

LG Munich I, final judgment of. July 31, 2026 – 42 O 763/25

**--- No document title available ---****Sources:**

K & R 2026, 607

LSK 2026, 17961

tenor

1. The defendant is ordered to refrain from the following actions, under penalty of a fine of up to EUR 250,000.00, or alternatively, imprisonment of up to six months, to be determined by the court for each instance of non-compliance.

a) to reproduce, in whole or in part, the musical works attached as Exhibits K 1.1 to K 1.5 and the refrain of the musical work attached as Exhibit K 1.6 without the consent of the plaintiff and/or to have them reproduced by third parties,

aa) in the territory of the United States of America for the purpose of training an artificial intelligence (AI) model to generate music and/or

- Reproduction for training purposes –

bb) in the territory of the Federal Republic of Germany by storing parameters or other data structures in such an AI model,

- Reproduction in model form –

as happened in the AI models underlying the AI application Suno in Su-no versions 3.5 and 4; and/or

b) to publicly perform, in whole or in part, the musical works attached as Exhibits K 1.1 to K 1.5 and the refrain of the musical work attached as Exhibit K 1.6 without the plaintiff's consent, within the framework of offering a model as described in Application 1 a), or within the framework of an application for generating music that uses such a model, in the territory of the Federal Republic of Germany and/or to have these actions carried out by third parties and

- public performance through Suno's offering –

c) To reproduce and publicly perform without the consent of the plaintiff any alterations to the musical works attached as Exhibits K 1.1 to K 1.5 and the refrain of the musical work attached as Exhibit K 1.6, and/or to have these actions carried out by third parties, as happened in Exhibit K 3.

- injuries during distribution –

2. The defendant is ordered to provide the plaintiff with information, by submitting an organized list, regarding the extent to which she has carried out the actions described in point 1 with respect to the musical works attached as Exhibits K 1.1 to 1.3 and with respect to the refrain of the musical work attached as Exhibit K 1.6, and what income she has generated therefrom, specifying

a) the number and scope of the actions according to point 1 and

b) sales,

The information must be provided for all actions in point 1 a) bb), 1 b) and c) since 01.07.2023.

3. It is determined that the defendant is obligated to compensate the plaintiff for all damages relating to points 1 a) bb), 1 b) and 1 c) since July 1, 2023, which have already arisen and/or will arise as a result of the actions described in point 1 relating to the musical works attached as Exhibits K 1.1 to 1.3 and to the refrain of the musical work attached as Exhibit K 1.6.

4. The plaintiff is authorized to publish the operative part of the judgment within 6 weeks after the judgment becomes legally binding in the national *Süddeutsche Zeitung* on weekends on page 3 in the business section in a 1/4 page landscape format at the defendant's expense.

5. The defendant is ordered to pay the plaintiff pre-litigation legal fees in the amount of EUR 5,049.70 plus interest at a rate of five percentage points above the base interest rate since July 30, 2025.

6. In all other respects, the action is dismissed.

7. The defendant shall bear the costs of the proceedings.

8. The judgment is provisionally enforceable in paragraphs 1a) aa), 1 a) bb), 1 b) and 1 c) against security in the amount of EUR 150,000.00 each, in paragraphs 2 and 3 against security in the amount of EUR 70,000.00, in paragraph 4 against security in the amount of EUR 10,000.00 and in paragraphs 5 and 7 against security in the amount of 110% of the amount to be enforced.

Facts

- 1 The plaintiff is asserting claims for injunctive relief, disclosure and damages against the defendant, the provider of a music generator that creates sound recordings upon user requests, for infringement of copyrights in six different pieces of music.
- 2 The plaintiff is a collecting society that manages the rights of use to musical works transferred to it by composers, lyricists and music publishers.
- 3 The defendant, based in the USA, develops, operates, and licenses a music generator based on artificial intelligence (hereinafter: AI), which is accessible in the Federal Republic of Germany via the defendant's website hosted in the USA. The music generator creates musical pieces upon user request. The dispute concerns versions v3.5 and v4 of the music generator. The defendant also offers a mobile app.
- 4 The musical works in dispute are "Atemlos durch die Nacht" by Kristina Bach, "Rasputin" by FF, Fred Jay and George Reyam, "Big in Japan" and "Forever Young" by Marian Gold, Bernhard Lloyd and FM, "Daddy Cool" and the refrain of the piece "Mambo No. 5 A little bit of" (Exhibits K 1.1 to K.6). The musical works are registered in the plaintiff's works database (Exhibits K 11, K 13, K 17, K 19, K 21, K 23).
- 5 The plaintiff, composers Kristina Bach, George Reyam, Marian Gold, Bernhard Lloyd, David Loubega, and CP, as well as music publishers, signed supplementary agreements for their respective musical works between September 2024 and October 2025 with regard to the alleged copyright infringements (Exhibits K 12, K 14, K 18, K 20, K 22, K 24). FF's daughter and former manager signed for him, and Fred Jay's son signed for him (Exhibits K 14, K 18). The plaintiff did not conclude a supplementary agreement with composer FM. According to the wording of the supplementary agreements, reference is made to the general licensing agreements existing between the composers, music publishers, and the plaintiff. To avoid any legal uncertainties, it is stated that the

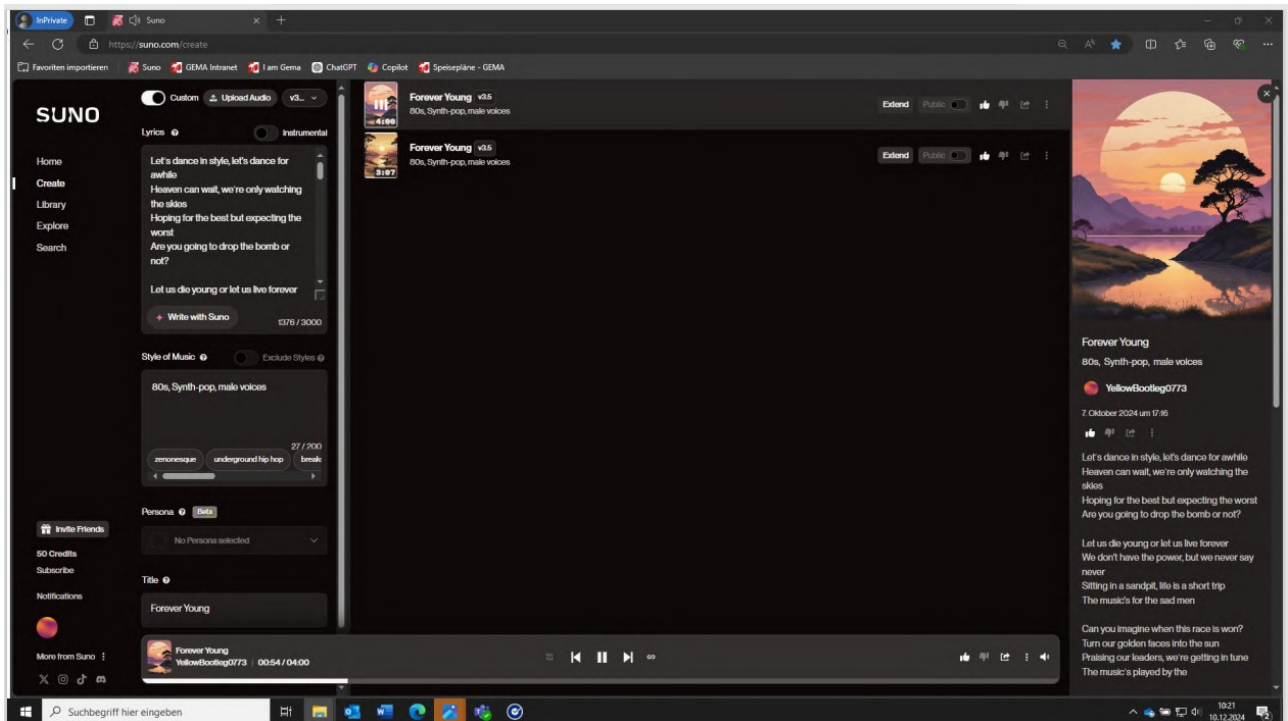
rights holders transfer to the plaintiff the exclusive right to use musical works (with or without lyrics) in whole or in part in AI systems, in particular for training and fine-tuning, through processes for processing contextual information, and in the output of AI systems, specifically including use in AI music generators and AI-supported search engines. By agreement dated March 1, 2026/February 24, 2026/March 2, 2026 (Exhibit K 66), the co-authors Marian Gold and Bernhard Lloyd authorize the plaintiff to assert the disputed claims for injunctive relief in its own name.

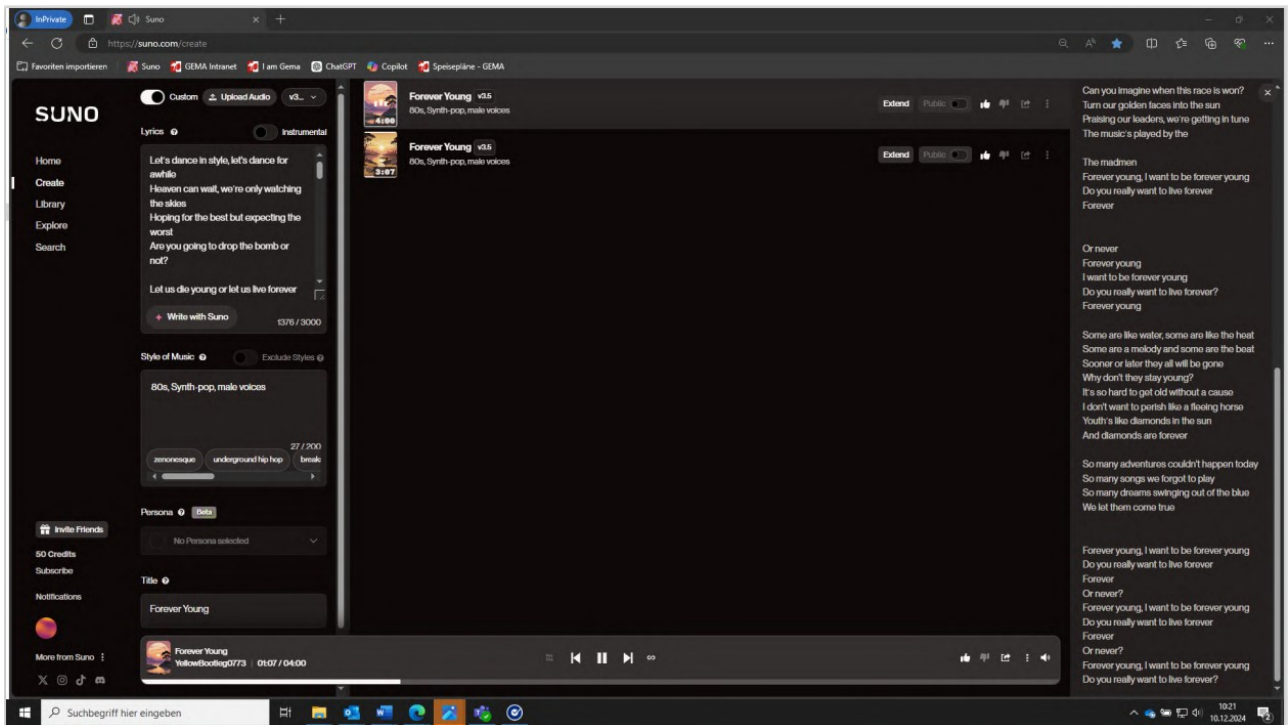
- 6 In the legal notice of her website, the plaintiff declared a reservation of rights regarding text and data mining for the works contained in her repertoire.
- 7 The European collecting society International Copyright Enterprise offers the online repertoire of the plaintiff, the British collecting society PRS for Music and the Swedish STIM to music users throughout Europe from a single source and represents the rights vis-à-vis digital music services on behalf of the three partners.
- 8 A reciprocal agreement exists between the plaintiff and the US-based Harry Fox Agency regarding the exercise of mechanical reproduction rights, which serves the international exercise of rights by the respective foreign partner company.
- 9 The defendant's music generator is based on an AI system that, in addition to the user interface, includes both a generative, pre-trained transformer model and a diffusion model. The various models (hereinafter collectively referred to as "model") consist of deterministic neural networks.
- 10 In generative pretrained transformer (GPT) models, the neural network always generates the same output up to and including the softmax function, provided the internal state, parameters, and all inputs are identical. The output layer of the transformer has one neuron for each token. The higher the activation of a neuron, the more likely that the corresponding token is the next token for text generation. Using the softmax function, a probability is calculated for each token from all activations in the output layer, which can be used to select the next token. The output layer of a GPT network thus contains the probability calculated by the model according to the softmax for each potential next token, and depending on the selection algorithm, the next selected token is then either random or random. Since the task of a GPT model is to calculate the probability of the next token, a choice must be made based on the token probabilities. It is this first step after the GPT model that can introduce randomness into the output of the AI application.
- 11 Diffusion models operate similarly: the calculation of the noise component is deterministic. However, diffusion models differ fundamentally from GPT models in terms of their function and architecture. They are trained to identify stochastic interference components (so-called noise) in the input signal and, in the defendant's model, in the audio input. Operationally, this occurs in three steps: (i) estimating the noise component contained in the input data, (ii) partially subtracting the estimated noise signal from the input data, and (iii) outputting a noise-reduced state. This process is repeated as long as a relevant noise level is detected. For a diffusion model to perform this task, it is trained using artificially noisy inputs to recognize the noise. Modern statistical methods make it possible to distinguish genuine information from noise with a high degree of probability. This requires that the diffusion model has learned, through sufficient examples, to differentiate signal from noise, i.e., genuine information from chance and errors.
- 12 The defendant trained its model using a corpus of audio files and metadata in the United States, with the dataset containing millions of complete audio recordings. The training required the use of complete recordings because fragmentary excerpts are insufficient to understand, for example, how musical form unfolds over minutes or how genre conventions manifest themselves.
- 13 The defendant's training dataset also contained the musical works at issue. The defendant used so-called stream-ripping techniques to extract and copy the musical works from the YouTube platform. In doing so, it circumvented the so-called rolling cipher, a technical protection measure implemented by the platform to prevent the downloading of audio and video content. This involves using two separate URLs for each audio and video file: a visible URL for the website where playback takes place and free streaming is possible, and a second URL,

invisible to the user, for the actual storage location of the audio and video files. The platform generates this second URL using a complex algorithm that changes frequently. This technology makes it more difficult for internet users to permanently download content from the platform.

- 14 As part of the training process, the defendant used the works in dispute for preparation and preprocessing (e.g., conversion, formatting, feature extraction, creation of spectrograms) as well as for the creation of training, validation and test datasets.
- 15 The defendant collected the metadata for the musical works in question, used to build the training dataset, from websites that made it freely and publicly available. For music generation, metadata such as title, genre, and lyrics are used to retrieve the trained patterns and probabilities. The defendant linked the metadata with the audio files obtained by circumventing the rolling cipher to form so-called bundles.
- 16 These bundles were then converted into tokens, small units consisting solely of numbers. The tokens were vectorized to capture their semantic meaning and their proximity. The vectors contain semantic, syntactic, and structural information about the content. When tokenizing audio data, the audio signals are divided into small audio splitters and analyzed. Depending on the method and quality requirements, an audio splitter is approximately 10 to 50 milliseconds long. An audio token encodes the extracted properties of an audio splitter, such as volume, timbre, spectral shape, whether voice(s) were recognized, or the brightness of the sound. Detailed information is intentionally lost in this process, known as quantization.
- 17 The training data was also saved for the creation of backups and backup copies.
- 18 In training its model, the defendant used numerical vectors derived from the training data to gradually adjust a separate, initially randomly generated set of parameters over many training cycles in billions of mathematical calculations. The end result is a trained model whose set of model weights embodies the model's "learned knowledge." The original training data, such as the audio files, are not included in the model as audio files. To generate outputs, the model processes the input prompts. The parameters determine how the model responds to prompts and what content it generates through the application of mathematical operations. For example, the model can generate a piece of music based on text input because it has learned the relationship between specific texts and specific sounds.
- 19 In July 2023, the defendant released a beta version of its then-current model.
- 20 The defendant's music generator can, in principle, be used by anyone with internet access and an internet-enabled device who registers. The defendant offers free, non-commercial use, which allows the creation of 10 music tracks per day. Upon subscribing to a paid service, the defendant grants users usage rights to the requested music tracks, which they may also use for commercial purposes. A monthly subscription price of \$10 includes the creation of 500 music tracks per month, while a price of \$30 includes 2,000 music tracks per month.
- 21 By May 2024, over 10 million users had used the program. In October 2024, the application recorded 2.21 million visitors.
- 22 In addition to the music generator, the defendant's service includes a music service. Users can share their music via this service and play both music they themselves have requested and music requested by third parties, although music generated by third parties must be approved beforehand. If an output is not actively published by the user, it is only accessible via its direct URL.
- 23 The user submits a request to generate an audio recording via the user interface by entering a prompt. Users can enter lyrics or describe the content of a piece of music, select the musical style, and give the piece a title. Additionally, they can upload sample recordings, reference inspirations, exclude musical styles, and select the gender of the vocalist.
- 24 The music generator processes the specifications within seconds and produces two digital audio recordings, known as outputs, for each specification. These can be played, published, and shared via a media player integrated into the website. Users can also download the outputs as audio files (MP3/WAV) and video files (MP4).

- 25** The music generator is offered to users in a production environment (inference workloads). While the file is still being created, the user can already listen to the output. For this storage, the defendant uses infrastructure servers of an external provider, which maintains so-called edge servers worldwide. Edge servers are high-performance servers characterized by their physical proximity to the users who access the content stored on them. They are used particularly when low latency is required when accessing the stored content, because a short response time is important to users. For use of the defendant's application in Germany, the model is stored on edge servers located in Germany. The fully generated output is stored on servers also provided by the defendant. When the user retrieves the respective output, an intermediate copy is created in their RAM.
- 26** The defendant's music generator produced the music tracks submitted as Exhibit K 3 in audio format as outputs. When requesting the outputs in dispute, employees of the plaintiff and its legal representatives each entered the original lyrics of the respective work, the musical style, and the work title into the input mask of the music generator, using versions v3.5 and v4 of the model. When entering the lyrics "Atemlos durch die Nacht" (Breathless Through the Night), the plaintiff also specified the music style "Schlager" (German pop music); for the lyrics "Daddy Cool," the music style "70s, Disco, Electronic, Soul, Funk"; for the lyrics "Rasputin," the music style "Disco, late 70s"; for the lyrics "Big in Japan," the music style "80s, Synth pop, male voices"; for the lyrics "Forever Young," the music style "80s, Synth pop, male voices"; and for the lyrics "Mambo No. 5 A little bit of," the music style "Latino Pop" (see transcripts of the prompts in Exhibit K 2). The prompts contained no further specifications, such as those regarding melody, harmony, rhythm, or arrangement.
- 27** In connection with the output in dispute for "Atemlos durch die Nacht" (Breathless Through the Night), the plaintiff's employees and their legal representatives entered a total of 176 identical prompts, for the output for "Daddy Cool" a total of 14 identical prompts, for the output for "Rasputin" 8 identical prompts, for the output for "Big in Japan" 124 identical prompts, for the output for "Forever Young" 12 identical prompts and for the output for "Mambo No. 5 A little bit of" 4 identical prompts.
- 28** The following is an example of the prompt for "Forever Young" (Appendix K 2.5):





- 29 By letter dated January 17, 2025, the plaintiff's legal representatives issued a warning to the defendants (Exhibit K 4).
- 30 The plaintiff claims that FF composed the music for the piece "Daddy Cool" on his own.
- 31 The supplementary agreements Exhibits K 12, 14, 18, 20, 22 and 24 were not unilaterally imposed by the plaintiff. The beneficiaries had the opportunity to submit their own proposed texts and effectively implement them.
- 32 The musical works in question are fully and unchanged memorized in the model. Memorization occurs when information about specific training data is defined in the model parameters in such a way that the model is able to reproduce training data wholly or partially in its outputs. Regurgitation, on the other hand, considers only the output and identifies it as a (partial) copy of training data. The phenomenon of memorization of content within models can lead to regurgitation, the production of output that explicitly or sufficiently similarly reproduces certain training inputs. The term "memorization effects," used by the defendant, does not exist in research.
- 33 Whether an output contains memorized content can be determined by comparing the output with the training data. If the output is found in the training data, memorization must be assumed. Due to the deterministic nature of models, they always produce the same output for identical input. However, randomization mechanisms implemented downstream in the AI system modify the outputs with random elements.
- 34 The (partially) identical outputs of the audio recordings in dispute proved their fixation in the model, since both a provoked regurgitation due to the prompts used and a random regurgitation were ruled out. The input of the lyrics as a prompt did not significantly restrict the model's creative scope. The lyrics only influenced one component of the speech melody, namely the syllable stress.
- 35 The inclusion of the disputed musical works in the outputs was not a deliberately provoked isolated incident, but rather a consistent occurrence. The plaintiff's other prompts concerning the disputed musical works also resulted in other, likewise infringing, outputs. From these, the plaintiff selected for the proceedings the output (Exhibit K 3) that most clearly documented the infringement.
- 36 According to numerous corresponding public forum posts and social media content, the input of original texts as prompts for the music generator in question is a common and regular practice among users.
- 37 The protective measures claimed by the defendant to prevent legal infringements had not yet been implemented at the time the lawsuit was filed. In any case, they only concerned the prevention of regurgitation and did not

address the memorization of training data.

- 38** Even if the defendant did not select the storage region, it tacitly accepts that the model will be stored on servers in Germany. The defendant has been aware of the phenomenon of memorization at least since the 2021 study by Carlini et al. (Exhibit K 35.1); at the very least, it should have been aware of it.
- 39** The plaintiff argues that the Munich I Regional Court has both international and local jurisdiction pursuant to Section 131 Paragraph 2 of the German Collecting Rights Act (VGG). Section 131 VGG is dual-purpose, thus regulating both local and international jurisdiction. If the infringements occur in several different judicial districts, Section 131 Paragraph 2 VGG allows the plaintiff, as a privileged collecting society, to assert all claims against the infringer before one of the courts with local jurisdiction pursuant to Section 131 Paragraph 1 VGG. Alternatively, jurisdiction is established under Section 23 of the German Code of Civil Procedure (ZPO).
- 40** The works in dispute (Exhibit K 1) are copyrighted musical works pursuant to Section 2 Paragraph 1 No. 2 of the German Copyright Act (UrhG).
- 41** The plaintiff, as the holder of the exclusive rights of use to the musical works in dispute, has standing to sue. The authors had already transferred their rights to the plaintiff in their general licensing agreement. Furthermore, the transfer of rights is also clearly stated in the supplementary agreements. FF had effectively granted his daughter and his long-time advisor a power of attorney that extended beyond his death, authorizing them to sign the supplementary agreement with the plaintiff. The sole legal successor of the deceased co-composer Fred Jay of the work "Rasputin" is his son, which is why he was able to validly sign the supplementary agreement. For the work "Mambo No. 5 A little bit of," proof of a chain of rights from the original author is not necessary, as the plaintiff bases its claims on an infringement of the arranger's copyright on the refrain. Co-authors could assert claims for injunctive relief separately from one another, which is why the plaintiff is entitled to bring an action even without a supplementary agreement with the composer FM regarding the musical works "Big in Japan" and "Forever Young".
- 42** International Copyright Enterprise did not acquire any rights of use from the plaintiff. The reciprocal agreement with the Harry Fox Agency did not grant exclusive rights of performance, nor did it include online rights. Furthermore, the Harry Fox Agency merely offered publishers and collecting societies the option of accepting direct licensing offers from US licensees via opt-in.
- 43** In training its model with the works in dispute, the defendant made reproductions that, under applicable U.S. law, were reserved to the composers as authors, pursuant to 17 U.S.C. § 106(1). These reproductions were not justified by the limitations in 17 U.S.C. § 107, the so-called fair use provision. The four factors to be examined under fair use all weighed in favor of the composers. The purpose and nature of the use of the works supported the authors, as no transformative use had taken place. The model did not create anything entirely new in relation to the works with which it was trained, but rather generated copies of the original works. The nature of the works in dispute also weighed in favor of the composers, as they were characterized by a very high degree of creativity, and the defendants exploited precisely this. The quantity and significance of the portion of the work used, in relation to the work as a whole, were also to be considered in favor of the authors. As a result of the training, the works in question would be made fully accessible to the public by being included in the output. The defendants were not content with a mere analysis of the works. The generated musical pieces in the outputs would compete directly with the composers' works in the popular music market. The defendants must provide detailed evidence that their generated outputs have no adverse effects on the music market.
- 44** There have been multiple infringements of German copyright law. Given that the musical works in question have been encoded in the defendant's model, the model stored on servers in Germany constitutes a copy within the meaning of Sections 15(1) and 16 of the German Copyright Act (UrhG).
- 45** With regard to the training performed with the musical works in dispute and the outputs shown in Exhibit K 3, the simple prompts generated, considering the complexity of the musical works in dispute, already constitute prima facie evidence that the musical works were reproduced in the models. The possibility of a model randomly

generating training data-like output is so improbable that it can practically be ruled out. In any case, the defendant bears a secondary burden of proof regarding the reasons that led to the outputs in dispute, since the technical processes took place exclusively within the defendant's sphere and users had no direct access to the model.

