementary application on facts supported is that already in the first instance put forward were (cf. BGH NJW-RR 2010 1286. Tz 10, 12;. NJW-RR 2012, 429 Tz 11 mw N.). . The is also not opposed , that the district court no findings to hit has, whether the publishing contract in 1998 (TW 27) with the applicant come about is (vg. BGH NJW-RR 2012, 429 Tz . 11).

c) The applicant has not demonstrated, that they contractual partner of the publishing contract in 1998 become is with the consequence, that they no exclusive rights on the processing in 1998 acquired has. The defendant has, after it already in the first instance in agreement found was, that the applicant rights to the " fanfare - Blues 1998" entitled (statement of defense, page 10 ff. = Bl. 31 ff.) Denied, that the contract with the applicant completed was, but as evidenced by the contract of "RB, L.". In the context of the discussion before the Senate in the appointment of 04.03.2014 was this the pages applicant carried out, that the " publishing contracts from the year 1962 and the year 1998 ... with the proprietorship of Mr. B. completed " were

(Protocol, page 2). So was the presentation of the defendant concerning the conclusion of the treaty of 1998 with the proprietorship of RB granted (§ 288 ZPO). As far as the applicant for conclusion of the oral hearing in brief from 06/25/2014 their presentation in the appointment to the effect explained that to protocol given explanation, the publishing contracts are with the " sole proprietorship of Mr. B." concluded been had, linguistically inaccurate been; one of the RB KG separate proprietorship of RB that in 2006 identity while in a GmbH & Co. KG converted been had, had there to no time given; addressed was whether rather the previously existing commercial partnership, whose personally liable partner RB have had, is a re-opening of the oral hearing under 2 ZPO § 156 para. not in consideration. A procedural error within the meaning of Section 156 (2) No. 1 ZPO has neither been demonstrated nor otherwise evident. Nor are the requirements of § 156 para 2. 2 no. ZPO before. Also a reopening of § 156 para. 1 CCP is not caused, because the argument in brief from 06.25.2014 meets not the requirements of a revocation of the appointment declared confession (§ 290 ZPO). Because this would have it the presentation and proof of facts been necessary, after which the Managing Director of Complementary -GmbH the applicant on the knowledge of the true facts prevented was, what it lacks. It is however also not been established and under evidence provided, that the CEO not been able, between the partnership (RB KG) and a single company to differ, and that the logged statement to this fact is based (see . Reichold, in Thomas / Putzo, ZPO, 34th edition, § 290 marginal number 2). In particular, would it in regard to the discussion of the appointment before the Senate, which is from the submitted commercial register extracts not apparent, that the individual company "RB" in the year 2006 in the applicant " risen " is, more than nearby, it noted, that there is a Sole proprietorship not given have, rather, the agreements of 1962 and 1998 with the RB KG concluded been had.

That the plaintiff is the legal successor of the sole proprietorship "R. B." become is, is disputed. A proof of this has the applicant not begun. From the submitted commercial register excerpts concerning the RB KG respectively. RB GmbH & Co. KG (Annex TW 2) and the B. Verwaltungs GmbH gives itself this is not.

2) Without success makes the applicant exclusive rights of composers KW on the " Today" - the theme song in the version of 1998 - based on the representative action statement from 07.31.2013 (Annex BB 1) - in the alternative, in the way of representative action in its own name claims.

a) As far as the defendant the submission of representative action explanation of the HC from 31.7.2013 (cf. in. facility BB

1) calling as late alleges , penetrating it with its objection not by . The freely determined representative action is a special form of locus standi (§ 51 Abs. 1 ZPO) and therefore a process requirement is that on its own because in each position of the procedure to consider is (Hüsstege in Thomas / Putzo , ZPO, 34th edition , § 51 paragraph . 32), so that the applicant with their arguments not estopped is ZPO), (§ 531 para. 2 especially since the fact of the authorization of the defendant is not disputed is .

b) The by the applicant submits made claims for infringement of the exclusive adaptation rights of KW at the " Today" Fanfare in the version of 1998/1999 are , however, unfounded , as this no copyright - or . Joint copyrights to the processing "of Today" -Fanfare of 1998/1999 has .

aa) The freely determined representative action is to constant jurisprudence a private interest of Prozesstandschafters ahead , the foreign law in its own name claims to make that particular then present , when the decision to own legal situation of the process control officers affected . To what extent this is affirmed be could , can be left as it is on an authorization on the part of the copyright holder is missing . Because this presupposes, in addition to the submission of the corresponding declaration by the authorizing party , his legal ownership .

The applicant has not the evidence provided , that KW co-author of the version 1998 is . Without success calls to the applicant on the copyright presumption according to 1 § 10 para. Copyright Act . According to § 10 para. 1 of the Copyright Act is suspected , that the one , which on the original factory or on the reproduction piece as author referred to is , this work actually created has. Are more people indicated , is presumed , that these persons as co-authors worked were . The scope and the size of individual contributions is it not to, provided that the contributions creative type are . Absence of more information on this , is presumed , that the persons equal creator of the work are (cf. BGH 1986, 887, 888 - . BORA BORA). The presumption applies to the proof of the contrary .

The applicant has a reproduction piece of the plant TW 8 presented , in which to quotations of the " Today" -Fanfare in the version from 1998 for various instruments are , on which each of the designation of Messrs KW and HG Wa . as a composer of music given is so that to the extent a presumption according to § 10 para. 1 of the Copyright Act is , that Mr. W. equal co-author of the fanfares -Blues in the work version of 1998/1999 is .

The presumption is , however, in dispute refuted , as the applicant itself maintains , on which the defendant applicable references , that the processing of fanfare -Blues 1998/1999 exclusively by Mr Wa . is carried out is (see . the application , page 4, document from 15.2.2013, p 2 = Bl. 55). KW also has in one of the applicant as a system TW 8 submitted telephone interview (in part printed in "practice music teaching " , TW plant 8, p 5) indicated , that in the composition of the fanfare -Blues in the version of 1998/1999 no Cooperation between both composers took place , but Mr. Wa . " A new version made " have , which he in hindsight agreed to have ("1999 was the Today- music by H.-G. Wa . Fundamentally revised and

re-orchestrated", machine TW 8, page

5). Because this information separates the adoption of a co-authorship of since this one " through deliberate cooperation of the co-authors resulting uniform creation, therefore, a common plan, a common will and a common objective requires, a jointly-earned work to create" (Schulze, Dreier / Schulze, UrhG, 4th edition, § 8 No. 2 with further references). Although comes, as already in the schedule discussed, even at a time staggering of posts a co-authorship in consideration; it is however expected, that each party to its (creative) contribution in subordination under the common overall idea created has what it at every lecture is missing. Consequently remains there at the principle, according to which according to § 3 sentence 1 Copyright Act each machining of a work, which is a personal mental creation of the arranger is, as an independent work protected is. I.e. Rights holder is the editor, not the author of the processed work, even if the treatment is not without the consent of the originator of the processed plant utilized are can.

3) The applicant can the claims made claims and not on its own exclusive rights of use to the processing 1980/1984 support; not even in the way of arbitrary litigation.

a) As far as the applicant's exclusive rights to the fanfare -Blues in the version of 1980/1984 claims does, is it not actively legitimized. The terms of eligibility pleading - and proof loaded applicant has, despite denials of locus standi on the part of the defendant, a contractual agreement with KW in relation to the processing 1980/1984 not been established. For this purpose, which has regional court also any findings made. Regardless of the question, whether the applicant rights from the contract of 1962 (Occasion Dining, Entert TW 5) derived can, gives up from no. 8 of this contract

"The author transfers to the publisher the exclusive right, edits the work, extracts and facilities for single or multiple instruments or voices, minor cuts and changes, transfers in adere keys and translations into other languages to make to leave and surrender; Operations for which the publisher is not approved or launched has, are of a participation of the arranger in the sense of paragraphs 2 to 5 excluded.