- 46** For reproduction purposes, it is not necessary to identify a specifically definable data set within the model. The outputs in question could be made perceptible using the music generator on a conventional PC simply by entering the lyrics of the original songs and a basic style setting. This is sufficient for indirect perceptibility.
- 47** The reproductions within the model are not justified by the text and data mining exception. In any case, memorizations of training data do not fall under the exception, since reproductions within the model do not serve further data analysis and permanent reproduction is not justified under Section 44b of the German Copyright Act (UrhG) anyway. Furthermore, the exception does not apply because the works in question were obtained by circumventing the rolling cipher as a protective measure and were therefore not lawfully accessible under Section 44b of the German Copyright Act (UrhG).
- 48** The burden of proof for the absence of a reservation of rights under Section 44b Paragraph 3 Sentence 1 of the German Copyright Act (UrhG) lies with the defendant. The defendant must at least provide detailed evidence and proof of the sources from which the works were taken, whether exclusively from online sources or also from physical sources, who published the data, and whether reservations of rights were declared in this context, for example, in the robots.txt file of the source website or in another suitable location.
- 49** The plaintiff validly declared a reservation of rights in its legal notice, the authority to do so deriving from the general licensing agreement. For the works in dispute, this authority also derives from the supplementary agreements.
- 50** The plaintiff also effectively obligated its licensees in its terms of service to declare the reservation of rights of use. YouTube declared effective reservations of rights of use for the works in dispute in three respects: by prohibiting access by crawlers in its robots.txt file (Exhibit K 53), which is a recognized machine-readable reservation pursuant to Section 44b Paragraph 3 Sentence 2 of the German Copyright Act; by prohibiting scraping in its terms of service (Exhibit K 54); and by the technical protection measure of the rolling cipher, which has the declaratory effect of a machine-readable reservation of rights of use.
- 51** By making its model and thus also the original works stored within the model available to the users of its service, the defendant makes the works publicly accessible in accordance with Sections 15 Paragraph 2, 19a of the German Copyright Act; alternatively, this constitutes an unnamed case of public reproduction in accordance with Section 15 Paragraph 2 of the German Copyright Act.
- 52** The criterion of accessibility at times and from places of the user's choosing is met, since the defendant offers users in Germany, and thus a broad public, permanent access to the music generator and the underlying model, including the internal work memory in which the works in question are stored and thus reproduced, and this access is possible for users from places and at times of their choosing. The defendant need not play a central role in this, as this criterion was developed for platform operators and is not applicable to a software application with an integrated AI model.
- 53** Further infringements occurred through the outputs of the models. The generated musical pieces in question constituted alterations under Section 23 Paragraph 1 Sentence 1 of the German Copyright Act (UrhG), in which the respective originals were recognizable. The alterations of the musical works also fulfilled the elements of distortion under Section 14 of the German Copyright Act (UrhG).
- 54** With the outputs in dispute, the defendant fulfills the elements of the offense of reproduction under Sections 15 Paragraph 1 No. 1, 16 of the German Copyright Act (UrhG). The developer and provider of a model has control over the reproductions through the outputs, and not the user who generates the output using a simple prompt.

- 55** The limitation under Section 44a of the German Copyright Act (UrhG) is not applicable. Even if the defendant only stores its outputs for several minutes on the servers of its external provider in Germany and in the working memory of the users' devices, this storage has independent economic significance, which precludes the application of the limitation under Section 44a of the German Copyright Act (UrhG). This is because the possibility of immediately listening to the music tracks significantly increases the usability of the music generator.
- 56** The outputs in dispute should be classified as making available to the public pursuant to Section 19a of the German Copyright Act (UrhG), or alternatively as an unnamed case of public performance pursuant to Section 15 Paragraph 2 of the German Copyright Act (UrhG).
- 57** The act of reproduction was deemed to have occurred, as works were made accessible to the public in such a way that its members could access them from places and at times of their choosing. The criterion of central role, examined by the defendant, was not applicable, as this criterion is only relevant within the context of indirect liability for third-party copyright infringements. Regardless, the defendant had determined the functionality of the music generator by selecting the training data, was aware of the problem of memorization, and pursued a commercial purpose with regard to providing the application and the specific output. Furthermore, it had not taken sufficient measures to prevent copyright infringements.
- 58** The criterion of quantitative publicity is met, as the defendant's service is, in principle, accessible to any person with internet access and an internet-enabled device. Furthermore, the defendant's service already has over one million paying subscribers. Identical reproducibility of a specific output is not required. Moreover, the music generator in question does not generate copyright infringements randomly, but reliably.
- 59** The project also achieves high-quality public exposure, reaching a new audience. The works are transformed into memorized versions through the training of the model, making them available to users of the music generator for music creation purposes. Furthermore, the conversion and input into the model involves a specific technical process, clearly distinguishable from the original performance.
- 60** The defendant is not entitled to the privileged liability of a hosting service provider under Article 6(1) of the Data Protection Act (DSA). Firstly, Article 6 DSA does not apply to claims for injunctive relief; secondly, the defendant is not a hosting provider, as the subject of the dispute is not the subsequent publication of the generated music tracks by users, but rather the provision of the music generator for the creation of music tracks. Even if Article 6(1) DSA were applicable, the defendant would not benefit from the privileged liability because it was aware of the unlawful information.
- 61** The plaintiff expanded her claims by letter dated 21 October 2025 and amended them by letter dated 29 January 2026 and at the oral hearing on 9 March 2026 following the advice given by the Chamber.
- 62** The plaintiff ultimately requests, with the proviso that with regard to the work "Mambo No. 5", only the rights of the arrangers are asserted, namely an infringement of the refrain:
1. The defendant is ordered to refrain from the following actions, under penalty of a fine of up to EUR 250,000, or alternatively, imprisonment of up to six months, to be determined by the court for each instance of non-compliance.
 - a) to reproduce the musical works attached as exhibit K 1, in whole or in part, without the consent of the plaintiff and/or to have them reproduced by third parties,
 - aa) (reproduction for training purposes) for the purpose of training an artificial intelligence (AI) model to generate music and/or bb) (reproduction in the model) by storing in the form of parameters or other data structures in such an AI model, as occurred in the AI models underlying the Suno AI application in Suno versions 3.5 and 4, where claim 1. a) aa) relates to reproductions in the USA and claim 1. a) bb) relates to reproductions in Germany; and/or
 - b) (making available to the public by offering Suno) to make the musical works attached as exhibit K 1 publicly available in Germany, in whole or in part, without the plaintiff's consent, within the framework of offering a model

as described in application 1 a), or within the framework of an application for generating music that uses such a model, and/or to publicly perform them and/or to have these actions carried out by third parties, with the proviso that the application regarding public performance is made as an alternative in the event that the application regarding making available to the public is rejected; and/or

c) (Infringements during publication) To reproduce and/or make publicly available and/or publicly perform and/or have these actions carried out by third parties in Germany without the consent of the plaintiff, as happened in Exhibit K 3, with the proviso that the application regarding public performance is made as an alternative in the event that the application regarding making publicly available is rejected.

2. The defendant is ordered to provide the plaintiff with information, including a detailed list, regarding the extent to which she has carried out the actions described in point 1 concerning the musical works attached as Exhibits K 1.1 to 1.3 and K 1.6, and what income she has generated therefrom, specifying the amounts.

a) the number and scope of the actions according to point 1 and b) the sales, whereby this request is made without time limitation with regard to the actions described in point 1 a) aa) and otherwise with the proviso that the information is to be provided for all actions since 1 July 2023.

3. It is determined that the defendant is obligated to compensate the plaintiff for all damages that have already arisen and/or will arise as a result of the actions described in point 1 concerning the musical works attached as Exhibits K 1.1 to 1.3 and K 1.6, or, in the alternative, to surrender the unjust enrichment as shown by the information provided in point 2, this claim being subject to the time limitations specified in claim 2.

4. The plaintiff is authorized to publish the operative part of the judgment within 6 weeks after the judgment becomes legally binding in the national *Süddeutsche Zeitung* on weekends on page 3 in the business section in a 1/4 page landscape format at the defendant's expense.

5. The defendant is ordered to pay the plaintiff pre-litigation legal fees in the amount of EUR 5,049.70 plus interest at a rate of five percentage points above the base interest rate since the commencement of legal proceedings.

63 The defendant requests that

The lawsuit is dismissed.

64 The defendants assert that it is likely the plaintiff entered into an authorization agreement with International Copyright Enterprise, whereby the plaintiff fully assigned to International Copyright Enterprise the exercise of rights to the online rights of the copyright holders in its repertoire, including the rights of the copyright holders mentioned herein. The licensing of the relevant online rights in cases of multi-territorial use is exercised exclusively by International Copyright Enterprise.

65 The defendant assumes that the plaintiff has fully transferred the exercise of the relevant online rights to its repertoire in the USA to the Harry Fox Agency.

66 The defendant obtained the relevant training data for the musical works at issue exclusively from YouTube between the first half of 2023 and the first half of 2024. No usage restrictions by the rights holders or the plaintiff itself were stated on YouTube, either with the musical pieces or elsewhere on the website (referring to screenshots of YouTube videos of the musical works at issue, Exhibit B 49). The robots.txt file cited by the plaintiff did not contain the command "Disallow: /file_download" at least until June 2025.

67 The training data is neither contained in nor stored within the model. The model's weights and parameters represent mathematically learned patterns and generalized features from the training data, such as syntactic, semantic, and contextual relationships. The storage space in the defendant's model parameters is mathematically insufficient to store even 1% of the training data. If only a limited subset of the training data is stored in the model (which is not the case), it is incomprehensible why the six disputed musical pieces would have been selected and stored.

- 68** In the memorization process, substructures of a model specialize in recognizing (and not necessarily storing) a specific training example or parts of the training data based on their properties and "memorizing" the corresponding response. Memorization thus describes a state of the model in which this has occurred. Regurgitation refers to a behavior of the model, namely the reproduction of an exact copy of individual training data points in its output. The plaintiff has not demonstrated regurgitation. Memorization effects also relate to the behavior of the models, but include not only the output of exact copies of training data, but also outputs that merely resemble certain training data points. Memorization effects do not prove memorization within the model.
- 69** Information was lost during tokenization, meaning that no sections of the original audio recording could be exactly reconstructed from the numerical abstraction. The output mechanisms of the music generator itself, which relied on probabilistic selection within the system, were specifically designed for creative variation, not deterministic replication.
- 70** The outputs that are already playable while the complete output is being generated are only temporarily stored on the edge servers for a few minutes to enable immediate streaming of the song before they are automatically deleted. Therefore, in Germany, at most a short-lived copy of the output can exist on the external provider's server, which is automatically deleted after a few minutes. For the permanent storage of user-generated outputs, the defendant does not use the external provider used for storing the incomplete outputs, but rather a different service. The servers for this service are located in the USA.
- 71** Any similarities in the outputs are due to prompt-induced restrictions of the search space and to statistically learned patterns. The prompt is a necessary condition for every output. Over several months, the plaintiff conducted a total of 338 targeted prompt attempts, providing the model with maximum contextual information about the original works by means of the complete original lyrics and detailed structural and genre specifications. The input of the lyrics as prompts shaped the rhythm, intonation, syllable stress, acoustic cadence, and prosody of the texts. In particular, the number of syllables, accentuation, and character set necessarily dictate the rhythmic structure and melodic contour. The plaintiff's approach contradicts the intended use of the music generator. Inputting original lyrics into the application does not constitute regular and customary usage.
- 72** The defendant had no knowledge of the alleged memorization in her model.
- 73** The defendant has implemented lyric filters that reliably prevent the input of copyrighted lyrics verbatim. It has established a takedown procedure that allows third parties to report potentially copyright-infringing output. Risk mitigation measures are in place, such as restrictions on the input of artist names, producer tags, and lyrics, as well as on the uploading of audio files. The terms of service constitute an effective protective measure, as they prohibit the use of copyrighted material and the generation of output that could infringe the rights of third parties.
- 74** The defendants argue that the lawsuit is inadmissible. They contend that the court lacks international jurisdiction over the claim under point 1 a) aa), which relates exclusively to training activities carried out in the USA without any connection to Germany.
- 75** Section 131(2) of the Collecting Societies Act (VGG) does not establish international jurisdiction for German courts in purely foreign matters. This follows from the wording of the provision, its purpose, and its historical interpretation. As a more specific provision, Section 131 VGG, which establishes exclusive jurisdiction for collecting societies, supersedes the provision of Section 23 of the Code of Civil Procedure (ZPO).
- 76** The claims under points 1 and 2 did not meet the requirements for specificity pursuant to Section 253 Paragraph 2 No. 2 of the German Code of Civil Procedure (ZPO). The exhibits in Exhibits K 1 and K 3 were not suitable for specifying the alleged copyright infringements. The claim under point 1 a) did not describe the infringing act with sufficient specificity. The claims under points 1 and 2 were indefinite due to the use of terms requiring interpretation.
- 77** The expansion of the lawsuit is not appropriate.

- 78** The lawsuit is also unfounded. The plaintiff lacks standing to sue. The plaintiff failed to provide a complete chain of rights for the tracks "Daddy Cool," "Rasputin," and "Mambo No. 5 A Little Bit Of." Regarding the musical pieces "Forever Young" and "Big in Japan," the supplementary agreements are invalid due to the lack of signature from the third author, FM, as Section 8 Paragraph 2 Sentence 1 of the German Copyright Act (UrhG) requires the joint exercise of rights by all authors. The submitted supplementary agreements are invalid, in particular, because of partially divergent contractual provisions. As standard business terms and conditions, they are unreasonable under Section 307 Paragraphs 1 and 2 No. 1 of the German Civil Code (BGB). In the area of European online multi-territorial licenses, only International Copyright Enterprise is authorized to exercise the rights of the authors. The Harry Fox Agency alone has standing to enforce the rights affected in the USA.
- 79** All the musical works in dispute are not protected by copyright; they do not reach the required level of creativity and originality.
- 80** The training, to which U.S. law applies, constitutes a case of fair use under 17 U.S.C. § 107. The only two U.S. court decisions to date on this issue—Bartz v. Anthropic and Kadrey v. Meta—consistently found that the use of copyrighted works to train generative models constitutes a highly transformative use. The generation of outputs that utilize stylistic or otherwise unprotectable elements of the musical works does not undermine the transformative nature of the use. The allegedly similar outputs at issue cannot be infringing because they were requested by representatives of the plaintiff. The defendant has implemented safeguards designed to prevent the reproduction of copyrighted material. The defendant's use of copyrighted works is aimed solely at extracting information about musical style, structure, and relationships to develop its music generator, not at reproducing original recordings for listening. The works in question had already been published. The copying was appropriate to the transformative purpose and not excessive. To the extent that the plaintiff claims its members suffered market damages because the defendant did not pay license fees for the use of copyrighted works as training data, this does not constitute legally relevant damages. The plaintiff, who bears the burden of proof in this respect, has not proven that users played and listened to the nearly identical AI-generated music tracks instead of the original works. Furthermore, the public benefit of the music generator outweighs any potential market effects.
- 81** The defendant did not unlawfully obtain the training data. The alleged claim under 17 USC § 1201(a) is unfounded, as this provision only covers the circumvention of access controls. The rolling cipher, however, does not restrict access to works available on YouTube. It is a copy control because it serves to prevent unauthorized downloading.
- 82** For a permanent injunction under US law, four further factors are required, the existence of which the plaintiff has not proven: There is no imminent and irreparable harm, monetary compensation is available as an alternative adequate remedy, considerations of equity and the public interest do not require an injunction, and the court lacks the factual basis to apply the US equity standard.
- 83** US law does not provide for a substantive right to information; only procedural law regulates the mutual exchange of information through discovery mechanisms.
- 84** Insofar as the plaintiff invokes German copyright law, there is no copyright infringement by the model.
- 85** The properties of individual outputs do not allow conclusions to be drawn about the supposed content of the model parameters. The prerequisites for a prima facie case are not met because the empirical rule postulated by the plaintiff does not exist. The defendant also bears no secondary burden of proof because it has presented comprehensive information on the model's functionality.
- 86** The plaintiff's prompts for generating the outputs are contextualizing and therefore complex. It is therefore inadmissible to conclude that the original is fixed in the model. The output is the result of complex, iteratively refined user contributions from the plaintiff; therefore, the causal link is broken by the intervening, goal-oriented user action.

- 87** The weights and parameters embodied in a trained model did not contain any copyright-relevant reproductions of the training works. Rather, they were copyright-neutral, as they were merely extracted, mathematically expressed patterns that represented statistical relationships and general musical rules and insights, and did not contain the original data.
- 88** There is no legally relevant physical fixation of the protectable elements of the works. Reproduction only occurs if an objectively and precisely identifiable form of expression of a copyrighted work is fixed in a specific information carrier, which can be made directly or indirectly recognizable to the average recipient. This identifiability must not depend on the context of use.
- 89** The elements justifying protection in the parameters are neither directly nor indirectly perceptible. An average observer lacks the insight or technical skills to understand the model's architecture and reconstruct or perceive the parameters. No reading device exists in the sense of a "parameter player." Similarity could be based on probabilistic path decisions made by the model during its generation. Technically opaque, unreliable, and non-reproducible perception processes based on mere probabilistic path dependencies do not meet the requirements of the Court of Justice of the European Union for an objectively precise, unambiguously identifiable, and independently established form of the protected work elements that can be repeated any number of times.
- 90** The limitation under Section 44b of the German Copyright Act (UrhG) is not applicable because the parameters generated during model training merely represent the results of automated analysis, not the work itself, and therefore do not constitute reproductions. In any case, reproductions and any modifications are covered by the text and data mining limitation. The wording, systematic structure, and purpose of Section 44b UrhG encompass the reproduction of data collected for the purpose of text and data mining at any time. It makes no difference whether the reproduction occurs during training or in subsequent processes.
- 91** The plaintiff's declared reservation of rights of use does not meet the formal requirements of Section 44b Paragraph 3 Sentence 2 of the German Copyright Act (UrhG), as the reservation must be express and in machine-readable form. Furthermore, the reservation of rights of use was not correctly placed in the legal notice of the plaintiff's website, as it was not accessible for the relevant retrieval and collection processes and was not associated with the specific work.
- 92** The plaintiff bears the burden of proof and the burden of production to demonstrate that, at the time the data was obtained from YouTube, a machine-readable usage reservation existed for each of the disputed musical works. In any case, YouTube, as the mere holder of simple usage rights, could not have declared a valid usage reservation. The plaintiff has neither alleged nor proven that it authorized and obligated YouTube to declare a usage reservation. The tariff VR-OD 15 cited by the plaintiff in this context is irrelevant, as it only covers audiovisual live streams and linear streams.
- 93** Article 53(1)(c) of the AI Regulation defines the scope of Article 4 of the DSM Directive. By creating and publishing a sufficiently detailed summary of the content used for training the general-purpose AI model, based on a template provided by the Office for Artificial Intelligence in accordance with Article 53(1)(d) of the AI Regulation, all necessary steps have been taken to comply with copyright law, and licensing of copyrighted works used is not required.
- 94** There is no risk of recurrence, as the alleged one-time storage of the musical works in the model constitutes a self-contained action within the context of the initial commissioning of the model. A risk of recurrence with regard to such storage is excluded because the plaintiff has not asserted that the defendant will build and commission another model in this manner.
- 95** The mere offering of the music generator itself does not constitute making the work publicly available, as the copyrighted work is not within the provider's sphere of control. The defendant does not fulfill the requirements of EU law for a central role by simply making the music generator available. The defendant did not intentionally and knowingly enable access to copyrighted material for a receptive audience. The central role lies with the plaintiff, who specifically attempted to access a wide variety of original works. The defendant did not promote the

accessibility of copyright-infringing content through selection decisions, special tools, or the design of its business model. The music generator is designed to create new, independent content, not to extract allegedly contained originals.

- 96** Furthermore, the requirement of making the work available to the public as stipulated in Section 19a of the German Copyright Act (UrhG) and Article 3(1) of the InfoSoc Directive was not met. The plaintiff failed to substantiate its claim that the specific musical works would have been accessible to a large number of people in an identical manner. Access from specific locations and at specific times chosen by the recipient was also not possible. The music generator never offered a specific work as an addressable resource. Hypothetical access to the work could only be attempted through extensive prompting. This was random, non-standardized, and did not reliably produce an identical output.
- 97** There is also no copyright infringement through the model's outputs. The outputs in question are not to be considered a transformation under Section 23 Paragraph 1 Sentence 1 of the German Copyright Act (UrhG), but rather a free adaptation under Section 23 Paragraph 1 Sentence 2 of the UrhG, since the elements giving rise to protection are not recognizable. There is also no distortion under Section 14 of the UrhG.
- 98** The defendant is not responsible for the output generated by the plaintiff; the plaintiff alone, as the user, is responsible. The plaintiff's prompts were complex due to the input of the complete song lyrics, including structural specifications and genre selection. The plaintiff's deliberate use of the platform to infringe copyright cannot be attributed to the defendant. The mere provision of infrastructure or software does not establish the provider's liability as a perpetrator.
- 99** Even in the case of direct reproduction, the requirements for intentional reproduction, with full knowledge of the consequences and the central role of the person reproducing, must be met. Abstract knowledge of the possibility of infringing uses is insufficient for an act of reproduction.
- 100** Die Outputs erreichten keine Öffentlichkeit. Da die generierten Outputs ohne Freigabe durch die Nutzer nicht anderen Nutzern zur Verfügung stünden und durch die Eingabe desselben Prompts nicht zuverlässig ein bestimmtes wiederholbar Ergebnis erzeugt werden könne, liege keine Wiederholbarkeit im rechtlichen Sinne vor.
- 101** Jedenfalls sei eine Vervielfältigung nach § 44a Nr. 2 UrhG rechtmäßig. Die vorübergehenden Vervielfältigungshandlungen im Arbeitsspeicher der Nutzer sowie möglicherweise auf einem Mo-dal-Server in Deutschland seien zulässig, da sie lediglich flüchtig seien, einen integralen und wesentlichen Teil eines technischen Verfahrens darstellten und allein den rechtmäßigen Werkgenuss durch den Nutzer im Sinne des § 44a Nr. 2 UrhG ermöglichten und keine eigenständige wirtschaftliche Bedeutung hätten.
- 102** Eine öffentliche Zugänglichmachung oder Wiedergabe von Umgestaltungen der Musikwerke durch nutzergenerierte Outputs sei allein über den nicht streitgegenständlichen Musik-Streamingdienst denkbar. Die Beklagte betreibe eine Plattform und fungiere nicht als Inhaltenanbieter.
- 103** Die Beklagte sei für die nutzergenerierten Inhalte nach dem SafeHarbourRegime des Art. 6 DSA haftungsprivilegiert.
- 104** Ein Anspruch auf Urteilsbekanntmachung sei nicht gegeben, da das Verfahren öffentlichkeitswirksam geführt werde und die Öffentlichkeit bereits hinreichend informiert sei.
- 105** Die Abmahnung der Klägerin (Anlage K 4) sei so oberflächlich gehalten gewesen, dass es der Beklagten nicht möglich gewesen sei, die behaupteten Rechtsverletzungen auf ihren Systemen nachzuvollziehen.
- 106** Die Beklagte hat die Verspätung des klägerischen Vortrags im Schriftsatz vom 03.03.2026 zur Wiedererkennbarkeit schutzfähiger Elemente der Musikwerke in den angegriffenen Outputs gerügt.
- 107** Am 16.02.2026 (Bl. 850/852 d.A.), am 03.03.2026 (Bl. 964/965 d. A.) und am 06.03.2026 (Bl. 1205/1206 d. A.) sind Beschlüsse zur Geheimhaltung ergangen.