Changes in the work that the artistic essence of the work change, require in each case the prior approval of the copyright holder, of this principle, not of a monetary subsequent claim dependent make can.

The author is the same or a similar title, content or essential parts, issues of contract work in any other publishers and to any other time use. If the author - completely or partially - the substance, the content, or a part, a subject of the contract work in peculiar neuschöpferischer way for a different work use or work on similar topics publish want, so is he these new works the publisher to reasonable conditions first offer. " Contrary to the opinion of the applicant is not, that they without further the publishing rights in the scope of this contract also in later edits the HIDE representational work by KW acquires. That the applicant, the exclusive rights on the machining 1980/1984 through a separate (express or implied) agreement with the composer acquired has, has not been established.

b) As far as the applicant for the assertion of the claims due to injury of the exclusive editing right of the HC on the "Today" -Fanfare in the version of 1980/1984 in the way the representative action by the explanation of the K. W.vom 31.7.2013 (Annex BB 1) was effectively authorized , the regional court, free of legal errors , denied a claim for injunctive relief pursuant to Section 97 (1), Section 23 (1) UrhG . True , it has assumed , that by the defendant with the creation of a new Today- theme song commissioned company MM in the composition of the theme song in 2009 to fanfare - Blues 1962 in the processing of 1980/1984 is not in an inadmissible way used (§ 23 p.1 UrhG) and therefore did not violate the exclusive rights of use of the composer KW, perceived by the plaintiff as litigator .

aa) The claimant was effectively authorized to assert the copyright claims of the composer KW in her own name as a litigator . With respect to that of the defendant collected Verspätungsgrüße is the above embodiments (2s. A) reference taken .

bb) Without success makes the defendant contends , that GEMA exclusive owner of the applicant as a process status unionist in own name claims made rights is the KW as this in the time of the signing of the publishing contract already GEMA members have had. According to § 23 S. 1 UrhG , the author has the exclusive right to edit and redesign his work ; Edits of the work may only be published or edited with the consent of the latter . recycled are . The violation of this exclusive editing right of the composer K.W. makes the applicant in the present case as a process status unionist claims . The editing rights of the copyright holder according to § 23 of the Copyright Act is , however, not subject matter of the GEMA authorization contract (see . TW plant 5 no. 8).

cc) The Senate can the legal question , whether it is in the current "Today" - the theme song in 2009 , and at the of the applicant challenged songs to non-free machining of the work of KW according to § 23 of the Copyright Act or to a free use of the sense of § 24 S . 1 Copyright Act is , from its own competence to decide , as he repeated with such issues is concerned is and the actual basis due to the present grade material of the attacked injury form and the disputed work versions of the "Today" - the theme song is established .

dd) True has the district court adopted , that it is in the current Today- signature tune of the company MM from the year 2009 not to a processing or transformation of the ZDF fanfare of composers KW in the edited version of 1980/1984 in the sense of § 23 UrhG acts .

(1) According to Section 2, Paragraph 2 of the Copyright Act , protected works within the meaning of this provision are only personal intellectual creations . To the creative peculiarity of a musical work (§ 2 para. 1 no. 2 of the Copyright Act) may , however, not to high demands placed be . For the area of musical creation is by the law , the so-called . small coin recognized that simple , but just still protected intellectual achievements recorded . It extends therefore from , that the formative activity of the composer only a relatively small Eigentümlichkeitsgrad has , without that it here on the artistic value arrives ((BGH 1991, 533 - Brown Girl II; GRUR 1988, 812, 814 - "A little peace "). This is true both for the originally created works as well as for editing (§ 3 sentence 1 of the Copyright Act).