- 108** Die Kammer hat in der öffentlichen Sitzung vom 09.03.2026 zur Sache verhandelt und Beweis erhoben. Der Zeuge ... wurde vernommen, sämtliche der in den Anlagen K 1 und K 3 vorgelegten Musiktitel wurden laut abgespielt und angehört. Hinsichtlich des Ergebnisses der Beweisaufnahme wird auf die Niederschrift der öffentlichen Sitzung vom 09.03.2026 Bezug genommen (Bl. 1209/1214 d. A.).
- 109** Nach Schluss der mündlichen Verhandlung vom 09.03.2026 hat die Klägerin am 21.05.2026 einen nicht nachgelassenen Schriftsatz eingereicht. Der Vortrag der Beklagten im Schriftsatz vom 07.04.2026 geht über den Vortrag hinaus, zu dem ihr eine nachgelassene Schriftsatzfrist gewährt worden war.
- 110** Zur Ergänzung des Tatbestands wird auf die Schriftsätze der Parteivertreter nebst Anlagen sowie die Niederschrift der öffentlichen Sitzung vom 09.03.2026 Bezug genommen.

Entscheidungsgründe

- 111** The admissible claim is largely well-founded. The plaintiff is entitled to the asserted claims due to the infringement of copyright usage rights, with the exception of the infringement of the right of making the work available to the public.
- A.
- 112** The lawsuit is admissible.
- 113** I. The Regional Court of Munich I has international and local jurisdiction for the action against the defendant, which is based in the United States of America.
- 114** 1. The international and local jurisdiction of the Munich I Regional Court for infringement claims asserted in the territory of the Federal Republic of Germany arises from Section 131 Paragraph 1 Sentence 1 of the Administrative Court Act (VGG) and Section 32 of the Code of Civil Procedure (ZPO).
- 115** In the absence of relevant international agreements, international jurisdiction is governed by autonomous German rules of jurisdiction. These include the unwritten principle of dual functionality, according to which international jurisdiction can be inferred from local jurisdiction (see BGH 02.06.2022, I ZR 140/15 para. 22 – YouTube II; BGH 21.04.2016, I ZR 43/14 para. 18 – An Evening with Marlene). The principle of dual functionality is applicable not only to the jurisdictional provisions of the German Code of Civil Procedure (ZPO), but also to venues found in other national laws (see BGH 08.11.2017, IV ZR 551/15 paras. 9 et seq. for § 215 of the German Insurance Contract Act (VVG); Hau in: Zöller, ZPO, 36th ed. 10/2025, EulZPR, para. 50).
- 116** Section 131(1) sentence 1 of the German Collecting Societies Act (VGG) provides for an exclusive place of jurisdiction for actions brought by collecting societies for infringement of their granted rights of representation: either the general place of jurisdiction of the infringer or the court at the place of infringement, which in turn is determined according to Section 32 of the German Code of Civil Procedure (ZPO) (see Dreier/Schulze/Raue, 8th ed. 2025, VGG § 131 para. 2; Schricker/Loewenheim/Reinbothe, 6th ed. 2020, VGG § 131 para. 4). According to Section 32 ZPO, the establishment of jurisdiction requires only a plausible assertion of facts on the basis of which an infringement committed within the court's district can be established (see Federal Court of Justice (BGH) 21.04.2016, I ZR 43/14 para. 17 – An Evening with Marlene). The plaintiff, as a collecting society, argues that the defendant offers its music generator, which commits the infringements in dispute and in particular generates infringing outputs, throughout Germany and thus also in Munich.
- 117** Furthermore, the defendant did not raise any objection to jurisdiction with regard to the alleged infringements in the territory of the Federal Republic of Germany.
- 118** 2. The international and local jurisdiction of the Munich I Regional Court for the infringements asserted in the territory of the United States of America arises from Section 131 Paragraph 1 Sentence 1, Paragraph 2 of the Administrative Court Procedure Act (VGG), Section 32 of the Code of Civil Procedure (ZPO).
- 119** The plaintiff may, before the Regional Court of Munich I, which has jurisdiction for the infringing acts in the territory of the Federal Republic of Germany pursuant to Section 131 Paragraph 1 Sentence 1 VGG, Section 32

ZPO, also assert claims against the defendant resulting from infringing acts that took place in the territory of the United States of America, based on the concentration rule of Section 131 Paragraph 2 VGG.

- 120** a. If several courts have jurisdiction over multiple legal disputes brought by a collecting society against the same infringer, the collecting society may, pursuant to Section 131 Paragraph 2 of the German Collecting Society Act (VGG), assert all claims before one of these courts. This rule of concentration facilitates legal action for the collecting society, which, insofar as an infringer has committed several infringing acts, can choose between them in the case of multiple places of action or result (see Schricker/Loewenheim/Reinbothe, 6th ed. 2020, VGG § 131 para. 6). The only requirement for this is the identity of the infringer; the infringing acts committed in the different court districts do not need to be identical (see BeckOK UrhR/Freudenberg, 50th ed. 01.06.2026, VGG § 131 para. 5).
- 121** b. The provision of Section 131 Paragraph 2 of the Administrative Court Act (VGG) is to be applied in a dual capacity to international jurisdiction (see Dreier/Schulze/Raue, 8th edition 2025, VGG Section 131 Paragraph 1a).
- 122** aa. Contrary to the defendant's view, Section 131 Paragraph 2 of the German Collecting Society Act (VGG) does not require that international jurisdiction be established before the collecting society's right of election exists. Rather, Section 131 Paragraph 2 of the VGG, like the other national rules that establish local jurisdiction, results in international jurisdiction in addition to local jurisdiction, according to the principle of dual functionality.
- 123** The wording of the provision does not provide the separate justification for international jurisdiction demanded by the defendant. Section 131(2) of the Collecting Society Act (VGG) reads: "If, pursuant to paragraph 1, sentence 1, several courts have jurisdiction over several legal disputes against the same infringer, the collecting society may assert all claims before one of these courts." Section 131(1), sentence 1, of the VGG states: "For legal disputes concerning claims of a collecting society for infringement of a right of use or right of consent administered by it, the court in whose district the infringing act was committed or the infringer has its general place of jurisdiction has exclusive jurisdiction." The provision does not stipulate that the place of commission of each infringement must be in the Federal Republic of Germany. If none of the places of commission were in the Federal Republic of Germany, there would be neither local nor international jurisdiction.
- 124** bb. The present application of Section 131 Paragraph 1 Sentences 1 and 2 of the German Collecting Society Act (VGG) to establish jurisdiction is – contrary to the defendant's view – compatible with a historical-teleological interpretation of the provision. The legislator's intention was, firstly, to enable the infringer to establish jurisdiction at the place of the infringing act, and secondly, to facilitate legal action for the collecting society by concentrating it in one jurisdiction when the infringer commits infringing acts in several locations.
- 125** The Collective Rights Management Act (VGG) replaced the Copyright Act (UrhWG) by virtue of the Act on the Management of Copyright and Related Rights by Collecting Societies of May 24, 2016 (Federal Law Gazette I, p. 1190 et seq.). Except for a purely editorial change, Section 131 of the VGG corresponds to the provisions of Section 17 of the UrhWG (see Schricker/Loewenheim/Reinbothe, 6th ed. 2020, VGG § 131 para. 2). According to the explanatory memorandum of March 23, 1962, the reason for the introduction of Section 17 of the UrhWG was the earlier case law of the Berlin courts, which, in copyright disputes concerning unauthorized performance of music, always considered the registered office of the collecting society to be the place of jurisdiction pursuant to Section 32 of the Code of Civil Procedure. The legislator wanted to change this disadvantageous situation for the organizers through Section 17 of the Copyright Act, which established the place of jurisdiction at the location of the infringement (see BT-Drs. IV/271, p. 19).
- 126** To avoid unduly complicating legal action for collecting societies by introducing jurisdiction based on the place of infringement, Section 17(2) of the German Copyright Act (UrhWG) contains a special provision allowing multiple infringements committed in different locations to be pursued in the same court. The explanatory memorandum to the law cites the case of a "traveling organizer" who repeatedly commits copyright infringements in various locations (see BT-Drs. IV/271, p. 19). This explanatory memorandum does not imply that the application of Section 17 of the German Copyright Act is limited to traveling organizers (see BGH 14.05.1969 I ZR 24/68 –

Festzeltbetrieb), as the provision is not formulated solely for this specific scenario but is deliberately formulated in an abstract manner. Like the corresponding Section 131 Paragraph 2 of the German Copyright Act (VGG), it refers only to the person of the infringer, not to the identity of the infringing acts committed by him in the different judicial districts. The collecting society can therefore assert different and independent infringements by the same infringer jointly in one proceeding before one of the available competent courts (see BeckOK UrhR/Freudenberg, 47th ed. 01.09.2025, VGG § 131 Rn. 5).

- 127** The facilitation of legal proceedings for collecting societies through the pooling of jurisdiction provided by Section 131 Paragraph 2 of the German Collecting Society Act (VGG) can be justified by their special status (see Lutz, Conflict of Law.net, March 10, 2026, <https://conflicto-flaws.net/2026/muscles-frommunich-how-germancourts-might-stop-us-companies-fromviolating-copyrightthrough-ai-training/>). Collecting societies are organizations whose sole purpose is the collective management of copyrights and related rights for multiple rights holders. They are subject to special regulatory provisions, particularly as evidenced by Sections 9 et seq., 27, and 34 et seq. of the VGG. Therefore, the dual application of Section 131 Paragraph 2 of the VGG, which applies only to collecting societies, does not result in excessive jurisdiction for German courts. Even a voluntary procedural representation of the plaintiff as a collecting society does not lead to broad jurisdiction, since it can only exercise such a right if it has its own legitimate interest in doing so.
- 128** Furthermore, the general application of Section 131 Paragraph 2 of the Administrative Court Act (VGG) as establishing jurisdiction is required for reasons of procedural economy and good administration of justice, which serve the public interest and also apply in an international context (cf. Geimer-Schütze, NJW 1988, 3088, 3090).
- 129** cc. The dual-purpose application of Section 131 of the Administrative Procedure Act (VGG) is – contrary to the defendant's view – in accordance with international law. In the customary international legal doctrine of jurisdiction, a distinction is made between the jurisdiction to prescribe, the jurisdiction to adjudicate, and the jurisdiction to enforce (see Noll, ZaöRV 2022, 333, 335 et seq.). Only the jurisdiction to enforce, the execution of judgments, is governed by the principle of territoriality and is therefore permissible under international law exclusively within the territory of the state exercising power or with the consent of the foreign state concerned (see Kuschel, ZUM 2025, 174, 180). However, the provision of Section 131 VGG does not concern the jurisdiction to enforce, but rather, as a statutory provision, determines jurisdiction and thus falls within the areas of regulatory authority (jurisdiction to prescribe) and decision-making power (jurisdiction to adjudicate). These jurisdictions are not only based on the territoriality principle, but also on another point of connection (genuine link). The special connection with the regulating state can result from an indirect effect within its territory (effect principle), the impact on its own citizens (personality principle), the threat to important legal interests of the regulating state (protection principle), or conduct that is condemned worldwide (universality principle) (see Mills, 84 BYIL (2014) 187, 197). The provision of Section 131 Paragraph 2 of the German Collecting Rights Act (VGG) facilitates legal action for a collecting society that collectively manages copyrights and related rights for multiple rights holders.
- 130** This results in a special connection arising from the internationally recognized principle of protection.
- 131** The defendant's argument that a dual application of Section 131 Paragraph 2 of the German Copyright Act (VGG) violates the principle of territoriality enshrined in international law is incorrect. The territoriality principle does not govern the question of jurisdiction, but rather the separate question of which substantive law is applicable to the infringement in cross-border cases. According to the territoriality principle, claims arising from copyrights or related rights are to be assessed under the law of the country of protection, and thus under the law of the state for whose territory intellectual property protection is sought (see BeckOK UrhR/Lauber-Rönsberg, 48th ed. 01.12.2025, UrhG Conflict of Laws and International Jurisdiction, para. 7).
- 132** dd. The defendant invokes an alleged general principle according to which rules of jurisdiction that establish an exception to jurisdiction at the defendant's place of residence must be interpreted restrictively. The judgments of the Court of Justice of the European Union and the German Federal Court of Justice cited by the defendant do not establish such a principle, but rather deny the extension of the jurisdiction of a court with jurisdiction over tort claims to other, non-tort claims by virtue of the general jurisdiction based on the factual connection (see ECJ

27.09.1988, Case 189/87, paras. 19 et seq.; German Federal Court of Justice 28.02.1996, Case XII ZR 181/93, para. 17; German Federal Court of Justice 10.12.2002, Case X ARZ 208/02, para. 19). Such a situation does not exist. The plaintiff bases her exclusively tortious claims on a special legal norm pursuant to Section 131 Paragraph 2 of the Administrative Court Procedure Act (VGG), which establishes local and international jurisdiction in cases of different places of commission.

- 133** Equally incomprehensible is the defendant's reliance on the Federal Court of Justice's decision of June 14, 1965, GSZ 1/65, with which it seeks to achieve a restrictive interpretation of jurisdiction based on the defendant's particular legitimate interest in conducting the proceedings in its home country. In that decision, the Federal Court of Justice merely clarified that an appeal can be based on the incorrect assumption of international jurisdiction (ibid., paras. 10 et seq.). It did not, however, address the interpretation of rules of jurisdiction.
- 134** c. If, in order to avoid excessive jurisdiction, one were to require a sufficient domestic connection in accordance with the case law of the Federal Court of Justice on Section 23 of the Code of Civil Procedure (see Federal Court of Justice, 02.07.1991, XI ZR 206/90, para. 17; Federal Court of Justice, 13.12.2012, III ZR 282/11, para. 16), this would be the case here: The plaintiff is domiciled in the Federal Republic of Germany, it asserts the rights of predominantly German copyright holders, and there is a close substantive connection between the alleged domestic and foreign infringements.
- 135** II. The claims are sufficiently specific in accordance with Section 253 Paragraph 2 No. 2 of the German Code of Civil Procedure.
- 136** According to Section 253 Paragraph 2 No. 2 of the German Code of Civil Procedure (ZPO), an application for an injunction must be formulated with sufficient clarity to clearly define the subject matter of the dispute and the scope of the court's power to examine and decide the case pursuant to Section 308 Paragraph 1 ZPO. This allows the defendant to mount a comprehensive defense and prevents the decision as to what is prohibited for the defendant from ultimately being left to the enforcement court (see Federal Court of Justice (BGH) judgment of July 14, 2022, I ZR 97/21, para. 12). Sufficient clarity is generally given if reference is made to the specific infringing act and the application, at least when considered in conjunction with the plaintiff's submissions, unambiguously identifies the characteristics of the challenged conduct that form the basis and the point of reference for the infringement and thus the injunction (ibid.).
- 137** Applying the aforementioned standards, the claim proves to be as specific as possible and only less specific if this cannot be avoided, which is why the resulting inaccuracies must be accepted (cf. Cepl/Voß/Zigann/Werner, 3rd ed. 2022, ZPO § 253 Rn. 196).
- 138** 1. The plaintiff's applications and pleadings clearly specify which infringements she is challenging, namely the reproduction of the musical works in question during the training of the model, their reproduction within the model, their making available to the public, and, alternatively, their public performance through the offering of the model, and their making available to the public, and, alternatively, their public performance and reproduction through the outputs in question. The plaintiff ultimately referred to the specific infringements in her applications: for the alleged reproductions during training and within the model, to the infringements that occurred in models 3.5 and 4, and for the challenged infringements through the outputs, by referring to the outputs documented in Exhibit K 3. The plaintiff has specified and clarified the territorial scope (brief dated December 12, 2025, p. 92, file 315), stating that the claim under point 1 a) aa) relates to acts in the United States of America and that the claims under points 1 a) bb), 1 b), and 1 c) relate to acts in the Federal Republic of Germany. With regard to claims under points 2 and 3, the territorial scope is established by reference to the claims under point 1. The defendant correctly identified the different alleged infringements and defended itself with respect to all alleged infringements.
- 139** 2. The claim is sufficiently specific with regard to the use of the terms requiring interpretation, "partially", "musical works", "arrangements", "storage in the form of parameters or other data structures", "number", "scope" and "revenues".

- 140** The use of terms requiring interpretation in the statement of claim is permissible if there is no dispute between the parties regarding their meaning and objective criteria for differentiation exist, or if the plaintiff describes the term requiring interpretation with sufficient specificity and, if necessary, provides examples or aligns their claim with the specific infringing act (see Federal Court of Justice, June 2, 2022, I ZR 140/15, para. 27 et seq. – YouTube II). In the present case, the defendant can be reasonably expected and expected to assess, based on the referenced specific infringing acts and the clarifying explanations, whether further infringing acts not explicitly included in the individual claim fall under the injunction. Specifically:
- 141** a. At the latest in connection with the statement of claim (brief dated December 17, 2025, p. 93, file 316), it is clear that the term "partially" used in the application under points 1 a) and b) refers to the exploitation of parts of the work. The term is used verbatim in Article 2(a) of the InfoSoc Directive. This article stipulates that copyright holders have the exclusive right to authorize or prohibit the reproduction of their works, in whole or in part. The term "adaptation" is found in Section 23(1), sentence 1 of the German Copyright Act (UrhG). In any case, the plaintiff has based its injunction request on the specific infringements listed in Exhibit K 3, which is why it can be determined which acts are covered by the requested injunctions.
- 142** An application that referred to all possible uses of (parts of) the musical works in dispute, as well as potential adaptations, would be unmanageable in the proceedings. Likewise, it is not expedient from a procedural standpoint to initiate new litigation for every further partial use or adaptation. The application wording chosen here, which requires interpretation, is necessary to guarantee effective legal protection and must therefore be accepted (cf. Federal Court of Justice, 22 July 2021, I ZR 194/20, para. 34 – Broadcasting Liability).
- 143** b. The term "musical works," used repeatedly by the plaintiff in the application, is sufficiently specific. It is based on the wording of the law: The term "works of music" is defined in Section 2 Paragraph 1 No. 2 of the German Copyright Act (UrhG). Furthermore, the plaintiff has clarified (brief dated December 17, 2025, p. 93, file 316) that song lyrics are not covered by the applications.
- 144** The references to exhibit K 1 in the application also satisfy the requirements of Section 253 Paragraph 2 No. 2 of the German Code of Civil Procedure (ZPO). Due to the designation chosen in the application, "musical works attached as exhibit K 1," it is sufficiently clear that only the music is to be prohibited, and not the lyrics. The sound recording rights under Section 85 of the German Copyright Act (UrhG) that exist in the recordings submitted as exhibit K 1 also do not render the application vague. It is clear from the statement of claim that the plaintiff is not asserting any sound recording rights. The recording obviously serves only for illustrative purposes.
- 145** c. The term "storage in the form of parameters or other data structures" in the application under point 1 a) bb) is described in detail in technical terms in the statement of claim, including the conditions under which memorization can take place, which is why it is clear in which features of the challenged conduct the basis and the point of reference for the infringement and thus the injunction are to lie.
- 146** d. The terms "number," "scope," and "revenue" mentioned in point 2 of the application are sufficiently defined. In the written submission of December 17, 2025 (p. 317 of the file), the plaintiff clarifies that the term "scope" includes, in particular, the extent to which parts of the work were used. The term "revenue" understandably encompasses all of the defendant's revenue.
- 147** 3. The application submitted under point 2 is sufficiently specific. The reference to "the actions described in point 1" is understandable given the already demonstrated sufficient specificity of the actions named in point 1 of the application.
- 148** Furthermore, the request for information does not require a self-contained, comprehensible list of the information to be provided. Since the right to information serves to prepare the claim for damages, and the plaintiff cannot know which internal documents exist and are necessary for calculating the defendant's revenues, a more detailed list of the information to be provided cannot be demanded.
- 149** 4. Contrary to the defendant's assertions, the applications under points 1 a), 1 b), and 1 c) are not inadmissible due to the fact that the actions complained of were carried out "by third parties." The defendant argues that the

plaintiff has failed to demonstrate a risk of repetition with regard to the actions of third parties, and therefore the applications go beyond the alleged infringement and are inadmissible. However, whether a risk of repetition exists is not a question of admissibility, but rather of the merits of the application.

- 150** 5. At the oral hearing on March 9, 2026, the plaintiff clarified its claim with the wording "with the proviso that, with regard to the work 'Mambo No. 5,' only the rights of the arrangers are asserted, in particular an infringement of the refrain." It is already evident from the plaintiff's written submissions (brief dated February 9, 2026, pp. 18/21, pp. 642/645 of the file) and the expert opinions submitted by the plaintiff (Exhibits K 56, 57, 67, and 68) that the subject of the dispute is only the refrain composed by the authors Lubega and Pletschacher. The proviso in the claim can be interpreted as meaning that its wording was intended as stated in the judgment. Claims are procedural declarations that are subject to interpretation in accordance with Sections 133 and 157 of the German Civil Code (BGB) (cf. (MüKoZPO/Becker-Eberhard, 7th ed. 2025, ZPO § 253 para. 91). In case of doubt, the interpretation intended is that which is reasonable according to the standards of the legal system and corresponds to the well-understood interests of the parties (cf. BGH 21.12.2023, IX ZR 238/22 para. 12 – Interpretation of procedural declarations).
- 151** III. The subsequent joinder of claims, which took place without the consent of the defendant, is expedient pursuant to § 263 ZPO by analogy.
- 152** In a written submission dated October 21, 2025 (pp. 75/76 of the file), the plaintiff first requested an injunction against the reproduction of the musical works for the purpose of training a model. According to the Federal Court of Justice's case law, this subsequent joinder of claims pursuant to Section 261 Paragraph 2 of the German Code of Civil Procedure (ZPO) is to be considered an amendment to the claim, which is why Section 263 ZPO is applicable accordingly (see Federal Court of Justice, March 19, 2004, V ZR 104/03). The required expediency under the provision is present. The amended claim is procedurally efficient because outstanding points of contention can be resolved concurrently, thereby avoiding a new trial. It is irrelevant whether new party declarations or the taking of evidence become necessary and thus delay the proceedings (see Greger in: Zöller, ZPO, 36th ed. 2025, Section 263 ZPO, para. 13). Furthermore, the party's submissions regarding the functioning of the model in dispute and the plaintiff's standing to sue relate in particular to both the old and the new application.
- 153** IV. The plaintiff has standing to sue.
- 154** The plaintiff is asserting the injunction claims of co-authors Marian Gold and Bernhard Lloyd for the musical works "Forever Young" and "Big in Japan" under German law pursuant to Section 8 Paragraph 2 Sentence 3 of the German Copyright Act (UrhG) by way of voluntary representation in legal proceedings. According to Section 51 Paragraph 1 of the German Code of Civil Procedure (ZPO), this is generally permissible if the party conducting the proceedings has been authorized by the rights holder to do so and has a legitimate interest in doing so (see BeckOK ZPO/Kersting, 58th edition 2025, ZPO Section 51, marginal note 50).
- 155** 1. The co-authors Marian Gold and Bernhard Lloyd implicitly authorized the plaintiff, by granting the exclusive rights of use with identical agreements dated 27.01.2025/25.06.2025 (Exhibits K 20, K 22), to assert the disputed claims for injunctive relief in its own name.
- 156** The supplementary agreements are valid. There is no violation of the regulations governing general terms and conditions, nor is there any formal invalidity, and the agreements could be validly concluded without the third co-author.
- 157** a. The rights granted in the supplementary agreements are, as the composers' main contractual obligations, exempt from content control and are subject only to transparency control and protection against surprising clauses (see MüKoBGB/Fornasier, 10th ed. 2025, BGB § 305c Rn. 2; BGH 01.10.2014, VII ZR 344/13, Rn. 13).
- 158** aa. According to Section 307 Paragraph 3 Sentence 1 of the German Civil Code (BGB), the provisions on the control of contractual terms apply only to provisions in standard business terms and conditions that deviate from or supplement statutory regulations. However, no control of terms applies to agreements that directly regulate the

nature, scope, and quality of the main contractual performance and the remuneration to be paid for it. According to the principle of freedom of contract applicable in civil law, the contracting parties are generally free to determine the performance and consideration; in the absence of statutory provisions, there is also regularly no standard of review in this respect (cf. Federal Court of Justice (BGH) 21.04.2022 I ZR 214/20 para. 41 – Dr. Stefan Frank; BGH 31.05.2012, I ZR 73/10 para. 28 – Fee Conditions for Freelance Journalists).

- 159** Clauses 1 and 2 of the supplementary agreements grant the copyright holders the exclusive right to use the works in AI systems, as well as the right to edit and modify them, when using the musical works (with or without lyrics) in AI systems for training and fine-tuning, through processes for processing contextual information, and in the output of AI systems. This grant of rights is to be classified as a primary obligation of the supplementary agreements, reflecting the privately agreed-upon design of the contractual scope of services.
- 160** bb. The clauses of the supplementary agreements do not violate the transparency requirement pursuant to Section 307 Paragraph 1 Sentence 2 of the German Civil Code (BGB).
- 161** The parties to the contracts concluded them specifically for the purpose of pursuing legal action against the plaintiff for the alleged infringements of rights. The signatory composers were therefore aware of which rights were intended to be covered by the agreement.
- 162** The supplementary agreements at issue are, moreover, sufficiently specific. The terms "AI systems," "processing of contextual information," "output," and "AI-powered search engines" are not so vague and incomprehensible as to result in an unreasonable disadvantage. The term "AI systems" used in point 1 is also used in Regulation (EU) 2024/1689 (hereinafter: the AI Regulation) and is legally defined therein in Article 3(1). The terms "output" and "AI-powered search engine" are readily understandable.
- 163** The fact that the "processing of contextual information" does not solely involve the analysis of the music data itself is already evident from the wording.
- 164** The use of the legal term "unnamed rights pursuant to Section 15(2) of the German Copyright Act" is not incomprehensible or misleading, but rather refers to the provision of Section 15(2) of the German Copyright Act, which contains not an exhaustive, but an exemplary list of the exploitation rights reserved to the author. Like Section 31a of the German Copyright Act, it permits contractual agreements regarding unknown types of use. The unnamed right that the composers are granting in this case is the unnamed right of public communication, which, in accordance with the directive-compliant interpretation of Section 15(2) of the German Copyright Act, must be assumed to apply insofar as Article 3(1) of the InfoSoc Directive grants more extensive rights than the rights of public communication named in Section 15(2), sentence 2, of the German Copyright Act (see Federal Court of Justice, 21 September 2017, Case No. I ZR 11/16, para. 23 et seq. – Preview Images III).
- 165** The requirement "to assert claims retroactively within the framework of the statute of limitations" is not indefinite in time, as the defendant argues, but can be calculated based on the legally regulated limitation periods.
- 166** The supplementary agreements, clauses 1 and 2, are not opaque simply because the rights holders do not possess neighboring rights to performances or sound recording rights to master recordings. According to their wording, the supplementary agreements refer to the transfer of rights by "the rights holders" to the plaintiff. Thus, only those rights actually held by the respective rights holders are transferred.
- 167** cc. The granting of rights in clauses 1 and 2 of the supplementary agreements is not surprising within the meaning of Section 305c Paragraph 1 of the German Civil Code (BGB). The parties to the supplementary agreements concluded them specifically for the plaintiff's legal action regarding the infringements at issue. Accordingly, the granting of rights of use in question is located in the central clauses 1 and 2 and is not placed in a hidden or unexpected location. The mere fact that collecting societies have not previously observed any AI-related use and that the transfer of rights is extensive does not render the provision surprising.
- 168** b. The supplementary agreements are not invalid due to a formal defect. Contrary to the defendant's view, the conclusion of the specific supplementary agreements does not require a majority resolution of the plaintiff's

general meeting. Such a formal requirement is only necessary if the general authorization agreement is amended (see Section 15 of the 2023 model agreement in Exhibit K 32).

- 169** c. The authorization granted to the plaintiff without the consent of the third co-author is valid. While Marian Gold and Bernhard Lloyd could not, without their third co-author, grant the plaintiff the exclusive right of use of their joint work in AI systems through these agreements, since the right of publication and exploitation of the work, according to Section 8 Paragraph 2 Sentence 1 Half-Sentence 1 of the German Copyright Act (UrhG), belongs only to all co-authors jointly, the chosen wording of the "transfer" of the exclusive rights of use at least constitutes an authorization to assert the right to injunctive relief, which each co-author has against a third party infringing the joint copyright, independently of the other co-authors (see Higher Regional Court of Karlsruhe, judgment of January 27, 2021, 6 U 60/20, paragraphs 103 et seq.).
- 170** If joint copyright is infringed, Section 8 Paragraph 2 Sentence 3 of the German Copyright Act (UrhG) facilitates legal action by granting each individual co-author the sole right to pursue injunctive relief independently, without requiring the consent of the other co-authors (see Federal Court of Justice (BGH) 26.01.1995, I ZR 63/93 para. 25 – Video Secondary Evaluation III). This constitutes a case of statutory representation in legal proceedings (see Higher Regional Court (OLG) Frankfurt 17.09.2002, 11 U 67/00 para. 67). The co-author, as the statutory representative in legal proceedings, can, in turn – without the consent of all co-authors – authorize a third party to exercise the rights by way of voluntary representation in legal proceedings (see Higher Regional Court (OLG) Karlsruhe 27.01.2021, 6 U 60/20 paras. 103 et seq.). In any case, this applies if the third party has its own legitimate interest in being able to exclude others from using the work (Schricker/Loewenheim/Loewenheim/Peifer, 6th ed. 2020, Copyright Act § 8 para. 23). A collecting society to which the co-author belongs has its own economic interest, which also prevents abuse of rights (cf. Dreier/Schulze/Mantz, 8th ed. 2025, Copyright Act § 8 para. 23).
- 171** This does not unduly prejudice the interests of the co-author who was not involved in the authorization (contrary to the defendant's argument, citing Wandtke/Bullinger/Thum, 6th ed. 2022, Copyright Act § 8 para. 131). The injunction claim asserted here is not directed against the uninvolved co-author, but against a third party as the infringer. Likewise, the representative capacity in the proceedings does not lead to any lack of clarity in this case.
- 172** d. Even assuming that the supplementary agreements were invalid – quod non – the plaintiff was explicitly authorized by Marian Gold and Bernhard Lloyd to conduct the litigation by agreement dated March 1, 2026/February 24, 2026/March 2, 2026 (Exhibit K 66) after the commencement of the lawsuit. The granting of authorization is possible until the conclusion of the oral proceedings (see Musielak/Voit/Weth, 22nd ed. 2025, German Code of Civil Procedure § 51 para. 26).
- 173** 2. The plaintiff has a legitimate interest in the voluntary representation in the proceedings. Such an interest exists if the decision affects the legal position of the party authorized to conduct the proceedings; it can be based on an economic interest (see BeckOK ZPO/Kersting, 58th ed. 2025, ZPO § 51 para. 50 with further references).
- 174** Co-authors Marian Gold and Bernhard Lloyd authorized the plaintiff to exploit the works in their representation agreements. In the agreements they signed on January 27, 2025/June 25, 2025 (Exhibits K 20, K 22) and March 1, 2026/February 24, 2026/March 2, 2026 (Exhibit K 66), the parties explicitly refer to the licensing agreements concluded between them. The defendant's assertion that the plaintiff is merely offering witness testimony regarding the existence of the alleged agreements (brief dated January 13, 2026, p. 5, file 447) is therefore unfounded. Furthermore, all three co-authors are listed in the plaintiff's database of works (Exhibits K 19, K 21), which can be considered evidence of the existence of licensing agreements with the plaintiff. Therefore, it is not necessary to order the submission of all authorization agreements pursuant to Section 142 Paragraph 1 of the Code of Civil Procedure, as requested by the defendant.
- 175** The decision cited by the defendant, according to which associations for the promotion of commercial interests are generally not authorized to assert claims of individual members in representative capacity under the revised version of Section 13 Paragraph 2 No. 2 of the German Act Against Unfair Competition (UWG) due to a lack of a legitimate interest of their own (Federal Court of Justice, October 9, 1997, I ZR 122-95, para. 20), is not

applicable in the present case. The plaintiff is not an association seeking to assert the rights of its members, but rather a collecting society.

B.

- 176** The lawsuit proves to be largely justified.
- 177** The plaintiff is entitled to the asserted claims for injunctive relief, disclosure and damages due to the infringement of copyright usage rights, with the exception of the infringement of the right of making the work available to the public.
- 178** I. Insofar as the plaintiff seeks protection for copyright infringements caused by the reproductions in the model, the offering of the model, and infringing acts in the outputs, each within the territory of the Federal Republic of Germany, German law is applicable pursuant to Article 8(1) of the Rome II Regulation. According to this provision, the law of the state for which protection is sought applies to non-contractual obligations resulting from an infringement of intellectual property rights.
- 179** II. The plaintiff is entitled to the injunction claimed in point 1 a) bb) of the statement of claim against the defendant pursuant to Sections 97 para. 1 sentence 1, 15 paras. 1, 2, 16 para. 1 of the German Copyright Act (UrhG). The defendant has reproduced the works in dispute, in whole or in part, in its models in Germany without the plaintiff's consent.
- 180** 1. The six musical pieces at issue (Exhibit K 1) constitute works of music within the meaning of Section 2 Paragraph 1 No. 2, 2 of the German Copyright Act (UrhG).
- 181** a. The concept of a copyright-protected work is an autonomous concept of EU law, which must be interpreted and applied uniformly (see ECJ 13.11.2018, C-310/17, para. 33 – Levola Hengelo; BGH 20.02.2025, I ZR 16/24, para. 15 – Birkenstock sandal). For an object to be classified as a work, two cumulative conditions must be met. First, it must be an original in the sense that it is the author's own intellectual creation. Second, classification as a work is reserved for elements that express such an intellectual creation (see ECJ 24.10.2024, C-227/23, para. 48 – Kwantum Nederland).
- 182** A prerequisite for originality in a work is that it reflects the personality of its author by expressing their free creative decisions (see ECJ 12.09.2019, C-683/17, para. 30 – Cofemel). The use of existing design features does not, in itself, preclude originality. A work consisting solely of known design features can be original if the author has expressed their creative decisions in their arrangement (see ECJ 04.12.2025, C-580/23, C-795/23, para. 78 – Mio). If the author is inspired by existing works, the new work also enjoys protection if it itself meets the requirements for protection of a work (see *ibid.*, para. 79).
- 183** In musical compositions, the composer's original intellectual creation can arise from the melody and the use of musical means of expression such as rhythm, tempo, harmony, and arrangement, as well as from the manner in which individual instruments are used, the execution of the instrumentation, and orchestration. In contrast, purely technical creation using formal design elements based on the principles of harmony, rhythm, and melody, or which—like the simplest of tone sequences or well-known rhythmic structures—belong to the musical commons, is not eligible for copyright protection (cf. German Federal Court of Justice, 16 April 2015, I ZR 225/12, para. 44 – Goldrapper).
- 184** The assessment of protectability depends on the perception of those in the relevant public who are reasonably familiar with and receptive to musical matters (see BGH 26.09.1980, I ZR 17/78 para. 17 – Dirlada; BGH 16.04.2015, I ZR 225/12 para. 64 – Goldrapper). The members of the deciding chamber belong to this relevant group. The chamber heard the musical pieces in dispute (Exhibit K 1) at the oral hearing and considered the expert opinions submitted by the private experts (Exhibits K 25, K 56, K 57, K 67, K 68, B 61) for both parties. This is not a case where obtaining a court-appointed expert opinion to establish the factual basis would have been exceptionally necessary, such as in the assessment of an extremely short musical sequence (cf. BGH

16.04.2015, I ZR 225/12 para. 64 – Goldrapp). The defendant's request for an expert opinion to assess whether the work meets the required quality standards must therefore be rejected.

- 185** b. Applying the aforementioned principles, the musical pieces in dispute are to be classified as works under Section 2 Paragraph 1 No. 2 of the Copyright Act.
- 186** The Chamber will use the international grade designation in the following (both the international and German designations can be found in the private expert opinions).
- 187** aa. The musical work "Breathless Through the Night" reflects the personality of its author. Her free creative decision is expressed through the specific combination and development of melodic, harmonic, rhythmic, and formal design elements. Particularly creative is the compositional dramaturgy, which is unusual for a pop song and is characterized by a dramatic arc and, in particular, by the unusual intensification of the post-chorus. In detail:
- 188** The classic verse song, with a two-part verse (verse and pre-chorus) and a two-part chorus (or chorus and post-chorus), is in B-flat major and 4/4 time. Unusually for the German pop genre, the song features four distinct, melodically differentiated sections, each with its own character. The six-bar verse form is unusual in German pop and is only found in other genres, such as "We Can Work It Out" by The Beatles. The post-chorus, while not uncommon in itself, is not a bridge that occurs only once, but rather a section that always follows the chorus. This distinguishes the song's structure from the post-chorus "Hier gibt es viele, die sind genau wie du" (There are many here who are just like you) in Su Kramer's song "Hier ist das Leben" (This is Life) and from the post-chorus "Anton, Anton" in DJ Ötzi's song "Anton aus Tirol" (Anton from Tyrol). These distinctive features represent creative choices. The piece possesses a sufficiently individual melody to be considered a musical work. Although the "Oho" vocalizations in the opening bars bear a resemblance to the "Oho" or "Aha" vocalizations in "Festival der Liebe" by Fred Jay/Jack White, as interpreted by Jürgen Marcus (1973), the sequence of notes is already different. The rhythmic variety and agility of the melody increase consistently, creating a breathless effect. The verse begins with a third motif (B ♭ #) and a responding vocalise (D#-C# and E ♭ #). In the pre-refrain, the melody develops, expanding the initial third (B ♭ #) into a triad (B ♭ #-F#). The four-note upbeat, in contrast to the monotonous one in the verse, lends the melody an urgent quality. The refrain creates tension and, in a melodically high-energy progression, picks up the high note B, already anticipated in the pre-refrain, as the beginning of a descending line that leads consistently to the thirds of the underlying chords (G#/E, D#/B, A#/F#, and B/G#m). The purposeful melodic progression across a range of more than an octave (A#-B1) is striking and deviates from expectations. With this tension-filled compositional form, the piece clearly distinguishes itself from familiar compositional elements. In the pieces cited by the defendant ("My Polly" by Thomas Bulch, published as Henri Laski (1899); "Land of Dreams" by Roseanne Cash (2012); and "Punches" by Noah Cyrus (2018)), the transition to the high note appears considerably less dramatic, explosive, and triumphant. A striking aspect of the harmonic structure is that the composer consistently ends the melodic phrase of the pre-refrain, refrain, and post-refrain in G# minor, even though a return to the tonic chord would have been harmonically expected, which lends the work a distinctive sound. Melodically, the melody initially expands virtuously to the four-note chord B#-F#-C#. The new high note, C#, melodically surpasses the refrain, and the melody takes an exuberant turn. In contrast to the refrain, the chord tones are notated ascending. The individual sections exist in a carefully considered tension with one another. Subtle cross-connections exist between the motifs of the different sections. At the same time, the rhythmic variety and agility of the melody steadily increase, creating an exuberant, "breathless" effect. This is further enhanced by the fact that, from the pre-refrain onward, all phrases end in G# minor—the relative minor, not the tonic—and begin with the subdominant, E major.
- 189** The defendant's private expert (Exhibit B 61) also attributes a certain level of originality to various parts of the piece. The hook in the melody "until a new day awakens" (d#-f#-a#-b) achieves a certain level of compositional merit through the striking downward sixth leap to a# and the syncopated rhythm. The eight bars of the second part of the refrain, in which the melody ascends in eighth notes followed by eighth notes with differing pitches, thus sequencing the principle, are original, as is the combination of the note sequence of the bridge at "oho" and "Lust pulsiert auf meiner Haut" (Desire pulses on my skin).

- 190** bb. The musical work "Daddy Cool" reflects the personality of its author. His free creative decision is expressed through the specific combination and development of melodic, harmonic, rhythmic, and formal design elements. The compositionally sophisticated dialogue principle is particularly creative: the verse poses a question (at the end of the measure, questioning), the chorus gives the answer (at the beginning of the measure, answering). In detail:
- 191** The piece is in 4/4 time at a tempo of 128 bpm, and the key is F minor. Besides bass and drums, it features funk guitar, various percussion instruments (some with distorted effects), strings, baritone saxophones, a trumpet section, male lead vocals, and female backing vocals. Formally, it is a strophic song, although the verse and chorus are remarkably short, each consisting of eight bars and a repetition of four-bar phrases. The piece is based on a continuous beat driven by drums/percussion and a prominent bass, as well as a largely repeating four-bar chord progression. The familiar i-VIIb-vi chord progression does not detract from the piece's originality. The principle of contrast is a crucial stylistic device in the song's formal structure. The verse features a contrasting pair of phrases between the male voice and the female choir. The intro thrives on clear musical contrasts between a high, melodically and rhythmically varied string melody and a simple yet groovy bass riff. Later, the bridge presents a contrast between an instrumental section with a new string melody and a low spoken-word section. This creatively employed principle of contrast is not found in the instrumental dance pieces described by the defendant. The stylistic device of musical responses runs like a thread through the melodic structure of the piece. In the verse, the first motif is presented in a very low register; the response is choral and complements the connection with a leap of a fourth to the upper octave, creating the impression of a cohesive and powerful interplay. In the chorus, the choir takes over, forming a melodic pair of phrases. The metrical and rhythmic composition deliberately varies between the verse and chorus. The skillfully composed relationship between verse and chorus is a defining characteristic of the piece. Despite their brevity, the two sections of the song are musically significant. In the verse, both motifs begin on the downbeat, while the refrain begins directly on the first beat (on the downbeat), creating a pause after the first two notes. This rhythmic variation, with an unchanged melody, creates a noticeable contrast between the sections. This contrast is further emphasized by the syncopated final note of all phrases, both verse and refrain. This symmetrical relationship at the end of the phrase contrasts with the aforementioned difference at the beginning. The string arrangements, all played in unison and thus possessing a particular power and function as melodies, are another defining creative element. Furthermore, the string riff, which sometimes stands alone and sometimes joins the refrain, is rhythmically distinct. The arrangement of predominantly short notes combined with varying rest lengths, which are also melodically relevant, is a creative arrangement of musical material. The bass riff is another defining, freely chosen creative decision by the composers. It is heard right at the beginning, initially with the first two chords, F minor and E-flat major. This riff then establishes the underlying chord progression (F minor – E-flat major – C minor – F minor), which is completed by the remaining parts, and remains almost throughout the entire piece.
- 192** The defendant's private expert also attributes a certain level of originality to various parts of the piece (Exhibit B 61). The string riff from minute 0:19 onwards, as well as the interplay of string riff 2 with the wind instrument figures during the pauses, are considered original. The string melody accompanying the spoken word from minute 2:15 onwards is eligible for copyright protection due to its length and its variable tonal-rhythmic structure. The vocals, however, exhibit a very low level of originality due to the combination of rhythmic and tonal elements. The sequence of notes, together with the harmonies, is characterized by a very limited level of creative expression through repetition.
- 193** The musical work "Rasputin" reflects the personality of its creators. Their free creative decision is expressed through the specific combination and development of melodic, harmonic, rhythmic, and formal elements. The connection between the verse, which has echoes of a folk song, and a completely new refrain, unlike any found in folk songs, is particularly creative. Specifically:
- 194** The piece is in B-flat minor, in 4/4 time, and has a tempo of 126 bpm. A strikingly creative choice for a disco song is the nearly one-minute instrumental intro with its various rhapsodically linked sections. The ballad-like structure and the use of the balalaika are also rather unusual in this style. Regarding the harmonic structure of the chorus, the composers have chosen unusual turns. The key change from B-flat minor to B-flat major is striking. There is

also an unusual melodic shift from the more folk-like verses and pre-choruses to a blues-like harmony in the chorus. Another defining characteristic is the use of "incorrect" E minor chords in the pre-chorus, whose overarching melody clearly implies F-sharp major. In contrast, the melody in both the verse and chorus shifts to E minor in the second bar, though the chord remains in B minor. Another free creative choice is the contrasting melodic structure of the three sections. The melody of the first verse ascends to F# on an upbeat fifth, circles the dominant, continues ascending on an upbeat, before descending back to the tonic. The pre-chorus is melodically undulating, and the chorus descends linearly from the highest note, both in full bars. It is striking that all sections melodically originate from the tonic. A rhythmic peculiarity is the repeated note at the beginning of the chorus.