For the assessment of the question , whether it is in the disputed theme song in 2009 (violation of the form) to a replica in the sense of § 23 German Copyright

Act or to an intrinsically creative composition according to § 24 of the Copyright Act is, is the scope of the protected older work - the fanfare -Blues in the version 1980/1984 - to be determined. This is initially the test ahead, by what objective features the creative peculiarity of the template used work determined is (BGH cited above - "A bit of peace"). Because of the distance between two stations depends on the design height of a template to use work from. Depending striking the nature of the used plant is so less will be the inherited peculiarities in the then created work fade. Conversely, true, that a work of lesser character rather in the nachgeschaffenen work rises as a factory special own imprint (BGH 1991, 511 - Brown Girl II; GRUR 1981, 267, 269 - Dirlada).

Decisive is the overall impression that the individual design elements of a plant in its overall view of the handset exercise. As far as only plant parts taken are, it must be in this order personal intellectual creations act (cf. BGH. 1981, 267 - Dirlada). The plant part as such must therefore to § 2 para. 2 of the Copyright Act established requirements of a copyrightable work sufficient and necessary degree of individuality have. A certain minimum number of shades or clocks is for the obtaining of a copyright protection is not required; each shorter the tone sequence is, the more low is, however, the clearance and the more rare is a copyright protection obtained (Schulze, in Dreier / Schulze, Copyright Act, 4th edition § 2 paragraph. 138).

(2) On the basis of these criteria, the title melody of the fanfare blues consisting of a tone sequence of 10 tones in the version from 1980/1984 (Annex TW 28, 2nd line; 7 notes in the notation in the expert opinion Max D. of 07/19/2013, see. conditioning BB 2, page 11) to for a personal intellectual creation required degree of individuality, which also already the district court assumed is.

The overall impression of the ZDF fanfare in the processed version of 1980/1984 is influenced by the bias to the actual theme tune - that in the processing 1980/1984 newly added has come "Morse" signal of the sequence of letters "TODAY" - and that is because subsequent 5 tone motif, which in the earlier shipments to point 19 indicator to the beginning of the

"Today" - News Journal began (It-As-F-As-It, see ZDF. Theme song of the 80's in the report Max DS 11 or GCACG. Accordance notation system TW 28, TW 29 in the after C transposed version). The basic structure of the recognition melody Clarion 1962 with a be opened, rising fourth from G to C was in the 80 processing of KW although retained, in contrast to the fanfare 1962 in the in the connection to the fourth a fifth of C to G follows (see. TW 28 respectively. opinion DS 21), is the fourth in the machining 1980/1984 W. However, the motive (bar 9 and 10) repeatedly, what is the first up, then descending tone sequence ACG followed (cf. TW 28; S. 21 of the report D. "Motive 1" of the fanfare 1962 or p. 11 fanfare 1984). Through this new arrangement gets the fanfare in the version 1980/1984 a more modern, but also a different musical appearance over the theme song of 1962. While the theme song from 1962 by a classical fanfare motif of a rising fourth (GC) and a bottom (CG) to be as triad a C connects, dominated is (cf. TW 28), which as circuit design ACG in a shorter note length follows, there is the theme tune of the 80 version of two designs, namely a be opened Quart GC (resp. E as in the listing in the opinion D.), which then repeats is, as well as the subsequent 3-tones motif ACG (resp. E As-F in the listing of D.),

which likewise repeated is . The melodic impression of recognition melody 1980/1984 is , as the listening test shows , by the tone sequence GCACG (resp . There As-As-F-E in the listing in the opinion D., p 11) shaped .

Although there is the sequence of notes of the specific form of protection only from 10 marks - variations of GCA (or Es-As-F in. Quotation of D.) -, so that only a narrow margin of space available is . Also is it is in the use of Morse logos as bias to the - to the beginning of the broadcast sounding - the theme song as well as a rising Quart as intro to common stylistic device that does not own copyright protectable are . After continuous law can be made of the overall impression of the protective capability - as by linking a conventional style means - also then arise , if the individual elements for be taken only a small individuality comprise (cf. BGH cited above -. Brown Girl II). However, is in the composition of from a sound sequence of a few tones existing news jingles like the " Today" - the theme song of 1980/1984 the scope narrow , so that already small deviations from this lead out . The " Today" - the theme song of 1980/1984 has to their overall impression of the harmonic and rhythmic arrangement of a total of one concise peculiarity , which you as a jingle of the "Today" - News Journal a tonal uniqueness gives .