- 195** The first part of the verse exhibits similar melodic sections to the Turkish folk song "Kâtibim Üsküdar'a Gider Iken". However, there are rhythmic differences as well as differences in the motivic and phrase structure. Furthermore, the folk song lacks characteristic features such as the dotted figure on the first beat of the first measure, the eighth-note figure reminiscent of a written-out mordent in the third and seventh measures, the introduction on the repeated notes of the third and fourth beats in the second and third measures, and the melodically descending cadence in the fifth measure (measure numbering according to expert opinion K 68, p. 20).
- 196** The second riff of the intro and the second part of the verse, however, clearly resemble the folk song. The creators of "Rasputin" add a refrain to the verse, which does not exist in the folk song, and create something new through the combination of the two parts. If the creator is inspired by existing works by another creator, the new work also enjoys protection if it itself meets the requirements for protection of a work (see ECJ 04.12.2025, C-580/23, C-795/23, para. 79 – Mio). In the present case, the combination of the first part of the verse, the second part of the verse (pre-refrain), and the newly created refrain is independently creative and lends originality to the entire musical work.
- 197** dd. The musical work "Big in Japan" reflects the personality of its creators. Their free creative decision is expressed through the specific combination and development of melodic, harmonic, rhythmic, and formal elements. Particularly creative is the three-step progression of the melody from the verse through the pre-chorus to the chorus, which expresses a compositional energy that builds and is ultimately released. Simultaneously, the chord tempo increases, conveying a sense of urgency to the listener. In detail:
- 198** The musical work follows the classic strophic song form, with verse, pre-refrain, and refrain, as well as instrumental interludes. The work is in D minor, has a tempo of 98 bpm, and is in 4/4 time. The melody is creatively constructed. It focuses on the elaboration of notes within the range of the minor third of the tonic key (Df) and exhibits a consistent intensification from the verse, through the descending pre-refrain phrase, to the large interval leaps in the refrain. This melodic intensification, which distinguishes itself from simpler melodic structures, is emphasized by the gradual shift to half-measure harmonic changes.
- 199** The central motif of the refrain, a descending sequence of sixteenth notes (f, e, d), whose systematic melodic and rhythmic variations are found throughout the piece, represents a deliberate creative choice. Combined with the rhythmic and metrical structure, such as the prominent use of syncopation, the alternation of upbeat and downbeat in the verse and refrain, and the characteristic quarter-note triplet at the end of the refrain, these stylistic devices contribute to the memorability of the central motif and the memorable nature of the melodic material. The moderate tempo (98 bpm), which is significantly slower than that of typical dance music, lends the song a somewhat languid and melancholic mood. The skillfully employed compositional devices, particularly the rhythmic and metrical structure in conjunction with the descending sequence of seconds, contribute to the overall memorability of the central motif and the memorable nature of the melodic material.
- 200** The expert opinion of the defendant (Exhibit B 61) also attributes a level of originality to the sequence of tones of the intro, the interlude riff and the vocal melody.
- 201** The musical work "Forever Young" reflects the personality of its creators. Their free creative decision is expressed through the specific combination and development of melodic, harmonic, rhythmic, and formal elements. The work's melodic concept is particularly creative, based on a descending sequence of thirds that

recurs and is varied in all three sections. This sequence of thirds structures the entire piece as a complex yet memorable melodic framework. Specifically:

- 202** The piece is in C major, in 4/4 time, and has a tempo of 68 bpm as a half-time beat. The ballad is carried by a vocal melody in the high and highest falsetto register and is reminiscent of a lament. The melody is complex and develops from section to section, with the three sections maintaining a carefully considered tension. All sections are based on the same harmonic progression (C-A-F-G), but utilize it melodically in a varied and engaging way through register changes and rapid and frequent leaps of thirds and fourths. The refrain is melodically creative. The first four bars descend successively to the tonic C, to which the next four bars respond with a less purposeful line. A questioning, halting effect is created by the separation of the last two figures with rests, which nevertheless maintain the building block structure. In the second phrase, this effect is intensified by a melodic response concluding on the tonic after a rest of more than one bar. Contrary to the defendant's assertion, the court cannot identify any copyright-relevant reliance on Pachelbel's Canon. The core motif of the verses is consistently varied in tonal and rhythmic terms. Almost no two identical versions of this motif appear in any of the verses. The rhythm of the verse melody exhibits a high tonal density. The refrain is also motivically diverse, filling the entire eight-bar chord progression with numerous internal and cross-references to the verses. The increasing degree of pauses in the refrain, reminiscent of lamentation, is rhythmically just as defining as the dynamically syncopated structure. Even though the verses of both Cat Stevens' "Wild World" (1970) and "Forever Young" descend, the court, contrary to the defendant's assertion, cannot identify any copyright-relevant similarity.
- 203** A defining feature, particularly for the genre, is the eight-bar basic chord progression. The authors deliberately created harmonic tension. The verse touches upon the obvious dominant chord (G) in the last bar, but the verse melody does not end on the dominant root note G, but rather on the note A, thus completing the melody into a descending A minor triad (Ec-A) that is not resolved, creating a "melodic question mark." The pre-chorus also lacks a resolution, instead repeating the F-Am-G progression, while the melody is played solely on the subdominant F. Only at the end of the chorus is a clear harmonic conclusion chosen, this time in C major.
- 204** The defendant's expert opinion (Exhibit B 61) also acknowledges the intro's level of originality, with its small figures (cd-c-dc-d-cd and d eg-e) created by a second synthesizer over the chords, as well as the synthetic trumpet melody in the outro, due to its varied rhythms. The interval structure and rhythmic organization result in a low level of creative expression.
- 205** The refrain of the musical work "Mambo No. 5 A little bit of," which is the sole subject of this dispute, is not an arrangement of the original musical work "Mambo No. 5," but rather an independent work. Its creativity is based on a deliberately stereotypical, prolonged enumeration. This insistent repetition is the characteristic rhetorical principle of the piece. It is supported by the bass, which alternates between only two notes.
- 206** According to Section 23 Paragraph 1 Sentence 2 of the German Copyright Act (UrhG), a work is not considered an adaptation or transformation within the meaning of Section 23 Paragraph 1 Sentence 1 UrhG, but rather a new work, if the newly created work maintains a sufficient distance from the work used. Such a distance exists if the original creative elements of the original work that give rise to protection are not recognizable in the new work (cf. Federal Court of Justice (BGH) 07.04.2022, I ZR 222/20 Rn. 49 – Porsche 911).
- 207** The refrain combines a riff from the original work with a newly inserted vocal part. The riff, as heard in minutes 0:00.4 – 0:05.8 from a 1949 recording of Perez Prado's "Mambo No. 5," was looped in the refrain and played in octaves by the tenor and baritone saxophones (Expert Opinion B 61, p. 38). According to the findings of the defendant's private expert, such octave bass lines are already standard in Cuban piano music, and the rhythm is also derived from generic mambo accompaniments (ibid.). Thus, only a generic riff was adopted for the refrain, thereby maintaining a sufficient distance from the original work.
- 208** The inserted vocal part of the refrain incorporates free creative choices, thus constituting a work in its own right. Precisely calculated connections and references have been established using minimal material. The refrain essentially consists of a single two-bar motif, built on an upbeat, and two variations. The inherent repetition becomes a rhetorical principle; the melody repeatedly builds towards the passing note C-flat, which, through the

chord change, repeatedly enters the same two harmonic situations: the B-flat dominant seventh chord (sometimes with F as a suspended fourth) and E-flat major. The musical effect is that of an enumeration that always culminates in the passing note C-flat, whose stereotypical repetition takes on the character and gesture of a rhetorical device. The bass line, which consistently alternates between two notes (alternating bass), underscores this by also replacing the previous chord in two bars, in accordance with the enumeration in the melody. The rhythmic continuity is cleverly loosened by the repetition of the motif over the two alternating chords and the subsequent development of variations. The vocal part of the refrain blends seamlessly into the accompaniment through its rhythmic structure, while a multitude of contrasts (the suspension on the downbeats, the chord changes with a consistent melody, and the melodic variation) create an interesting tension with the instrumental accompaniment.

- 209** The expert opinion of the defendant (Exhibit B 61) also assigns a low level of creative merit to the newly composed refrain melody.
- 210** 2. The plaintiff is entitled to assert the claim.
- 211** a. The co-authors Marian Gold and Bernhard Lloyd of the musical works "Big in Japan" and "Forever Young" have effectively authorized the plaintiff – as explained in the admissibility review (see section A. IV.) – to assert the disputed claims for injunctive relief in her own name.
- 212** b. The authors of the musical works "Atemlos durch die Nacht", "Daddy Cool", "Rasputin" and "Mambo No. 5 A little bit of" have effectively granted the plaintiff exclusive rights of use.
- 213** Kristina Bach granted the plaintiff exclusive rights of use to the work "Atemlos durch die Nacht" by supplementary agreement dated September 25, 2024/September 19, 2024 (Exhibit K 12); FF's authorized representatives granted exclusive rights of use to the work "Daddy Cool" by supplementary agreement dated December 13, 2024/January 8, 2025/March 7, 2025 (Exhibit K 14); George Reyam; FF's authorized representatives and the legal successor of Fred Jay granted exclusive rights of use to the work "Rasputin" by supplementary agreement dated December 13, 2024/January 8, 2025/March 7, 2025 (Exhibit K 18); David Lubega and CP granted exclusive rights of use to the refrain of the work "Mambo No. 5 A little bit" by supplementary agreement dated February 11, 2025/October 20, 2025 (Exhibit K 34). of".
- 214** According to clause 1 of the identical supplementary agreements, the rights holders of the musical works in dispute "transfer" to the plaintiff "the exclusive right to use musical works (with or without lyrics) in whole or in part in AI systems, in particular for training and fine-tuning, through processes for processing contextual information and in the output of AI systems," which "in particular also includes use in AI music generators and in AI-supported search engines." According to clause 2, the transfer of rights under clause 1 includes the right of reproduction, public performance in any form including making available to the public, and unnamed rights under Section 15(2) of the German Copyright Act (UrhG), as well as the right of adaptation and transformation under Section 23 of the German Copyright Act (UrhG), including the right to use musical works (with or without lyrics) in an adapted or transformed form in the manner specified in clause 1.
- 215** aa. The authorized representatives of FF were able to validly sign the supplementary agreement of December 13, 2024/January 8, 2025/March 7, 2025 (Exhibit K 18) concerning the work "Daddy Cool". Based on the evidence presented, the court is convinced (§ 286 of the German Code of Civil Procedure) that FF is the sole author of the music of "Daddy Cool" and that the power of attorney of July 15, 2022 (Exhibit K 58) authorized the witnesses and the daughter of the deceased FF to conclude the supplementary agreement.
- 216** (1) The plaintiff claims that FF is the author of the melody and George Reyam the author of the lyrics (pleadings dated 29 November 2025, p. 11, file 540; and dated 23 February 2026, p. 34, file 913). This is disputed by the defendant.
- 217** The court, taking into account the entire content of the proceedings and the results of any taking of evidence, must decide according to its own conviction, pursuant to Section 286 of the German Code of Civil Procedure (ZPO), whether a factual assertion is to be considered true. The subject of proof includes, in addition to any

evidence taken, the facts relevant to the decision (see Musielak/Voit/Foerste, 22nd ed. 2025, ZPO § 286 para. 2). The witness ... stated in his testimony at the oral hearing on March 9, 2026, that FF was the sole author of the music for "Daddy Cool." The witness made a credible impression on the court, and his statements were believable. Without being questioned by the court, he initially stated unequivocally that he had not known FF when the musical work "Daddy Cool" was created; he was a child at that time. He then described in detail, plausibly, and comprehensibly the basis for his knowledge. He met FF in 1990 while working for Bertelsmann. After becoming self-employed in 2003 with his own music label and publishing company, he advised and supported FF on various projects. For the production of the musical "Daddy Cool," he handled the negotiations for the master rights on FF's behalf. "Daddy Cool" is an iconic title for which he receives usage requests weekly, which is why he is also very familiar with the legal positions surrounding the work.

218 FF's sole authorship of the music for Daddy Cool is further supported by the information in the catalogue of works submitted as Exhibit K 17 from the plaintiff's catalogue of works database. The catalogue lists FF as the composer and George Reyam as the lyricist. The listing of a specific person as composer constitutes an indication that this person is correctly listed. In this respect, it was incumbent upon the defendant to present specific circumstances demonstrating that the entries in the plaintiff's catalogue are incorrect. This has not been done. Their simple denial of FF's authorship of the composition of "Daddy Cool" is therefore procedurally irrelevant (cf. OLG Hamburg 31.10.2012, 5 U 37/10 para. 41 – Goldraper; Dreier/Schulze/Mantz, 8th ed. 2025, UrhG § 10 para. 11a; Wandtke/Bullinger/Thum, 6th ed. 2022, UrhG § 10 para. 67).

219 (2) The witness and the daughter of the deceased were jointly able to effectively sign the supplementary agreement dated 13 December 2024/8 January 2025/7 March 2025 (Annex K 18).

220 (a) By his power of attorney dated 15 July 2022 (Exhibit K 58), FF has effectively authorized the witness and his daughter.

221 The power of attorney stipulates in its § 1:

"In the event that a medical certificate is issued stating that I am no longer able to make my own decisions due to illness, or that I am legally incapacitated, or that there are doubts about my legal capacity, or that I am temporarily or permanently unable to manage my own affairs for other reasons due to physical or mental illness, I hereby authorize the following persons to represent me jointly and to act in my name."

This power of attorney is only validly granted in conjunction with the aforementioned medical certificate, which the persons authorized by me below must submit together with this power of attorney if the power of attorney is to be used.

222 According to the wording, the death of the principal constitutes another reason as a result of which the principal is permanently unable to manage their own affairs. The word "or" here serves to link alternatives, allowing a choice between them. The medical certificate is mentioned, according to the wording, only for the first scenario of legal incapacity or illness-related circumstances that preclude the principal from making a decision, but not for scenarios 2 and 3. While Section 1, Sentence 2 of the power of attorney does refer to the medical certificate, stating that the power of attorney is only validly granted in conjunction with the aforementioned medical certificate, this reference logically only applies to the scenario in which a certificate is required. Furthermore, the interpretation of the declaration of intent must be based on the perspective of the authorized representative, as this is an internal power of attorney. According to the witness's account, the power of attorney was also intended to apply in the event of the principal's death. The witness credibly testified that FF had considered, before concluding the power of attorney, what would happen if something were to happen to him. The reason for drawing up the power of attorney was a heart valve operation. It was very important to him that his entire musical oeuvre remain intact and that individual songs not be sold separately. FF had expressed his wish in several conversations that two of his closest confidants, a family member and a music professional, manage his life's work and his music. This was specifically intended to apply even in the event of his death. The witness was also named as administrator of the master rights in the will. The witness's statements were credible. He plausibly

described in his own words how the power of attorney came about and that it was also intended to apply in the event of his death.

- 223** Even if one were to take the view that the granting of power of attorney in the event of death could not be inferred from the wording of the power of attorney, it would have to be interpreted in accordance with the principal's intent. The principles of *falsa demonstratio non nocet* apply here: If the true intent of the declarant at the time of the declaration is clear (cf. BGH 17.01.1997, V ZR 285/95 para. 11), and the recipient of the declaration understood it accordingly, then what was intended is declared, even if a third party might objectively understand the declaration differently (Jauernig/Mansel, 19th ed. 2023, BGB § 133 para. 9; cf. BGH 12.10.2004, VI ZR 151/03 paras. 12ff.). If the intention of the person making the declaration and the understanding of the recipient of the declaration regarding its meaning coincide, a different interpretation is not possible (cf. BGH of 13.11.1998, V ZR 216/97 Rn. 10).
- 224** (b) The conclusion of the supplementary agreement is covered by the power of attorney. In terms of content, the power of attorney authorizes the agents pursuant to Section 2, Paragraph 2, to manage the assets listed therein, which, pursuant to Section 2, Paragraph 2 d), include the neighboring rights, copyrights, and other rights of use and exploitation created by or available to FF, as well as, pursuant to Section 2, Paragraph 2 e), his claims and membership rights against the plaintiff. Pursuant to the last sentence of Section 2, Paragraph 2, the agents' right to manage the other assets listed in Paragraph 2 extends to the right to conduct negotiations on existing contracts, to extend and amend such contracts, and to conclude new contracts. Pursuant to Paragraph 10, the power of attorney remains valid beyond death.
- 225** (c) The power of attorney remains valid until revoked by the heirs (see MüKoBGB/Schubert, 10th ed. 2025, BGB, § 168 BGB para. 45, BeckOK/Schäfer, BGB, 72nd ed., § 168 BGB para. 13 with further references). Contrary to the defendant's assertion, a power of attorney that extends beyond death does not merely permit temporary dispositions of estate assets until heirship is proven. Rather, the principal intended the power of attorney to enable the agent to perform certain legal acts independently of the heir's wishes, even after the principal's death (see BGH 24.03.2009, XI ZR 191/08 para. 19).
- 226** bb. The supplementary agreement of December 13, 2024/January 8, 2025/March 7, 2025 for the work "Rasputin" (Exhibit K 18) was validly concluded. In addition to Georg Reyam, the witness and the daughter of the deceased FF, as well as Fred Jay's son, signed the agreement. The son's authorization to sign as Fred Jay's sole heir derives from the Berlin Testament submitted as Exhibit K 48b, according to which he was appointed as the final heir.
- 227** The supplementary agreements differ in their preamble regarding the clause on whether the licensing agreements already cover the rights to use the works in AI systems. In the versions signed by Georg Reyam and the authorized representatives for FF, the preamble reads: "To avoid any legal uncertainties regarding the scope of the transferred rights, the parties agree with respect to the works...". However, the version signed by Fred Jay's legal successor states: "The parties assume that the licensing agreement also covers the rights to use the works in models and systems of artificial intelligence (AI) and in applications based thereon (hereinafter collectively referred to as "AI systems")." To avoid any legal uncertainties regarding the scope of the transferred rights, the parties agree with respect to the works...". The use of different wording is harmless. The only difference is in the preamble. The wording of the contract granting the corresponding rights is identical. The essential contractual provisions, the binding and the dispositive parts, are the same. Neither the timing of the contract signing nor the fact that almost three months elapsed between Fred Jay and George Reyam's signatures affects the validity of the agreement.
- 228** The supplementary agreement of February 11, 2025/February 25, 2025/October 20, 2025, concerning the refrain of the work "Mambo No. 5 A little bit of," has been validly concluded. The signing of different versions is harmless.
- 229** Only two versions of the supplementary agreement contain provisions regarding its entry into force; one does not. The supplementary agreement signed by PG GmbH (Exhibit K 24, Part 3) contains no provision regarding its entry into force, while the versions of the agreement signed by David Lubega and CP (Exhibit K 24, Parts 1 and

2) stipulate a retroactive entry into force on January 25, 2025. This is irrelevant, however, because, according to Clause 3 of the supplementary agreement, the plaintiff is entitled to assert claims for infringement of the rights mentioned in Clauses 1 and 2 retroactively within the framework of the statute of limitations, as well as to assert claims for injunctive relief and removal against third parties even for infringements that occurred in the past.

- 230** The different designations of the plaintiff's contract number – once as 1226952-002 and twice as 1226952 – in the various versions of the supplementary agreements are irrelevant. The agreement clearly refers to the musical piece "Mambo No. 5 A little bit of".
- 231** The differing provisions for the distribution of proceeds in the three supplementary agreements to Mambo No. 5 do not render the agreement invalid. The supplementary agreement signed by PG GmbH (Exhibit K 24 Part 3) contains no provision for the distribution of proceeds, the version of the agreement signed by David Lubega (Exhibit K 24 Part 1) assumes a distribution according to the distribution key stipulated in the plaintiff's distribution plan, and the version of the agreement signed by CP (Exhibit K 24 Part 2) assumes a revenue distribution of 1/3 each. Which provision applies must be determined by interpretation.
- 232** The supplementary agreement signed by PG GmbH (Exhibit K 24, Part 3) and the version of the contract signed by David Lubega (Exhibit K 24, Part 1) list the legal successor of Damaso Perez Prado (the author of the work "Mambo No. 5") as an additional contracting party, but not the version of the contract signed by CP (Exhibit K 24, Part 2). Furthermore, the contract was not signed by the legal successor of Damaso Perez Prado. However, this does not constitute a disagreement between the parties. According to the plaintiff's undisputed submissions, the parties intended to enable the plaintiff to pursue legal action regarding the alleged infringements of the refrain "Mambo No. 5," which, as already stated, is an independent work. They did not intend to conclude the agreement only if all persons named on the contract form, in particular the legal successor of Perez Prado, signed the agreement. The parties clearly intended to grant the plaintiff the exclusive rights of use to the musical piece "Mambo No. 5 A little bit of" for use in AI systems. The granting of these rights and the legal enforcement of the claims in dispute were the focus, not the question of which parties had to agree to such a grant. This is further supported by the fact that even if the complete work "Mambo No. 5 A little bit of" were to be considered an adaptation of the musical work "Mambo No. 5," the adapting authors acquired their own adapting copyright, which they could effectively grant to the plaintiff without the consent of the original author. As a dependent adaptation, the adaptor does require the consent of the author of the pre-existing work to exploit their adaptation (see Dreier/Schulze/Schulze/Raue, 8th ed. 2025, German Copyright Act § 3 para. 50). Nevertheless, he can grant rights of use to the adaptation independently of the original author (cf. BGH 13.02.1962, I ZR 27/60 para. 6 – record insert). The original author only needs to consent to the exploitation itself (cf. OLG Hamburg 07.07.2016, 5 U 23/16 para. 96 ff.).
- 233** c. The defendant's argument that it is entirely unclear to what extent the copyright holders still possessed AI-related rights at the time the supplementary agreements were concluded, or whether they had transferred AI rights to other market participants, is irrelevant. While the party bearing the burden of proof is generally not precluded from asserting facts about which they lack precise knowledge but which they consider probable based on the circumstances (see Federal Court of Justice, May 8, 2012, XI ZR 262/10, para. 40), the defendant does not even assert specific facts but merely raises other possible scenarios. This assertion does not meet the requirements for a concrete denial that would justify the taking of evidence (see Higher Regional Court of Hamm, July 15, 2025, 26 W 18/25, para. 14). The defendant also failed to submit any concrete offer of proof that the court could have considered.
- 234** d. The defendant's objection that the plaintiff lacks standing to sue with regard to neighboring rights in performances and sound recording rights in master recordings is irrelevant. The plaintiff is not asserting these neighboring rights. The sound recordings submitted in the proceedings serve merely to illustrate the musical works at issue.
- 235** The defendant's objection regarding the absence of a separate category for AI-related uses in the plaintiff's distribution plan for 2025 does not lead to a lack of standing to sue. According to Section 14 Paragraph 2 of the

distribution plan as amended on May 14/15, 2025, revenues without a separate category are allocated to the existing categories according to their rules (Exhibit B 47).

- 236** e. The activities of International Copyright Enterprise do not preclude the plaintiff's standing to sue. International Copyright Enterprise represents the rights of copyright holders against digital music services on behalf of collecting societies. Contrary to the defendant's assertion, such representation of rights does not constitute an assignment of rights.
- 237** Insofar as the defendant argues that the plaintiff, through its contractual relationship with International Copyright Enterprise, circumvents the protective purpose of Section 69 Paragraph 3 of the German Copyright Act (VGG) by formally licensing on a non-exclusive basis but practically handling all multi-territorial licensing through this entity, this concerns a possible violation by the plaintiff of Section 69 Paragraph 3 of the VGG, but does not affect the plaintiff's standing to sue.
- 238** f. The defendant's motion to order the plaintiff, pursuant to Section 142 Paragraph 1 of the German Code of Civil Procedure (ZPO), to submit all licensing agreements and reciprocal agreements concerning the musical works in dispute, is to be denied. The plaintiff's standing to sue is established by the submitted supplementary agreements.
- 239** 3. The musical works in dispute are reproduced in the models within the meaning of Section 16 Paragraph 1 of the German Copyright Act (UrhG). The defendant stores the models on Edge servers in the Federal Republic of Germany.
- 240** The infringement of copyright exploitation rights through reproduction in models pursuant to Section 16 of the German Copyright Act (UrhG) was recognized early on in legal literature (see, for example, Wandtke, NJW 2019, 1841, 1842). Nevertheless, the classification of such reproductions as reproduction in models within the meaning of Section 16 UrhG and their coverage by the limitations of Section 44b UrhG remains controversial in legal scholarship (for an overview of the debate, see Sesing-Wagenpfeil, ZGE 2024, 212, 217 et seq., footnotes 25 et seq.; Schwartmann/Köhler, NJW 2026, 711, 715), which is partly due to differing assumptions about the facts of the case. It is more appropriate, however, to differentiate between reproductions that merely serve to convert to a digital format or are created for analytical purposes, and reproductions that remain in the model. Following Spindler (GRUR 2016, 1112) and the Hamburg Regional Court (27.09.2024, 310 O 227/23 Rn. 46 – LAION), the temporally successive phases must be distinguished:
- (1) extracting and converting the training material into a machine-readable format, creating the training data material,
 - (2) the analysis of the data material and its enrichment with meta-information, the training of the model,
 - (3) the subsequent use of the trained model by prompts and outputs.
- 241** For the asserted claim for injunctive relief based on the reproductions in the model pursuant to Section 16 of the German Copyright Act (UrhG), the depicted Phase 2 is relevant. The musical works in dispute are reproducibly contained in the models. Their memorization constitutes a reproduction relevant under copyright law.
- 242** a. The musical works in dispute are, in the opinion of the adjudicating chamber, included in the model pursuant to Section 286 Paragraph 1 Sentence 1 of the German Code of Civil Procedure (see Moser, NJW 2026, 125, 127 et seq.).
- 243** aa. It is known from information technology research that training data can be contained in generative language models and extracted as outputs, a process known as memorization (see, for example, Carlini, Tramer, Wallace, Jagielski, Herbert-Voss, Lee, Roberts, Brown, Song, Erlingsson, Oprea, Raff, 2021, Extracting Training Data from Large Language Models, Appendix K 35.1, p. 1; Yang, Zhao, Wang, Shi, Kim, Han, Lo, 2024, Unveiling Memorization in Code Models, Appendix K 35.3, pp. 3, 7 ff.; Cooper, Grimmelmann, 2025, The Files are in the Computer, Appendix K 35.4, pp. 14 f.). Memorization occurs when the non-specific parameters used in training not only extract information from the training dataset, but also when the parameters specified after training

represent a complete incorporation of the training data. Completeness here does not refer to the quantity of data transferred from individual training data points, which need not be transferred completely or exactly, but to the transfer of more than just mere information such as patterns and correlations, i.e., at least partial transfer of the content as well.

- 244** Memorization of training data can occur not only in generative language models but also in generative music models such as the one at issue (see Roh, Novack, Peng, Miresghallah, Berg-Kirkpatrick, Houmansadr, 2025, Bob's Confetti: Phonetic Memorization attacks in music and video generation, Exhibit K 33, p. 3 with further references). According to the study by Roh et al., the defendant's model is particularly vulnerable: If a prompt resembling song lyrics is input, the defendant's model is especially good at generating the copyrighted piece of music that corresponds to the prompt in such a way that it closely resembles the music of the original (see Roh, *ibid.*, p. 2). In song-lyric-like prompts, the prompt is not the original song text, but a semantically nonsensical text that imitates the phonetic structure, rhyme and cadence of the original (cf. Roh, *ibid.*, p. 1 f.).
- 245** In information technology research, different standards are defined in specific studies to determine memorization. They depend in particular on the type of model under investigation and the objective of the publication, and sometimes require identical content-related agreement between the original and the output, or are satisfied with partial agreement (see Nasr, Carlini, Hayase, Jagielski, Cooper, Ippolito, Choquet-te-Choo, Wallace, Tramèr, Lee, 2023, Scalable Extraction of Training Data from (Production) Language Models Appendix K 35.2 pp. 2 f.; Cooper, Gokaslan, Cyphert, De Sa, Lemley, Ho, Liang, Mai 2025, Extracting memorized pieces of (copyrighted) books from openweight language models Appendix K 35.5 pp. 4 f.; Mueller, Gorge, Bernzen, Pirk, Poretschk, 2024, LLMs and Memorization: On Quality and Specificity of Copyright Compliance Appendix K 52 pp. 985, 987). If a model generates not (only) speech, but images or audio, only selected, basic features from the training data are captured during model training, while detailed information is deliberately omitted (see, for audio files, the defendant's technical report, Exhibit B 40A, para. 41). Given this so-called quantization, an exact, 100% matching memorization of training data is difficult to imagine. However, such a matching is not necessary, because quantization omits the detailed information that is difficult for the human senses to perceive anyway. Therefore, for diffusion models that generate images, an exact pixel match between the original and the output is not required for memorization; it is sufficient if their pixel spacing is very small (see Carlini, 2025, What my privacy papers (don't) have to say about copyright and generative AI, Exhibit B 33, p. 6). In models that generate music, memorization is determined both by using an automatic check that examines similarity values in melody, rhythm, harmony, identity and style, and by including human evaluation (see Roh, Novack, Peng, Miresghallah, Berg-Kirkpatrick, Houmansadr, 2025, Bob's Confetti: Phonetic Memorization attacks in music and video generation Annex K 33 p. 4).
- 246** The cause of memorization, which occurs primarily in large models, is thought to be the multiple occurrences of a training data point within the training data set (see Yang et al., *op. cit.*, pp. 8, 11). The defendant herself states that training data can contain various versions of works. If a model learns from such a training data set, statistical relationships between certain metadata (such as title, genre, or lyrics) and the musical properties of these works (key, rhythm, and others) are learned more strongly. If a user uses this metadata—especially metadata that is rare in the entire training data set—in a prompt, the learned statistical probabilities lead to outputs with predominantly similar musical properties (brief dated February 13, 2026, p. 53; p. 698 of the file).
- 247** The memorization of training data can be demonstrated using various methods. If the training data is known, a comparison of the training data with outputs is possible using simple, open-ended prompts and sufficient output complexity to determine memorization. Otherwise, parameters such as entropy and perplexity are used to examine the certainty with which a model reproduces an output – for trained and memorized content, the certainty is high (see Yang et al., *ibid.*, p. 10).
- 248** bb. The musical works in dispute are memorized in model form.
- 249** The memorization can already be established in this case by comparing the musical works in dispute with the outputs. The use of the musical works in dispute as training data is undisputed. As evidenced by Exhibit K 3, the

musical works in dispute are clearly recognizable in the submitted outputs through the respective prompts of the original lyrics, musical style, and work title (for recognizability, see below under B. III. 2.).

- 250** (1) The prompts in dispute are simple, open-ended prompts. The outputs were not triggered by the input of controlling prompts.
- 251** (a) The defendant's assertion that the plaintiff deliberately provoked the memorization effects through her thousands of complex and highly contextualizing prompt entries, including structural specifications, which were spread over several months, is simply false. As can be seen from the evaluation of the plaintiff's prompts (Exhibit B 4), the plaintiff did indeed send 3,779 prompts. However, only 338 of these relate to the musical works at issue. Of these 338 prompts, 176 relate to the musical work "Atemlos durch die Nacht," 14 to "Daddy Cool," 8 to "Rasputin," 124 to "Big in Japan," 12 to "Forever Young," and 4 to "Mambo No. 5." The remaining prompts from the plaintiff do not concern the matter at issue and are therefore irrelevant to the proceedings.
- 252** The prompts in question did not steer the output in a specific direction through repeated input of the same prompt. If the same prompt is entered again in an independent run, the input remains the same. The model parameters are also the same. Therefore, the conditional probability distribution from which the output is generated is fundamentally the same. This distinguishes the simple, open-ended prompt from a provocative prompt, in which evaluative or suggestive prompts alter the context and influence the outcome.
- 253** (b) The input of the original song lyrics does not constitute complex and highly contextualizing requirements, but rather should be classified as simple, open-ended prompts in relation to the music being queried. The lyrics and the choice of genre do not determine the music, and in particular not the melody.
- 254** The text, at most, establishes a thematic or atmospheric framework and requires prosodic compatibility. A text contains linguistic information such as semantic content, rhyme schemes, syllable sequences, and stress patterns. These elements may necessitate an adaptation of the musical phrasing to the prosody of the language. For example, a stressed syllable is regularly placed on a metrically stressed beat. However, such an adaptation primarily concerns only the assignment of note values to syllables or the distribution of stresses within a bar line.
- 255** The text, however, does not fundamentally determine the specific sequence of notes or their rhythmic, harmonic, or tempo-related elaboration. Prosodic compatibility does not imply a fixed pitch, pitch contour, interval leaps, motivic structure, melodic arcs, or repetition patterns. The same text can easily be set to completely different sequences of notes without requiring any linguistic changes. The specific melodic elaboration thus remains open and interchangeable. The same applies to rhythm in the narrower musical sense. While the number of syllables and linguistic emphasis can influence the length of individual notes or their placement within a measure, the decision regarding time signature, syncopation, rhythmic motifs, or complex accent shifts rests on compositional parameters. A compelling rhythmic structure cannot be derived from the text. Similarly, the text does not exert a determining influence on tempo. Tempo is regularly determined by stylistic conventions and the prevailing mood. There is no necessary connection between the textual content and a specific speed in beats per minute. Identical lyrics can be set to music as a slow ballad or a fast dance song. Ultimately, the lyrics contain no harmonic constraints. The choice of key, chord progression, or modulation is determined by musical principles. Even if certain lyrics might be associated with a minor or major key, these are culturally influenced, not mandatory, associations. The lyrics do not dictate a specific harmonic structure.
- 256** The genre selection made in the prompt allows for a wide variety of possible musical arrangements and variations. In any case, the genre descriptions, such as Schlager, Pop, Disco, Electronic, Soul, or Funk, are quite general.
- 257** (c) Insofar as the defendant argues that the input of the entire song lyrics violates its terms of use (Exhibits B 5, B 37), this is irrelevant to the question of memorization.
- 258** (2) The outputs in dispute cannot be classified as the result of chance. Given the complexity and length of the generated musical works and their extensive correspondence with the training data, as well as the simple, open-ended prompts used, chance can be ruled out as the cause of the song lyrics being reproduced (see

Cooper/Grimmelmann, loc. cit., pp. 21, 28). The defendant also did not cite chance as the cause of the outputs being generated.

- 259** (3) It is immaterial that the plaintiff submitted only one output per work. Memorization occurs regardless of whether an identical output is generated with a consistent prompt. The defendant's model contains both a transformer and a diffusion model. It is undisputed that, with GPT models up to and including the SoftMax function, the same output of the neural network is always generated if the internal state, parameters, and all inputs are identical. The core of the models is deterministic. The output layer of a GPT network contains the probability calculated by the model according to SoftMax for each potential next token, and depending on the selection algorithm, the next selected token is then either random or not. Since the task of a GPT model is to calculate the probability of the next token, a choice must be made based on the token probabilities. It is this first step after the GPT model that can introduce randomness into the output of the AI application. The situation is similar with diffusion models: the calculation of the noise component is deterministic.
- 260** (4) The defendant argues that, given the model's capacity relative to the size of the training data, the storage space in the model parameters of the defendant's model is mathematically insufficient to store training data exactly or nearly exactly. This is irrelevant, as the plaintiff has not even claimed that all training data is stored in the model. The only relevant question is whether the six musical pieces in dispute are recognizably memorized. Contrary to the defendant's view, the plaintiff is also not required to explain why these six were selected and memorized.
- 261** (5) The defendant's request for an expert opinion on whether the six musical works at issue, or parts thereof, are stored or memorized in the model is to be rejected. The extent to which a division into weights and parameters constitutes reproduction (brief dated November 26, 2025, p. 14, file 118; brief dated January 13, 2026, p. 28, file 469) is a legal question and not subject to expert evidence. Insofar as the defendant offers evidence for its claim that its model does not function like a large database (brief dated November 26, 2025, p. 14, file 118; brief dated November 26, 2025, p. 25, file 129; brief dated March 2, 2026, p. 18, file 983; brief dated March 6, 2026, p. 15, file 1200), expert testimony is not required, as the court does not base its assessment on such a mode of operation. Likewise, the court does not assume that an output is an "exact copy of a specific training date." The defendant fails to adequately address the studies submitted by the plaintiff in support of its assertion that the memorization of training data cannot be demonstrated by the output (brief dated November 26, 2025, p. 24, file 128; brief dated January 13, 2026, p. 38, file 479; brief dated February 13, 2026, p. 39, file 684). The defendant does not describe a plausible alternative sequence of events that could have led to the outputs in question. The expert opinion submitted by the defendant, Exhibit B 40a, also lacks any supporting facts.
- 262** b. The memorization of the musical works in dispute in the models constitutes a reproduction pursuant to Section 16 Paragraph 1 of the Copyright Act.
- 263** (aa.) The reproduction right regulated in Section 16 of the German Copyright Act (UrhG) implements Article 2 of the InfoSoc Directive. The EU law concept of reproduction must be interpreted uniformly, autonomously, and in conformity with the directive (see ECJ 16 July 2009, C-5/08, para. 27 – Infopaq). Recital 21 of the InfoSoc Directive already requires a broad definition of reproduction in order to guarantee legal certainty in the internal market. This is reflected in the wording of Article 2 of the InfoSoc Directive, which uses all-encompassing terms such as "direct or indirect," "temporary or permanent," and "in any manner and in any form" to describe reproduction (see ECJ 16 July 2009, C-5/08, para. 42 – Infopaq). Furthermore, the broad scope of protection results from the main objective of the directive, which is to ensure a high level of protection for those entitled to protection (see ECJ 24.03.2022, C-433/20 para. 16 – AustroMechana; BGH 27.06.2024, I ZR 14/21 para. 19 – Internet-Radiorecorder II).
- 264** Given the possibility of reproduction under Article 2 of the InfoSoc Directive "in any manner and in any form," reproduction is not limited to identical reproduction but also includes any altered representation of the work, such as the digitization of an analog work (ECJ 11.09.2014, C-117/13 – TU Darmstadt), storage in a compressed file format like MP3 (ECJ 05.03.2015, C-463/12, para. 35 – Copydan), or in a reduced-size version (BGH

29.04.2010, I ZR 69/08, para. 17 – Preview Images I). Section 16(1) of the German Copyright Act (UrhG) covers reproduction in altered form through the phrase "regardless of [...] the method used."

- 265** The duration of the reproduction is irrelevant. The wording of Article 2 of the InfoSoc Directive refers to "temporary or permanent" reproductions; a literal equivalent can be found in Section 16(1) of the German Copyright Act. The reproduction right thus extends, in principle, also "to transient fragments of the works in the memory of a satellite decoder and on a television screen" (ECJ 04.10.2011, C-403 and 429/08, para. 159 – FAPL/Murphy).
- 266** Beyond the aforementioned clarifications in the wording of the regulations, neither EU law nor German law provides a clearly defined definition of reproduction. According to the highest German court rulings, reproduction within the meaning of Section 16(1) of the German Copyright Act (UrhG) is defined as any physical fixation of a work that is capable of making the work perceptible to the human senses in any way, directly or indirectly (most recently BGH 23.10.2024, I ZR 112/23 para. 66 – Manhattan Bridge); the Court of Justice of the European Union (CJEU) formulates this implicitly (see ECJ 29.07.2019, C-476/17 paras. 52 ff. – Pelham; more explicitly Advocate General Szpunar 12.12.2018, C-476/17 para. 47). In the case of direct perceptibility, reproduction can be readily detected, whereas in the case of indirect perceptibility, further intermediate steps are required, such as the image and sound carriers of technical devices mentioned in Section 16 Paragraph 2 of the German Copyright Act (see also ECJ 05.03.2015, C-463/12, paragraph 35 – Copydan).
- 267** bb. Applying the aforementioned standards, the models constitute reproductions. The musical works in dispute are physically embodied in the models and can be made indirectly perceptible.
- 268** (1) Due to the memorization, an embodiment is given as a prerequisite for the copyrightable reproduction of the musical works in dispute by means of data in the specified parameters of the model, which in turn are physically located on the servers. The musical works in dispute are reproducibly defined in the models.
- 269** According to Article 2 of the InfoSoc Directive, reproduction occurs "in any manner and in any form." The determination in mere probability values is irrelevant (see von Welser, GRUR 2024, 1406, 1411). New technologies such as models are covered by the reproduction right under Article 2 of the InfoSoc Directive and Section 16 of the German Copyright Act (UrhG). According to Recital 5 of the InfoSoc Directive, the reproduction right regulated in the InfoSoc Directive is intended to adequately take account of the new forms of exploitation resulting from technological developments. Given the technological neutrality applicable to exploitation rights in copyright law (see Specht in FS Schulze, 2017, 413, 414), the specific technology used for embodiment is not decisive. Storing a musical work as an MP3 file constitutes reproduction (see ECJ 05.03.2015, C-463/12, para. 35 – Copydan). This storage method employs lossy compression, whereby the digitally stored audio data contains only the signal components perceptible to humans, resulting in a significant reduction in data volume. With regard to the musical works at issue, which were used as training data, it is also sufficient if the model, based on the statistical information derived during training, is capable of generating statistically probable token sequences that recognizably reproduce the musical works.
- 270** The decomposition of musical works into parameters is harmless with regard to their physical definition. The parameters are contained within the model as a whole. Such a definition can be compared to progressively stored JPEG files, where information is scattered throughout the file (cf. Pesch/Böhme, GRUR 2023, 997, 1005; Sasing-Wagenpfeil speaks of a sufficiently strong path predetermination inherent in the model, which describes the protected syntax of a work, ZGE 2024, 212, 243). Individual parameters do not need to be protected by copyright.
- 271** The defendant, through its appointed legal expert (Exhibit B 15), argues, with reference to the case law of the Court of Justice of the European Union, that reproduction only occurs if a context-independent, objectively and precisely identifiable form of expression of a copyrighted work is defined in a specific information carrier. The statistical and mathematical insights into training data embodied in the weights and parameters must constitute a fully formed, independent object of expression. This is lacking, the defendant claims, as there is no concrete

delimitation. This argument is not persuasive. The definition in the model is sufficient; it is an object identifiable with sufficient accuracy and objectivity.

- 272** Contrary to the defendant's assertion, the Court of Justice of the European Union does not examine the criterion of distinguishability when determining whether an infringing reproduction has occurred, but rather when examining whether a work exists: The term "work" implies a form of expression of the copyrighted subject matter that allows it to be identified with sufficient accuracy and objectivity. However, the possibility of precise and objective identification is lacking in the case of the taste of a foodstuff. Unlike, for example, a literary, artistic, cinematic, or musical work, which represents a precise and objective form of expression, the identification of the taste of a foodstuff is essentially based on taste sensations and experiences, which are subjective and variable (see ECJ 13.11.2018, C-310/17, paras. 40 et seq. – Levola Hengelo; referring to this ECJ 12.09.2019, C-683/17, paras. 33 et seq. – Cofemel and ECJ 11.06.2020, C-833/18, para. 25 – Brompton).
- 273** The concrete delimitation is therefore a criterion establishing legal protection and not a feature intended to narrow the copyright at the level of the elements of the offense by imposing the additional requirement of delimitation. The interpretation demanded by the defendant, according to which, for example, there would be no infringement of the copyright by storing the work as JPEG files, would also contradict the main objective of the InfoSoc Directive, which is to ensure a high level of protection for the rights holders (see ECJ 24.03.2022, C-433/20, para. 16 – AustroMechana). It should be noted in passing that the subject of the dispute is not the taste of spreadable cheese, but musical works. Their identification does not depend on the subjective perceptions of the person perceiving the piece of music. Therefore, the Court of Justice of the European Union has explicitly stated that musical works can be identified with sufficient accuracy and objectivity (see ECJ 13.11.2018 – C-310/17 para. 42 – Levola Hengelo).
- 274** The case law of the Court of Justice of the European Union does not support the defendant's argument that it is inadmissible to infer from a subsequent reproduction to an upstream system, and therefore reproduction in the model cannot be "identified" based on the outputs. In the FAPL/Murphy decision cited by the defendant, the Court of Justice of the European Union makes a statement regarding the point in time for assessing reproduction, but not a statement regarding causality in the sense of a possible inference between the television screen in question and the decoder (see ECJ 04.10.2011, C-403/08 and C-429/08 – FAPL/Murphy). The Court of Justice of the European Union states that whether the generation of ephemeral fragments of works in the memory of a satellite decoder and on a television screen constitutes reproduction depends on whether the composite whole of the simultaneously reproduced fragments—that is, those present at a given moment—contains elements that express the author's own intellectual creation (see CJEU, loc. cit., paras. 157 et seq.). However, in the model at issue, even non-ephemeral files are overwritten and deleted. Rather, the specified parameters are present in the model and enable the reproduction of the musical works in question, which served as training data. They are thus embodied in the model. The model itself is stored on servers.
- 275** (2) The musical works at issue in dispute, which are physically represented in the models, can be made indirectly perceptible to the human senses.
- 276** For reproduction purposes, indirect perceptibility is sufficient, which is the case if the work can be perceived using technical aids (cf. ECJ 05.03.2015, C-463/12 para. 35 – Copydan for memory cards of mobile phones and internal memory of MP3 devices).
- 277** According to Exhibit K 3, the musical works could be easily perceived using the music generator, a terminal device with a screen, and simple, open-ended prompts as outputs. Thus, as demanded by the defendant, an average user with readily available technical resources could access the musical works in question. Contrary to the defendant's view, a reading device in the sense of a "parameter player" is not required. For indirect perceptibility, it is not necessary to make the individual elements perceptible. The perceptibility (of parts) of the musical work is sufficient.
- 278** Even if access is possible for an average user in this case, this is not the decisive factor. Reproductions also occur if perceivability requires special knowledge, such as full access to the model's parameters (see

Pesch/Böhme, GRUR 2023, 997, 1005; contra Dreier/Schulze/Raue, 8th ed. 2025, UrhG § 16 para. 21, 37). Given the necessary broad interpretation of the right of reproduction, difficulties in perception and limited perceivability do not preclude reproduction, but may lead to the classification that the work is not publicly accessible, which, however, is not a prerequisite for the right of reproduction (see Sesing-Wagenpfeil, ZGE 2024, 212, 246).

- 279** The defendant argues that copyright-relevant reproduction requires a stable, addressable storage state that is context-independent and reproducible. A mere increased probability of a specific output is insufficient to prove the requirements of the Court of Justice of the European Union for an objectively precise, unambiguously identifiable, and independently established form of the protected work elements that can be repeated any number of times. The storage state required by the defendant exists; it is present in the model. With full access to the model's parameters, it is also context-independent and reproducible. Insofar as the defendant requires a probability and reproducibility of a specific output, this could only concern the factual question of whether memorization exists, which can be assessed based on the similarity of the training data to the output, and not the examination of whether reproduction in the legal sense has occurred. It should be noted in passing that reproduction does not require repeatable reproduction. Article 2 of the InfoSoc Directive does not contain any requirement for repeatable reproduction. The provision of Section 16(2) of the German Copyright Act (UrhG), which refers to repeatable perception, was introduced in 1965 merely for clarification, to open up the right of reproduction to advancing technological developments and to include phonograph records, audio tapes, and film recordings under the right of reproduction (see BT-Drs. IV/270, p. 47). The chosen wording "repeatable reproduction" was intended to broaden, not restrict, the applicability of the right of reproduction.
- 280** 4. The reproduction that has taken place in the models is not covered by the limitations provisions of Section 44b of the German Copyright Act.
- 281** The defendant cannot invoke the limitations provision of Section 44b of the German Copyright Act.
- 282** The models in dispute generally fall within the scope of the limitations on text and data mining. The regulations cover necessary reproductions during the compilation of the data corpus in Phase 1 (as described in Section B. II. 3), but not further reproductions within the model in Phase 2. If, as in the present case, the training in Phase 2 involves not only extracting information from training data but also reproducing works, this does not constitute text and data mining. Even though the limitations generally apply to the training of models, reproductions within the model are not reproductions covered by the limitations, as they do not serve solely to prepare for text and data mining.
- 283** a. According to the legal definition in Section 44b Paragraph 1 of the German Copyright Act (UrhG), which largely corresponds to Article 2 Paragraph 2 of the DSM Directive, "text and data mining [...] is the automated analysis of one or more digital or digitized works in order to obtain information, in particular about patterns, trends, and correlations." In text and data mining, as defined by the limitations provision applicable to Phase 2, information is extracted automatically. The automated analysis itself is not an act relevant to copyright law (see German Federal Parliament Printed Matter 18/12329, p. 40, regarding Section 60d of the former version of the Copyright Act). The non-creative information contained in works is not protected by copyright as such (see Raue, GRUR 2017, 11, 13 with further references), which is why the analysis of works for the purpose of evaluating mere information does not affect any exploitation interests.
- 284** Text and data mining sometimes requires preparatory measures that can infringe on exploitation rights, such as the reproduction of a work by converting it into another (digital) format or storing it in RAM. For these copyright-relevant actions, which relate to the creation of the training material and thus Phase 1, Section 44b Paragraph 2 Sentence 1 of the German Copyright Act (UrhG) generally permits reproductions. The rationale behind this is that these reproductions are created solely for subsequent analysis purposes and therefore do not impair the author's exploitation interests in the work (see Schack, ZUM 2016, 266, 269). The analysis and reproductions used solely for this purpose merely provide a technical enjoyment of the work (see Steinhauer, RuZ 2021, 5, 21). Since these actions, which are purely preparatory for text and data mining, do not affect any exploitation interest, the law does

not provide for any obligation to pay remuneration to the author (cf. Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025, UrhG § 44b Rn. 8).