(3) Applicable has the district court assumed , that the melody of the ZDF fanfare not in the form of infringement adopted was as in two to comparative melodies different intervals at different sites juxtaposed were , so that according to the overall impression of a re-creation is present .

For the distinction , if a (non-free) treatment or a free use is present , are the similarities and not the differences (or differences) significantly (BGH cited above - Dirlada). The law is generally high requirements to the presence of a free use , which in the area of music even further restricted will (cf. . Melodies protection in accordance with § 24 para. 2 of the Copyright Act of the, applicant but not claimed made is).

In contrast to the the Supreme Court decided situations (cf. BGH. Aa O. - Brown Girl II; BGH cited above - Dirlada), in which the rights issue in the foreground stood, whether due to the detected matches a prima facie case for this is , that the older work in the creation of the infringing embodiment as a template served has, is the special feature in this case is , that the commission just the fact was that " existing sound elements (the since decades broadcast theme song of the composer KW in the version of 1980/1984) critical to question and, if necessary , develop further or even from scratch "(cf. briefing Annex B 7). Since the defendant a new format of the news studio for the "ZDF Today " news family and in this context, a redesign of the sound elements planned , was the task of the defendants in the year 2009 commissioned composers , Massive Music, therefore, is that sound elements the "ZDF today " family continue - or new to develop , with the "Morse code as a basic theme expected to be recognized stay or however well- founded and understandable replaced be should ." The ZDF fanfare of KW in the version from 1980/1984 therefore served as a template for the new composition .

A comparison of the note images of the specific form of protection and the injury shape (system TW 28, TW 29; Opinion D., p 11 and 20; Opinion PS 4) , and the in the session from 03.04.2014 made listening test using the transferred sound carrier with the disputed " Today jingles " (cf. . log p 3 = Bl. 208 d. A.)

has no copyright relevant melodic or harmonic matches the injury form (fanfare - Blues 1980/1984) with the protective form (the Today theme song 2009) provide that in the new composition recognizable taken were .

The new theme song 2009 begins with a Morse Logo (cf. . Sheet TW 28; Opinion DS 20 each in C Major, reports PS 4 in F major), as the Morse Logo for the task of Massive Music as part of " well established sound brand " retained are should (see . Annex B 7). Morse or . rhythmic beeps (z. B. Uhrsignaltöne) or electronic sounds , which according to their listening experience of the viewers like as Morse perceived to be , are , however, common stylistic device to the announcement of the imminent start of a news broadcast , as the applicant itself admits (see . Opinion DS 26) so that the fact , that even the new theme song in 2009 with a Morse logo begins , the equally formative part of this theme song is , a significant acquisition in the form of infringement not to justify capable . The Morse logo injury form has also considerable tonal and rhythmic variations on. It sounds not on the fifth - as the 80 version - but on the fundamental and affects thereby significantly " fresh " ; it corresponds rhythmically also n ot the gemorsten word " today ", but has a modified rhythm on. As far as the applicant submits makes , that in the form of protection known , specific compound or . Tooothing of the Morse logos with the rest of the music in the form of "Clave- formula" that specifically and significantly for the 90 version of the ZDF Fanfare been had, also in violation of the form available was (cf. . Opinion DS 19) did it their Analysis based on the fanfare blues in the 1998/1999 version by the composer Wa . made , which , however, not subject matter of the appeal is (sh. above). Because of the applicant shown peculiarity of the new rhythmic structure of the 90 version, in which the last three beeps the Morse code a specific rhythmic form and thereby with the rest of the music in a special way interlinked and as a non- leachable portion of it to look at are (see . briefs from 01/08/2013 d p.8 / 9 = Bl. 116/117. A.), giving way to new theme song in 2009, in which the "Clave- formula" for representation of the applicant assumed was from the 80 version considerably .