- 285** b. The limitation in Section 44b of the German Copyright Act (UrhG) and its European legal basis in Article 4 of the DSM Directive apply to text and data mining in the training of artificial intelligence (see Higher Regional Court of Hamburg, 10 December 2025, 5 U 104/24, para. 71 et seq. – Laion; for the state of opinion in the literature, see Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025, UrhG § 44b, para. 17, footnote 65). Reproduction acts for the preparation of the training corpus are covered by this.
- 286** aa. The EU legislator was aware of the use of data for the purpose of training models. This is already evident from the Commission Communication “Artificial Intelligence for Europe” of 25 April 2018 (COM/2018/237). Even if this were not the case, the scope of Section 44b of the German Copyright Act (UrhG) and Article 4 of the Data Mining Directive (DSM-RL) extends to modern technology. According to the recitals of the DSM-RL, the limitations on text and data mining are intended to promote new technologies: according to Recital 18(1), first sentence, of the DSM-RL, text and data mining techniques should serve the development of new applications or technologies. To enable this, Recital 3, second sentence, of the DSM-RL states that “the relevant legislation [...] must be future-proof so as not to impede technological development.”
- 287** In this sense, the Court of Justice of the European Union has already pointed out, with regard to the limitation on reproduction acts under Article 5(1) of the InfoSoc Directive, that the provision must enable and guarantee the use of new technologies and maintain a fair balance of rights and interests between the rights holders and the users of protected works who wish to benefit from these new technologies (see CJEU 24 March 2022, C-433/20, paragraph 26 – Austro-Mechana). The Court has stressed that any interpretation must comply with the principle of technological neutrality, according to which the law must define the rights and obligations of persons in general terms so that one technology is not given preferential treatment over another (ibid.).
- 288** In the explanatory memorandum to Section 44b and Sections 60a et seq. of the German Copyright Act, the German legislature also explicitly listed “machine learning as a basic technology for artificial intelligence” within the scope of application (BT-Drs. 19/27426, 60).
- 289** bb. The scope of application of Section 44b of the German Copyright Act (UrhG) therefore includes acts of reproduction for the preparation of the training corpus of models. However, these are not the subject of the present dispute.
- 290** c. The reproduction of the musical works in dispute in the models does not constitute text and data mining.
- 291** Das Text und Data Mining zielt auf die Auswertung bloßer Informationen (vgl. Spindler/Schuster/Kaesling/Pesch, 5. Aufl. 2025, UrhG § 44b Rn. 18). Diese Informationen aus Trainingsdaten können in Parameter von Modellen überführt werden. Bei den statistischen Zusammenhängen, die Modelle aus Trainingsdaten „erlernen“, handelt es sich um Muster, die § 44b Abs. 1 UrhG als ein Beispiel für die zu gewinnenden Informationen nennt (ebd.).
- 292** Die Memorisierung der streitgegenständlichen Musikwerke überschreitet eine solche Auswertung und ist daher kein bloßes Text und Data Mining. Die Musikwerke als Trainingsdaten wurden nicht allein ausgewertet, sondern in die Parameter des Modells übernommen, was wiederum in die Verwertungsinteressen der Urheber eingreift (s.o. unter B. II. 3.).
- 293** d. Die Vervielfältigung der streitgegenständlichen Musikwerke im Modell in Phase 2 ist nicht von der Text und Data Mining Schrankenbestimmung des § 44b UrhG beziehungsweise Art. 4 DSM-RL gedeckt.
- 294** Die durch die Memorisierung im Modell gegebenen Vervielfältigungen wurden nicht zur Erstellung des Trainingsdatensatzes und somit im Rahmen der Phase 1 gefertigt, in der keine Verwertungsinteressen der Urheber tangiert sind, sondern sie sind zusätzlich beim Trainieren des Modells in Phase 2 erfolgt. Die Vervielfältigungen im Modell dienen keiner weiteren Datenanalyse. Die Prämisse des Text und Data Mining und der diesbezüglichen Schrankenbestimmungen, dass durch die automatisierte Auswertung von bloßen

Informationen selbst keine Verwertungsinteressen berührt sind, greift in dieser Konstellation nicht. Im Gegenteil, durch die gegebenen Vervielfältigungen im Modell wird in das Verwertungsrecht der Rechteinhaber eingegriffen.

- 295** aa. Ausweislich des eindeutigen Wortlauts der unionsrechtlichen Regelung der Schrankenregelung setzt Art. 4 Abs. 1 DSM-RL „zum Zwecke des Text und Data Mining vorgenommene Vervielfältigungen“ voraus (Spindler/Schuster/Kaesling/Pesch, 5. Aufl. 2025, UrhG § 44b Rn. 21, 24). Vervielfältigungen im Modell dienen aber nicht der weiteren Datenanalyse, weshalb die Schrankenregelung hierfür nicht als Legitimationsgrundlage in Betracht kommt (Sesing-Wagenpfeil, ZGE 2024, 212, 251). Auch die Vorschrift des § 44b Abs. 2 UrhG verlangt eine zweckgerichtete Vervielfältigung, die für das Text und Data Mining erforderlich sein muss.
- 296** The purpose-bound nature of the directive reflects the considerations underlying the Data and Data Mining Directive (DSM Directive). According to its recitals, the introduction of limitations on text and data mining is intended not only to promote innovation and new technologies but also to protect copyright holders. In this sense, Recital 3, paragraph 4 of the DSM Directive states that "at the same time, a high level of copyright protection must be maintained." Recital 8 of the DSM Directive points out that if "no exceptions or limitations can be invoked, the permission of the copyright holder is required for such actions." Recital 18 of the DSM Directive also emphasizes that "copyright holders may continue to grant licenses for the use of their works or other subject matter which are not covered by the mandatory exception for text and data mining for scientific research purposes provided for in this Directive, nor by the exceptions and limitations applicable under Directive 2001/29/EC."
- 297** A supposedly technology- and innovation-friendly interpretation, which would also consider reproductions in the model as covered by the limitation, is out of the question given the clear wording.
- 298** Contrary to the defendant's assertion, the explanatory memorandum to the Copyright Knowledge Society Act does not indicate that the purpose of the text and data mining exception is to permit all reproductions that occur in conjunction with the actual text and data mining (referring to BT-Drs. 18/12329, p. 40). The Copyright Knowledge Society Act codified Section 60d of the former Copyright Act, which did not regulate text and data mining in general, but only for scientific research. Furthermore, the aforementioned section of the explanatory memorandum explains that automated analysis comprises a multi-stage process in which large volumes of text and data are collected, processed, and automatically searched and analyzed for specific characteristics in digital form. The automated analysis itself, the core of so-called text and data mining, is not an act relevant to copyright law. However, permission is required for the reproduction of copyrighted content (BT-Drs. 18/12329, 40). Furthermore, the defendant's argument fails to clarify why the legislative history of a national law should be relevant to the DSM Directive.
- 299** Likewise, an analogous application of Article 4 of the DSM Directive is not possible, as this requires an unintended regulatory gap and a comparable balance of interests in the regulated and to-be-regulated situations (on analogy in EU law, see Schön, FS Canaris, 2017, 147, 153 ff, 160). Even assuming an unintended regulatory gap because the legislator was unaware of the memorization and the associated permanent copyright-relevant reproduction in the models, a comparable balance of interests is lacking. The limitations on copyright, by permitting preparatory acts of reproduction in text and data mining, establish a situation in which the exploitation interests of the copyright holders are not jeopardized because only information is extracted and the work itself is not reproduced. In contrast, reproductions in the model permanently impair the exploitation of the work and thereby infringe the legitimate interests of the rights holders. Authors and rights holders would be left unprotected by an analogous application of the limitations provision, which does not provide for remuneration for exploitation. This would clearly contradict recital 17 of the DSM Directive, according to which the damage to rights holders caused by the limitations is only "minimal" (see Raue, ZUM 2019, 684, 686). Furthermore, the risk of memorization originates solely from the sphere of model providers as infringers. If the limitation were applied analogously, only the injured rights holder would bear this risk (see Sesing-Wagenpfeil, ZGE 2024, 212, 260).
- 300** bb. Article 53(1)(c) and (d) of the AI Regulation, which entered into force on 2 August 2025 following an infringement pursuant to Article 113(3)(b) of the AI Regulation, does not lead to a different result.

- 301** Article 53(1)(c) of the AI Regulation obliges providers of AI models to implement a strategy for complying with Union copyright law and, in particular, for taking into account any usage restrictions pursuant to Article 4(3) of the DSM Directive. Thus, the provision refers to the DSM Directive and does not, as the defendant argues, define its scope of application (see Dornis, Ginsburg, Lucchi, JZ 2026, 235, 240). This relationship between the provisions is already established in Recital 108 of the AI Regulation, according to which the AI Regulation does not affect the enforcement of the copyright provisions of Union law. Therefore, the provisions of Article 4(3) of the DSM Directive, which already outlined above, remain in effect. This provision provides for a limitation on reproductions for text and data mining in Phase 1 of model training, but not for reproductions in Phase 2.
- 302** According to Article 53(1)(d) of the AI Regulation, providers of AI models must create and publish a sufficiently detailed summary of the content used to train the general-purpose AI model, based on a template provided by the Office for Artificial Intelligence. The defendant argues that this provision implies that creating and publishing such a summary fulfills all requirements for copyright compliance and that licensing of copyrighted works used is unnecessary. The defendant contends that the requirements of Article 53(1)(c) and (d) of the AI Regulation only make sense if AI models could be marketed in the EU even if their providers had not acquired comprehensive licenses for either the training or the output. The defendant's argument is unfounded. The purpose of Article 53(1)(d) of the AI Regulation, as stated in Recital 107 of the AI Regulation, is to facilitate the enforcement of the rights of "parties with a legitimate interest, including copyright holders [...]" (see Hilgendorf/Roth-Isigkeit, AI Regulation/Hofmann-Coombe, 2nd ed. 2025, § 7, para. 84). If the defendant's view were followed, enforcement of rights would not be facilitated, but rather the rights holders would be left without legal recourse. Following the requirements of the AI Regulation, the Commission Communication states that the objective of the summary is to assist rights holders in obtaining relevant information about the content used in training general-purpose AI models and to facilitate the exercise and enforcement of rights under EU law by parties with legitimate interests, including those in the field of copyright (see Commission Communication C(2025) 8311 final, paragraphs 7-9). Contrary to the defendant's view, the list of data extracted from online sources by crawling and scraping, provided in point 2.3 of the Annex to the Communication, does not imply that the mere mention of such data permits its use without regard to any copyrights. The creation and publication of the content used for training, as well as the existence of a mere strategy for complying with EU copyright, does not override copyright for AI model providers, nor does it constitute a limitation.
- 303** Contrary to the defendant's assertion, such a far-reaching restriction of copyright cannot be inferred from the Practical Guidance on the proper application of the obligations of providers of general-purpose AI models (<https://digital-strategy.ec.europa.eu/en/policies/contents-codegpai>). The Practical Guidance is intended to contribute to the proper application of the obligation under Article 53(1)(c) of the AI Regulation and merely sets out requirements that signatories can use to demonstrate the implementation of a copyright policy. It does not state that the implementation of the measures is intended to preclude copyright infringement. Accordingly, recital (a) of the Copyright Chapter of the Practical Guidance states: "adherence to the Code does not constitute compliance with Union law on copyright and related rights."
- 304** cc. If memorization of training data cannot be prevented according to the state of the art, training models with copyrighted training data is not covered by the text and data mining exception (cf. Spindler/Schuster/Kaesling/Pesch, 5th ed. 2026, UrhG § 44b para. 21).
- 305** Contrary to the defendant's assertion, this does not constitute an unconstitutional restriction of a business model approved by EU and German law. A business model that allows a company to exploit the (intellectual) property of others free of charge for its own profit is unknown to these legal systems. Insofar as the introduction of a new limitation covering training with copyrighted works is discussed in legal policy, this is always done in conjunction with remuneration for the copyright holders (for example, IUM Symposium, (Collective) Remuneration Models for AI Use: Paths to a Fair Balance of Interests, ZUM 2026, 153 ff.).
- 306** The required licensing when copyrighted works are used does not infringe upon the defendant's claim that the development and operation of models are protected under fundamental rights pursuant to Article 16 of the Charter of Fundamental Rights of the European Union (CFR) and Article 12 of the German Basic Law (GG).

Rather, it is mandated by Article 17(2) CFR, which explicitly enshrines the protection of intellectual property at the EU level as primary law.

- 307** The defendant further argues that a restriction is inappropriate given the importance of models for numerous legal applications, which are themselves protected by the fundamental rights of users to freedom of information and artistic expression. Firstly, third-party interests can only be considered indirectly when examining the plaintiff's claim against the defendant. Secondly, the defendant is not the sole provider of the technology in question. An injunction does not prevent other, non-copyright-infringing models, or models operated under licensing agreements, from being offered on the market. Furthermore, the defendant can obtain a license to avoid the injunction.
- 308** dd. Furthermore, the requirements for the limitations under Article 4(1) of the DSM Directive and Section 44b(2) of the German Copyright Act are not met in this case, as there was no lawful access to the work. The defendant circumvented the Rolling Cipher protection mechanism in order to download the musical works in question from the internet.
- 309** Access to works is lawful under Article 4(1) of the DSM Directive and Section 44b(2) of the German Copyright Act (UrhG) if, for example, the work is freely accessible on the internet or if the user has access to the digital content via a license (see Recital 18, second subparagraph, sentence 1 of the DSM Directive; German Federal Parliament Printed Paper 19/27426, p. 88). However, this limitation does not apply if a work was obtained by unlawfully circumventing access barriers (see Spindler/Schuster/Kaesling/Pesch, 5th ed. 2026, German Copyright Act, Section 44b, para. 28).
- 310** The defendant unlawfully gained access to download the musical works in question by circumventing the technically designed protection mechanism of the rolling cipher. The works can be listened to on the YouTube platform. However, the rolling cipher's protection mechanism is intended to prevent downloading the works beyond mere listening and viewing. Therefore, the rolling cipher technology constitutes an effective technical measure pursuant to Section 95a Paragraph 2 Sentence 1 of the German Copyright Act (UrhG), which can be used to prevent access to a copyrighted work (see Hamburg Higher Regional Court, November 21, 2024, 5 U 54/23, paragraphs 94, 98). Contrary to the defendant's view, the rolling cipher must be classified as an effective technical measure, even though the defendant succeeded in circumventing it. If a technical measure were 100% effective, circumvention would be completely impossible and legal protection against circumvention would no longer be necessary (cf. Dreier/Schulze/Specht-Riemenschneider/Raue, 8th ed. 2025, Copyright Act § 95a para. 15).
- 311** 5. Die aufgrund einer Verletzungshandlung begründete tatsächliche Vermutung der Wiederholungsgefahr kann nur durch die Abgabe einer ernsthaften, unbefristeten, vorbehaltlosen und strafbewehrten Unterlassungserklärung beseitigt werden (OLG Köln, 06.03.2015, 6 W 15/15 Rn. 3; vgl. BGH 01.12.2022, I ZR 144/21 Rn. 24 – Wegfall der Wiederholungsgefahr III). Eine solche hat die Beklagte nicht abgegeben.
- 312** a. Der verspätete Vortrag der Beklagten, sie halte keinerlei Modellgewichte mehr auf Servern in Deutschland vor (Schriftsatz vom 07.04.2026 S. 51 f., Bl. 1265 f. d. A.), führt nicht zum Wegfall der Wiederholungsgefahr. Die Erklärung ist nicht mit einer strafbewehrten Unterlassungserklärung gleichzusetzen. Zudem ist der Vortrag gemäß § 296a ZPO als unzulässig unberücksichtigt zu lassen. Es handelt sich hierbei um neuen Tatsachenvortrag, der der Beklagten nicht nachgelassen worden ist.
- 313** b. Die Beklagte rügt, die Klägerin habe keine Wiederholungsgefahr hinsichtlich Handlungen Dritter dargetan. Ein derartiger Vortrag ist nicht erforderlich, da die Haftung als Intermediär als minus in der Täterhaftung enthalten ist (vgl. Cepi/Voß/Zigann/Werner, 3. Aufl. 2022, ZPO § 253 Rn. 137).
- 314** III. Der Klägerin steht der im Klageantrag unter Ziffer 1 b) geltend gemachte Unterlassungsanspruch nach §§ 97 Abs. 1 S. 1, 15 Abs. 2 S. 1, 23 Abs. 1 UrhG gegenüber der Beklagten zu. Diese hat die streitgegenständlichen Werke ganz oder teilweise ohne Einwilligung der Klägerin durch das Angebot ihres Modells und im Rahmen ihrer Anwendung zur Generierung von Musik öffentlich wiedergegeben. Zudem steht der Klägerin der im Klageantrag

unter Ziffer 1 c) geltend gemachte Unterlassungsanspruch nach §§ 97 Abs. 1 S. 1, 15 Abs. 1, 2 S. 1, 16 Abs. 1, 23 Abs. 1 UrhG gegenüber der Beklagten zu. Die Beklagte hat die streitgegenständlichen Werke ganz oder teilweise ohne Einwilligung der Klägerin durch die streitgegenständlichen Outputs öffentlich wiedergegeben und vervielfältigt.

- 315** 1. Die Klägerin hat ihre Anträge unter Ziffer 1 b) und c) hilfsweise auf die öffentliche Wiedergabe nach § 15 Abs. 2 S. 1 UrhG gestützt, für den Fall der Abweisung des Antrags der öffentlichen Zugänglichmachung nach § 19a UrhG. Diese innerprozessuale Bedingung ist eingetreten. Die Anträge sind insoweit abzuweisen, da die Klägerin ihre Ansprüche nicht auf eine Verletzung des Rechts der öffentlichen Zugänglichmachung nach § 19a UrhG stützen kann.
- 316** Eine öffentliche Zugänglichmachung als besonderer Fall der öffentlichen Wiedergabe (vgl. BGH 31.07.2025, I ZR 155/23 Rn. 30 – Content Delivery Network) liegt vor, wenn der betreffenden Öffentlichkeit der Zugriff auf den Schutzgegenstand sowohl von Orten als auch zu Zeiten ihrer Wahl ermöglicht wird (vgl. EuGH 26.03.2015, C-279/13 Rn. 25 f. – C More Entertainment; EuGH 16.04.2026, C-496/24 Rn. 31 – Stichting de Thuiskopie). Der Zugriff „zu Zeiten ihrer Wahl“ ist insbesondere bei On-Demand-Diensten und dem Internet gegeben (vgl. SchlAntr. GA Szpunar 15.01.2020, C-753/18 Rn. 19 – SAMI). Vorliegend hat die darlegungs- und beweisbelaste Klägerin nicht hinreichend vorgetragen und bewiesen, dass bei Nutzung des Musikgenerators mit jedem Prompt auf die streitgegenständlichen Musikwerke zugegriffen werden kann. Sind für einen Abruf bis zu 176 gleichbleibende Prompts erforderlich, erfolgt der Abruf nicht zu Zeiten der Wahl des Nutzers. Die Klägerin behauptet zwar, sie habe für die streitgegenständlichen Werke weitere, rechtsverletzende Outputs erhalten und jeweils lediglich dasjenige Output in Anlage K 3 übernommen, das die Rechtsverletzung am plakativsten dokumentiere. Trotz substantiiertem Bestreiten der Beklagten hat die Klägerin diese weiteren Outputs nicht dem Gericht vorgelegt, sondern nur behauptete rechtsverletzende Ausgaben für weitere, nicht streitgegenständliche Musikwerke, eingereicht (Anlagen K 37, K 38).
- 317** 2. Durch das Angebot des Modells, die Anwendung zur Generierung von Musik und durch die streitgegenständlichen Outputs (Anlage K 3) wird in die den Rechteinhabern zugewiesenen Verwertungsrechte nach §§ 15 Abs. 1, 2 S. 1, 16 Abs. 1, 23 Abs. 1 UrhG eingegriffen. Die streitgegenständlichen Musikwerke sind in den Outputs wiedererkennbar.
- 318** a. Jeweils mindestens ein schutzbegründendes Element der streitgegenständlichen Musikwerke ist in den Outputs trotz der bestehenden Abweichungen im urheberrechtlichen Sinne wiedererkennbar.
- 319** aa. Nach § 23 Abs. 1 UrhG liegen urheberrechtliche Verletzungen nicht nur bei einer identischen widerrechtlichen Nachbildung eines Werks vor, sondern auch bei Bearbeitungen oder anderen Umgestaltungen. Der Schutzbereich der Verwertungsrechte erstreckt sich – bis zu einer gewissen Grenze – auch auf vom Original abweichende Gestaltungen (vgl. BGH 07.04.2022, I ZR 222/20 Rn. 54 – Porsche 911). Auch nach dem Unionsrecht betrifft die Frage, inwieweit der Urheber eine Nutzung des Werks in veränderter Gestalt erlauben oder verbieten kann, den Schutzzumfang des in Rede stehenden Verwertungsrechts (vgl. BGH 30.04.2020, I ZR 115/16 Rn. 37 – Metall auf Metall IV).
- 320** Therefore, a distinction between Section 16 of the German Copyright Act (UrhG) and Section 23 of the German Copyright Act is unnecessary, since any adaptation or transformation within the meaning of Section 23 of the German Copyright Act, if physically fixed, simultaneously constitutes a reproduction within the meaning of Section 16 of the German Copyright Act (cf. German Federal Court of Justice (BGH) 16 May 2013, I ZR 28/12 para. 36 – Beuys Action). This complies with EU law: According to Article 2 of the InfoSoc Directive, reproductions are not only identical copies of works, but also include reproductions "in whole or in part" (cf. European Court of Justice (ECJ) 29 July 2019, C-476/17 para. 29 – Pelham). This also applies accordingly to the exploitation right of making available to the public (cf. ECJ 09.03.2021, C-392/19 para. 25 – VG Bild-Kunst; fundamentally Benz, Der Teileschutz im Urheberrecht, 2018, 60 ff).
- 321** The decisive criterion for determining whether the scope of protection for a reproduction or public communication is opened is the recognizability of the original elements of the work in the other object (see ECJ 09.03.2021, C-

392/19 para. 25 – VG Bild-Kunst; see for sound recordings Advocate General Emiliou 17.06.2025 C-590/23 footnote 29 – Pelham [concept ‘pastiche’], ECJ 14.04.2026 C-590/23 para. 56 – Pelham [concept ‘pastiche’]). In copyright law, what is decisive is not the overall impression that distinguishes two works from one another, but rather the details that uniquely personalize them (see Advocate General Szpunar, 8 May 2025, C-580/23, C-795/23, para. 67 – Mio; CJEU, 4 December 2025, C-580/23, C-795/23, para. 87 – Mio). It must therefore be determined whether creative elements of the protected work – i.e., those that express decisions reflecting the personality of its author – have been recognizably incorporated into the allegedly infringing work (see CJEU, 4 December 2025, C-580/23, C-795/23, para. 86 – Mio). The use of a work without consent constitutes such an infringement even if it only concerns a small part of the work, provided that this part as such expresses the author's own intellectual creation (see ECJ 04.12.2025, C-580/23, C-795/23 para. 85 – Mio).