This applies also for that of the applicant based on specified three-part structure of the form of protection provided by the violation of the form taken has had. As far as the applicant , with reference to the embodiments in the private expertises D. (14) performs , that the fanfare -Blues in the version of 1998/1999 further differentiated been had, and a three-piece structure (Part 1 of the jingles few seconds before the full time , message preview , then part 2 of the jingles with the actual opening signal) obtained have , in the theme song 2009 adopted has had, is it also not relevant since the machining W. (1990/1998) is not the subject of the appeal is (see Fig. above Versions).

The " real " theme song of the form of protection and the form of infringement has , however, no significant similarities to that in the form of infringement still recognizable there and not faded are . True has regional court in so far observed , that in the two melodies of the form of protection and the form of infringement different intervals at different locations successive follow (see . P LGU 10/11).

The band in the version of 1980/1984 begins with a rising quart (GC, system TW 28 respectively . It Ace report D., p 11), which then in the motif repeats is , what is a 3-tones closing motif (ACG, plant TW 28 or . F-As-Es) connects . The tone sequence of

five tones that of wind instruments played will , begins and ends on the same note (G respectively . It sh. Above).

In contrast, has the ZDF fanfare in 2009, also by the own submissions of the applicant , a modified motif on (sh. Quoted in reports D., p 20). The fanfare design begins with a bottom (CG, TW plant 28, report D., p 20; As-It reports P., S. 4) to which is a fourth connecting (GC). The ascending melody of the three tones forms a triad above the root note (C or A-flat). In Morse logo done an anticipation of the theme of the three tones . New and for the recognition melody 2009 formative is of the descending second following Septimenton (B, cf. system 28 and TW. Opinion D., p 20; Ges in the opinion P., S. 4) to the out of four tones - a triplet (FBF, see . opinion Doehlemann , p 20, Des Ges -des, reports PS 4) and the final note (G or It.) - existing circuit motive leads over and the final tone down - otherwise than in the form of protection that again for Initial tone G returns - rises . When listening test is to determine , that the Septimenton the melody a modern sound gives and in conjunction with the both rhythmically as well as melodically amended final motif as a cinema sound anmutet (see . In the meeting handed recordings , track 5).

Although the theme song of 2009, the bottom (CG respectively . As-It in the listing in the report P.) following Quart GC in the listening test louder emerges and therefore also in the form of infringement , the fanfare motif concisely is , has the new theme song by the Septimenton and of this initiated , by the form of protection both rhythmically as melodically significantly different 4-tone-final motive so strong own characteristic features on, that at a total consideration of the used plant parts of the original (Fanfare 1980/1984) not more into the weight fall and the new work " fade " .

The applicant is therefore not in terms of the new theme song 2009 (head of claim I. 1, work number 10905710), nor in terms of excerpts from the works number 10905710

(Action Request I.1 c) and e) an injunction to .

3) As far as the applicant contends makes , that the District Court for the assessment of eligibility for protection error of law isolated on the individual " building blocks " lifted , not but the interaction respectively . the teeth of the individual components in the respective compositions considered have and therefore to the erroneous conclusion of a lack of protection capability come is, is the appeal even to the extent no success verbeschieden .

The judgment of the district court , after which the 17-conditioning TW mentioned , individual components of the fanfare - Blues for themselves taken not eligible for protection under § 2 para. 2 of the Copyright Act are (see . P LGU

9/10 = sheet 96/97 d. A.), is not attacked in detail with the appeal of the plaintiff . In the remainder is to be pointed , that - as the defendant already in the first instance indisputably presented has (statement of defense f, p 11 = BL-32 f..) - the building blocks 6 and 7 of the machining by Mr. W. from the year 1998 coming .

Although can also the use of known , for himself seen not worthy of protection stylistic elements such as , for example, Morse code or a rising fourth in a fanfare protectable be, if in the manner of their use , especially in a combination of individual network elements a personal intellectual creation to day occurs (see BGH GRUR 1968, 321, 324 - Hazelnut ; GRUR 1988, 810 - Fantasy; GRUR 1991, 533 - Brown Girl II). For this purpose has applicant but not concretely established , which connect the in-conditioning TW 17 mentioned blocks from the form of protection that an individual creative power of Mr. W. is in the form of infringement recognizable taken was . As far as the applicant on a connection of the block 7 (3 consecutively following orchestra blows to a constant sound) turns off , has this at the be undertaken viewing disregarded remain , since it is common ground of Mr Wa . comes , the copyright on the processing (1998/1999) the ZDF fanfare not the subject of the appointment are . Both the connection of the Morse logo (module 6) with the actual recognition melody as well as the tone sequence (GCACG) or . in the variant (GCAG) in the theme song (block 4) and the at fanfare conventional use of a fifth and a fourth (Block 2) in the form of protection and their presence in the form of infringement are already the subject of the examination , whether essential elements of the earlier work in the new theme song 2009 adopted were (see Fig. above statements under 2). Also has been already carried out , that the new overall impression of injury form to a substantial part of it is based , that the seventh in the new arrangement of MassiveMusic the four-note final motif initiates , while the Septimenton in the quotation in block 3 in two-part beginning or . as a final note used is . To what extent the in block 1 given basic beat in the 4/4-clock, consisting of quarters , - eighth , - and sixteenth notes , the for is seen not protective worthy is and also no specific characteristic has due to its connection with the other network elements a special characteristic obtained has , is neither established , nor otherwise apparent . The same applies for the of four tones (FGCD) existing tone sequence in block 5, which made the final of the theme song from the years 1986-2001 comes .

4) Since the applicant an injunction according to § 97. 1, § 23 of the Copyright Act not entitled , is the claims made claim on finding a requirement for compensation according to 2 § 97. Copyright Act unfounded .

5) From the same reasons, has the applicant also no claim on accounting (§§ 241, 259 BGB) and on reimbursement (§ 97 a paragraph 1, sentence 2. Copyright Act ; §§ 683 p 1, 677, 670 BGB).

III.

1. The decision on costs is based on Section 97 (1), Section 516 (3) and Section 91a of the ZPO. Since the lawsuit also in for settled declared extent no success had had , which has applicant also extent the caresses of the process to carry .

2. The decision on the provisional enforceability is issued by § 708 no. 10, 711 ZPO.

3. The revision is not allow , because the case no fundamental significance has, § 543 para. 2 sentence 1 no. 1 ZPO and also the requirements of § 543 para. 2 sentence 1 no. 2 ZPO does not exist . The case requires , such as the versions under II. Show , only the application secure law principles to the particular case .

4. The determination of the amount in dispute follows from Section 47 (1), Section 45 (1) sentence 2, Section 39 (1) GKG, and Section 3 ZPO.

The applicant has her with the lawsuit pursued interest in the first instance with € 50.000, - quantified and the date of 03.06.2013 executed , that is the amount in dispute equally to the nine from the application recorded works distribute .

With the appeal , the plaintiff initially continued to pursue the action to the extent of the seven music titles (lit. c to i) . With brief from 13.1.2014 (ff p 3 = Bl. 188 ff.), Received on

15/01/2014, was the calling partially withdrawn and only still claims for the music c) e) and h) followed . In the appointment before the Senate has to the then attributable dispute with € 35 000, - quantified and for the music h) an amount in the amount of € 30.000, - and for the music c) and e) , respectively , € 2,500 - scheduled .

Starting from that in the first instance specified aggregate amount of € 50 000, - measured the Senate to dispute the appeal under consideration of the supplementary application to the partial appeal redemption on 15.01.2014 to € 50.000, -. For the time after that sees the Senate a dispute in the amount of 30 000, - as appropriate to. This dispute raised up according to § 45 para. 1 sentence 2 GKG to € 60.000, - because over the alternative, in the way of gewillkürten Prozesstandschaft claims made claims decided was .

Suggested citation :

OLG Munich ruling . v. 7/8/2014 - 6 U 2165/13, BeckRS 2015, 11536