- 322** bb. The plaintiff's argument regarding recognizability is not to be rejected as untimely. The plaintiff's submissions in the brief of March 3, 2026, did not causally and significantly prolong the proceedings. The defendant was granted a period until April 7, 2026, to respond to the new factual submissions in the brief of March 3, 2028. Granting a period for submitting a written submission pursuant to Section 283 of the German Code of Civil Procedure (ZPO) is not a delay caused by late submissions (cf. Greger in: Zöller, Civil Procedure Code, 36th edition, 10/2025, Section 296 ZPO, para. 16). No further delay of the proceedings occurred.
- 323** cc. Applying the aforementioned standards, the musical works at issue (Exhibit K 1) are recognizable in the outputs (Exhibit K 3). When assessing whether a musical work is used in the allegedly infringing material in an altered form that is unrecognizable to the ear, the standard to be applied is the auditory perception of an average music listener (see ECJ 29.07.2019, C-476/17 paras. 31, 36, 37, 39 – Pelham; BGH 30.04.2020, I ZR 115/16 para. 29 – Metall auf Metall IV). The members of the adjudicating chamber belong to the group of average listeners, which is why an expert opinion on the question of recognizability was not required (see Leistner, GRUR 2019, 1008, 1010). The defendant's request for an expert opinion to assess recognizability is therefore denied. In assessing recognizability, the court relied not only on the auditory impression but also on the submitted musical score extracts. The most comprehensive presentation of the notation is found in the expert report submitted as Exhibit K 68; only in a few instances is the sequence of notes transcribed differently by the defendant (Exhibit B 57).
- 324** The melodies and compositions of the songs "Atemlos durch die Nacht," "Rasputin," "Forever Young," "Big in Japan," and the refrain of "Mambo No. 5 A Little Bit Of" are so extensively copied that there is no doubt about the recognizability of the original musical works in the releases. The original elements of the original musical works are also recognizable in the release "Daddy Cool." The releases do not maintain a sufficient distance from the original musical works in question.
- 325** (1) Creative elements of the musical work "Atemlos durch die Nacht" (Annex K 1.1), which are an expression of the author's personality, have been recognizably incorporated into the output in Annex K 3.1.
- 326** The output reproduces not only the melodies, harmonies, and arrangements of the original work, but also the entire compositional dramaturgy that distinguishes the original from standard pop songs. The listener experiences the same emotional arc.
- 327** Unless otherwise stated, in the musical excerpts reproduced below (Appendix K 68), the upper lines represent the original and the lower lines the output.

Verse:

5

Chords: B, B, G#m, B, F#, B, B, B

Pre-Refrain:

13

Chords: B, E, B, F#

17

Chords: G#m, E, B, F#

Refrain:

21 F# E B F# G#m

26 E B F# G#m

Post-refrain:

30 E B F# G#m

Interlude:

34 E B F# G#m E

40 B F# G#m

328 Both the original work and the output contain the four sections: verse, pre-chorus, chorus, and post-chorus. The original dramatic concept, with its steady melodic intensification from section to section, the initially concluding and then circling chord progressions, and especially the unusual intensification of the post-chorus, as well as the diverse motivic correspondences, are adopted in the output. The arrangement of the adapted output essentially mirrors that of the original work. The tempo and key of both pieces are identical. In both pieces, the prominent

bass drum is consistently played in quarter notes. Chords in sequencer eighth notes are also heard. The original figures are simplified, but their musical effect remains unchanged.

- 329** The verse of the output largely adopts the melody. The defining third motif d#-b and the subsequent vocalise-like responses dc# and ed# are not reproduced identically, but their motivic function, position, and rhythmic placement are recognizably replicated. The notated deviations concern individual target notes but do not alter the same concise, catchy opening gesture. The rhythm is identical. Harmonically, the output differs only in the omission of the chord change from B major to g# minor, which minimally alters the overall mood, as g# minor is the relative minor, sharing the same accidentals.
- 330** The pre-refrain of the output version also corresponds to the original with only a few minor deviations. In the output version, the melody and harmonies cadencete to a perfect cadence in B-flat major, instead of leading to the dominant as in the original. The output version lacks the original leap to the octave B-flat, resulting in a different emphasis on the following refrain. The melody rests briefly in the output version, while in the original it builds momentum. Minor rhythmic deviations are discernible, but they do not affect the virtually identical melodic structure. The refrain is audibly announced in both pieces, and the crucial characteristics remain: the output version turns to E major with the same upbeat. In the output version, the extension of the third to a triad, combined with a more metrically urgent upbeat, is continued in a sufficiently similar manner.
- 331** Besonders deutlich ist die Wiedererkennbarkeit im Refrain. Der Refrain des Originals gewinnt seine Individualität aus dem hochenergetischen Zugriff auf den Spitzenton, der anschließenden abwärts gerichteten Melodieführung, der auffallenden Weite des Ambitus und der zielgerichteten Führung zu den Terzen der zugrunde liegenden Akkorde. Der Output enthält lediglich punktuelle Änderungen. Die Melodie ist nahezu identisch, die Harmonie wird übernommen. Der charakteristische Verlauf, die Spannungsgeste und die harmonische Zielwirkung bleiben wiedererkennbar, auch wenn die Arpeggio-Figur (von der Beklagten als Arpeggiator-Figur bezeichnet) auf F#-Dur, und nicht wie im Original auf E-Dur erfolgt. Auch die auffällige Wendung, die Refrainphrase auf g#-Moll enden zu lassen, obwohl eine Dur-Auflösung im Schlager naheläge, wird übernommen. Die aufwärtsgerichtete, akkordbrechende Bewegung, die im Original den Refrain melodisch überbietet und durch einen neuen Spitzenton eine überschäumende Wirkung erzeugt, findet im Output eine erkennbare Entsprechung.
- 332** Die Rolle des Post-Refrains als Steigerung und Ausklang bleibt im Output in hohem Maße vergleichbar. Die Harmoniefolge des Refrains wird im Post-Refrain in beiden Stücken weitergeführt. Anders als das Original wiederholt der Output in seinem Takt 32 die originale Wendung in Takt 30 tonal, statt sich wie das Original melodisch dem unterliegenden Akkord F#-Dur anzupassen, was im Höreindruck lediglich eine geringfügige Abweichung darstellt. Das aufsteigende Motiv führt beim Output zur Terz d# in Takt 31 hinauf. Im Original erklingt hier die Wechselnote c#-b, wobei dieser minimale Unterschied aufgrund der Parallelität im Höreindruck kaum wahrnehmbar ist. Gleiches gilt für das Ende desselben Takts und damit die Phrase, wo im Output die vorherigen Töne c#-b wiederholt werden und im Original die Töne eine Quarte tiefer erklingen.
- 333** Das Zwischenspiel, das als Bridge vor dem letzten Refrain fungiert, ist im Output wiedererkennbar. Der charakteristische melodische Aufgang geht ebenfalls aufwärts und ist synkopisch ausgestaltet. Er ist im Output zwar um eineinhalb Takte vorgezogen, für die akustische Wahrnehmung ist dies genauso wie die präzisen Notenwerte nicht maßgeblich. Ferner ist der Ambitus des Aufgangs ähnlich, im Original eine kleine Sexte und im Output eine Quinte. Das Fehlen des Intros und des kurzen Outros lassen die Wiedererkennbarkeit nicht entfallen.
- 334** (2) Kreative Elemente des Musikwerks „Daddy Cool“ (Anlage K 1.2), die Ausdruck der Persönlichkeit des Urhebers sind, sind wiedererkennbar im Output in Anlage K 3.2 übernommen.
- 335** The particularly creative element of the original is a compositionally sophisticated dialogue principle: the verse poses a question (at the end of the measure, questioning), the chorus provides the answer (at the beginning of the measure, answering). The version replicates this relationship precisely, adopting the melody with only minor deviations. The defining combination of a continuous beat, a prominent bass foundation, short vocal units, and responding choral gestures is found in the adapted version. The listener perceives a simplified but complete version of the original, which fully adopts the original question-and-answer structure.

Verse 1, Variant:

Verse 1, Variant musical notation. The key signature is three flats (B-flat, E-flat, A-flat). The notation consists of two staves. The top staff has a treble clef and the bottom staff has a bass clef. Chords are indicated above the staves: Fm, Eb, Cm, and Fm. The melody is written in the top staff, and the bass line is in the bottom staff. Red highlights are present on the second staff, specifically on the notes G and A in the second measure, and on the notes G and A in the fourth measure.

Verse 2, variant:

Verse 2, variant musical notation. The key signature is three flats (B-flat, E-flat, A-flat). The notation consists of two staves. The top staff has a treble clef and the bottom staff has a bass clef. Chords are indicated above the staves: Fm, Eb, Cm, and Fm. The melody is written in the top staff, and the bass line is in the bottom staff. Red highlights are present on the second staff, specifically on the notes G and A in the second measure, and on the notes G and A in the fourth measure.

Verse 3, variant:

Verse 3, variant musical notation. The key signature is three flats (B-flat, E-flat, A-flat). The notation consists of two staves. The top staff has a treble clef and the bottom staff has a bass clef. Chords are indicated above the staves: Fm, Eb, Cm, and Fm. The melody is written in the top staff, and the bass line is in the bottom staff. Red highlights are present on the second staff, specifically on the notes G and A in the second measure, and on the notes G and A in the fourth measure.

Refrain:

Refrain musical notation. The key signature is three flats (B-flat, E-flat, A-flat). The notation consists of two staves. The top staff has a treble clef and the bottom staff has a bass clef. Chords are indicated above the staves: Fm, Eb, Cm, and Fm. The melody is written in the top staff, and the bass line is in the bottom staff. Red highlights are present on the second staff, specifically on the notes G and A in the second measure, and on the notes G and A in the fourth measure.

Bass riff:

First system chords: Fm, Eb, Cm, Fm (above); Fm, Eb, Bb, Fm (below).
 Second system chords: Fm, Eb, Cm, Fm (above); Fm, Eb, C, Fm (below).

Strings main theme original:

0:20-0:27, 2:48-2:55
 0:28-0:42, 1:14-1:29, 2:00-2:15, 2:25-2:40

String main theme output:

Chords: Fm, Eb, Bb, Fm

String arrangement of the original refrain:

0:59-1:13, 1:43-1:59
 1. 2.

String arrangement for refrain output:

Chords: Fm, Eb, C, Fm

336

The vocal passages are essentially retained and only slightly altered. The verse of the output adopts the stylistic device of musical response and the contrasting pair of phrases characteristic of the original. The phrases of the output exhibit the same alternation between a concise, rhythmically precise opening motif and a responding complement. The response is not note-for-note identical, but it displays precisely the same rhythm, the same

dialogic character, and a similar concluding effect. Thus, the three variants of the output's verse deviate only insignificantly from the original, and the overall effect on the listener remains largely unchanged. The attacked output in the first phrase always leads to the end of the phrase via the note G; as the penultimate note, the attacked output uses the seventh Eb, while the original remains on the fifth C. The chord progression of the first verse variation leads via the Bb major chord to the end on F# major, after which the C major chord is heard instead of the original C minor.

- 337** The refrain is adopted in the output with only minimal changes; the principle of the melodic phrase pair is retained. The refrain is sung by a choir, with the lead vocal altering individual notes and following the underlying C major chord with the note E. This deviation has only a marginal effect on the listener's perception.
- 338** The original distinguishes between verse and chorus by having the verse motifs begin on the downbeat and the final note rhythmically brought forward, while the chorus has a more upbeat rhythm and features a characteristic pause after the first few notes. This rhythmic differentiation between the sections remains discernible in the final version. The variations primarily involve minor shifts, shortenings, or inserted pauses; they do not eliminate the recognizability of the underlying rhythmic organization.
- 339** The distinctive bass riff is reproduced in a reduced form in the output by omitting the passing tones present in the second half of the original measure. The bass notes feature simplifications, rests, and two chord changes. The original chord progression of F minor – Eb major – C minor – F minor initially appears in the output as F minor – Eb major – Bb major – F minor. Subsequently, only minor rhythmic changes are introduced, and the third chord is replaced by C major. These deviations do not impair the recognizability of the piece. The function of the ostinato bass foundation, its position, the repetitive character of the movement, and its connection to the original chord progression are all preserved.
- 340** The string arrangements of the original are not identical in the output, but there is a correspondence. As in the original, strings are used to carry the melody and for the refrain, clearly oriented towards the main theme of the original. The original string lines are characterized by unison, high-pitched, and therefore assertive melodic gestures. The output adopts this function and the sonic character, and especially the short, agile interjections over the same harmonic framework.
- 341** The arrangements are very similar. Both pieces begin with an intro driven by drums and percussion, though the version simplifies the original only slightly. The beats are a quarter-note bass drum, while the version adds handclaps and replaces the original funky guitar with a keyboard. The tempos are almost identical.
- 342** (3) Creative elements of the musical work "Rasputin" (Annex K 1.3), which are an expression of the author's personality, are recognizably incorporated into the output in Annex K 3.3.
- 343** The original demonstrates creativity, particularly through the combination of a verse reminiscent of a folk song with a completely new chorus that shifts to a major key. The output reproduces precisely this combination.
- 344** In the musical excerpts reproduced below (Appendix K 68), where three lines are shown, the top lines represent the original, the middle line the output, and the third lines the melody of the folk song Kâtibim Üsküdar'a Gider Iken.

First part of the verse:

1:02

Suno

Rasputin

Üskadar

Bm Em

Bm Em F#

5 F# Bm Bm Em F# Bm

F# Bm Bm Em F# Bm

Bm Bm Em F# Bm

Second part of the verse:

10 Bm Em F# F# Bm

Bm Em F# F# Bm

Bm Em F# F# Bm

15 Em Bm F# Bm

Em F# Bm

F# Bm

Refrain:



- 345** The chorus of the version exhibits clearly recognizable and audible melodic and harmonic similarities to the original. The rhythm, as in both verses, is identical. The original features the defining shift from the B-flat minor key to a brighter, bluesy B-flat major range, employing the characteristic repeated note at the beginning and a melody that descends linearly from the highest note. The version clearly adopts the rhythmic structure and the repeating opening figure, albeit transposed and partially reharmonized. While the original shifts to B-flat major, the version shifts to D major. Although harmonically weaker because it remains within the same key, this shift has a similarly striking effect, as the D major chord does not appear in the verse. The chorus of the original is characterized by the descending line B-flat-G#-F#-Ed#, which, upon its repetition, begins on the note A. The chorus of the version also follows a descending line, partially overlapping with the original. The identical rhythm temporarily smooths over any inconsistencies in the listening experience caused by the differing melody, ensuring the original remains easily recognizable. The chorus of the version is structured as a second, lower voice to the original melody, which is why the latter remains sonically present and easily identifiable. Similarly, the version replicates the melodic shift from the more folk-like verses and pre-choruses to a harmony in the chorus more akin to blues. This maintains the contrast between the folk-inspired verses and pre-chorus sections and the refrain-like, bluesy major key as a formal and melodic effect.
- 346** The original is characterized not only by individual melodic fragments, but also by the unusual combination of a long instrumental introduction, a ballad-like, staggered structure, and a disco-idiomatic execution. The output adopts this dramatic structure in its essential features: the musical events are similarly prepared, the contrasting formal sections are arranged comparably, and the sequence of verse, undulating pre-refrain, and striking refrain, which was individually shaped in the original, remains recognizable.
- 347** Despite the largely absent instrumental accompaniment such as drums, balalaika riffs, and string riffs, the piece remains recognizable. The output is still identifiable as a simplified version of the original work.
- 348** (4) Creative elements of the musical work “Big in Japan” (Annex K 1.4), which are expressions of the personalities of the authors, are recognizably incorporated in the output in Annex K 3.4.
- 349** The original demonstrates creativity, particularly through the three-step progression of the melody from the verse through the pre-chorus to the chorus, expressing a compositional energy that builds and ultimately releases. Simultaneously, the chord tempo increases, conveying a sense of urgency to the listener. The output replicates this entire development, allowing the listener to experience the same compositional arc, the same logic of intensification, and thus the same emotional effect.

Verse:

Measures 1-4: Dm, Bb, C, A5

Pre-refrain:

Measures 5-8: Dm, Bb, C, Am, Bb, Gm, A5

Measures 9-12: Dm, Bb, C, Am, Bb, Gm, A

Refrain:

The image displays two systems of musical notation. The first system, measures 16-19, consists of a melody in the upper staff and a bass line in the lower staff. Chords are indicated above the upper staff: A, Dm, Bb, C, Am, Bb, and Gm. The second system, measures 20-23, also consists of a melody in the upper staff and a bass line in the lower staff. Chords are indicated above the upper staff: A5, Dm, Bb, C, Am, Bb, Gm, and A. The bass line in the second system features red notes and a triplet of eighth notes.

- 350** The multifaceted melodic development, originating from the central tone sequence F-D, is precisely traced in the output. As in the original, the output includes the extensions of the motif, the large interval leaps in the refrain, the change from the downbeat entry to the upbeat character in the refrain, the acceleration of the chord tempo, and the complex melodic rhythm, including the striking final triplet.
- 351** The borrowing is particularly evident in the verse. The melodic phrases are almost identical, with each individual note finding its exact counterpart. The verse descends in two four-bar phrases; the first motif is repeated and extended with variations, sounding on the second bar. The central element is the sequence F-D. Melodically, the phrases end on a half cadence, once on the tonic and once on the third, which introduces the pre-chorus. This concept is adopted by the verse of the original version, differing only slightly in rhythmic phrasing. The original version thus adopts not only the harmonic structure but also the specific melodic approach, including phrase lengths, upbeat effects, and the connections back to the respective chord root.
- 352** The pre-refrain shows a substantial borrowing. While individual note repetitions, rhythmic intervals, and chord progressions are simplified or rearranged, the characteristic build-up from the linear verse to a downward-expanding transition phrase is retained. In the pre-refrain, the preceding motif of the first measure is taken up and extended downward to the note C. The output adopts this concept with two exceptions: the chord tempo is not yet doubled, and the harmonies of the verse remain, to which the melody adapts.
- 353** In the chorus, the melody is virtuosic and sophisticated, featuring fast passages and large leaps. This structure is largely retained in the output. The central motif, the descending second sequence fe-d in sixteenth notes, reappears at emphasized points in the output and remains rhythmically and metrically consistent, ensuring the original is clearly recognizable. The systematic variation of this motif in the original—repetition, transposition, expansion, and integration into larger interval leaps—is also replicated in the output with barely perceptible deviations. The contrast between the previously more linear melody and the more pronounced interval leaps of the chorus represents one of the original's creative elements, which is readily apparent in the output.
- 354** The output closely resembles the artificial, cool synthesizer sound of the original, which is stylistically defining for the work and significantly contributes to its melancholic, languid mood. Both synthesizer sections, the intro riff and the interlude riff, are not nearly as rhythmically or tonally sophisticated in the output, but are recognizable due to their pitch, length, placement, and sound.
- 355** The absence of the original's groove figures in the output does not change the recognizability of the essential and individual design elements of the original in the output, which overall appears as a slightly simplified version of the original.

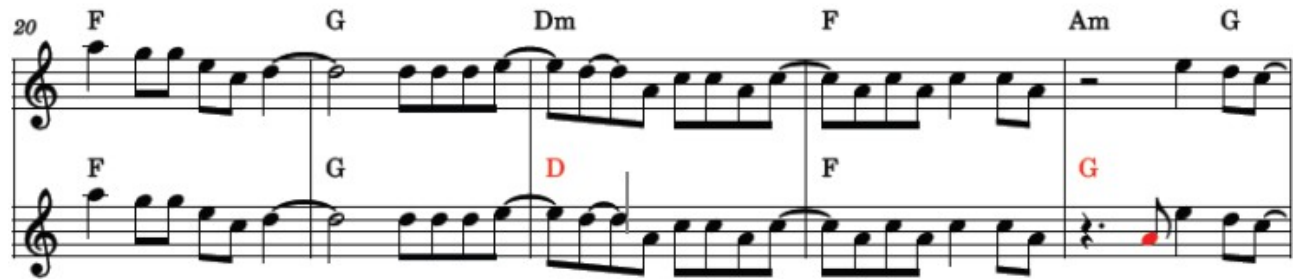
356 (5) Creative elements of the musical work “Forever Young” (Annex K 1.5), which are an expression of the author’s personality, are recognizably incorporated in the output in Annex K 3.5.

357 The creativity of the original is particularly evident in the work’s melodic concept, which is based on a descending third sequence that recurs and is varied in all three sections. This third sequence structures the entire piece as a complex yet memorable melodic framework. The output replicates this concept almost identically. The complex melodic-rhythmic concept of the original, including the use of rests, also reappears in the output.

Verse:

The image displays a musical score for the Verse of the song "Forever Young". The score is written in 4/4 time and consists of four systems of two staves each. The first system (measures 1-5) features a descending melodic line in the right hand, with chords C, G, Am, F, and G indicated above the staff. The second system (measures 6-10) continues the melody, with chords Dm, F, Am, G, and C indicated above the staff. The third system (measures 11-14) shows the melody descending further, with chords Am, F, G, and Dm indicated above the staff. The fourth system (measures 15-16) concludes the verse with chords F, Am, and G indicated above the staff. Red markings are present in the bass staff of measures 10, 13, and 16, highlighting specific notes.

Verse variant:



Refrain:



358

The adoption of the verse melody is particularly striking. The original uses a core motif that is continuously varied tonally and rhythmically within the verses. The output retains the dense eighth-note figures, the motivic interrelations, and the respective phrase structure. The verse melody is structured by a descending sequence of thirds, progressing bar by bar: G ♭ from bar 2 to 3, F ♭ from bar 4 to 5, and E ♭ from bar 6 to 7. At the end of the melody, the lower third of the target note C is added in the sequence C ♭. The output differs from the original only by a single auxiliary note in bar 4; this is a barely perceptible detail without any significant effect. The harmonic tension of the original is also recognizable. The verse melody avoids an obvious conclusion by not ending as expected on the dominant root note G, but instead remaining on A, thus creating the effect of an unresolved,

descending A minor triad. This "melodic question mark" is one of the creative compositional choices of the original and is also found in the final version. In bars 8 and 16 of the final version, the original A minor chord is missing. The original G major is heard at the beginning of each bar in the final version. This is a simplification of the chord progression, which in the original only appears in the refrain in bar 32, and is hardly noticeable to the listener due to the prominent, identical melody. In bar 6 – and correspondingly in all parallel bars of the piece – the final version also features a slightly indistinct D major instead of the original D minor. This difference is hardly noticeable because the melodic and harmonic context does not support this chord. It therefore does not stand out as a major chord. Thus, not only the surface of the melody but also the underlying compositional tension is retained.

- 359** This version of the verse continues to use the previously introduced, bar-by-bar third sequence. However, the note F expected in bar 20 within the sequence is omitted and replaced by a variation of the first phrase. Here, the sixth A is heard as a newly established high note and as a suspension to the high G, a turn that is crucial for the refrain. The output also differs from the original here due to the D major chord in bar 22 and the forward placement of the G major chord at the beginning of bar 24. This has no significant impact on the overall sound, as it is merely a simplification.
- 360** The intimacy intensifies further in the chorus. The original fills the entire eight-bar chord progression motivically, creating a plaintive, emotionally heightened performance through pauses, repeated notes and motifs, and melodic delays. The version recognizably adopts these features, the rhythmic and metrical placement, and the increasing effects of interruption. The chorus takes up the high note A as its climax. The melodic phrases now begin on the second beat, giving the chorus opening a heightened sense of urgency compared to the previous upbeats. The melody is similarly sequenced downwards in thirds. However, a C major triad now forms a firm melodic framework: G in bar 26, E in bar 27, and C in bar 28. This creates the melodic and harmonic stability of the striking chorus opening, which distinguishes itself from the preceding phrases. The output differs from the original in bar 31 only by one tied note: while the original falls a third down to A, the output remains on C. However, both notes are triad notes of the underlying F major chord, which is why the difference is barely noticeable. Furthermore, the overall sonic impression of the output also evokes the artificial, cool synthesizer world of the original, even though the production is not identical.
- 361** The arrangements differ only in tempo. The original is in halftime, while the output version doubles the beat. This makes the original sound calmer and more ballad-like overall. The intro is also doubled in the output version, which is why all the sections begin about 15 seconds later than in the original. Furthermore, the output version omits the original solo trumpet part at the end, at 2:53. However, this does not affect the recognizability of the original compositional features. The characteristic development of the melody from section to section, typical of the original, remains discernible: The verse has a more linear feel, while the subsequent sections increase the melodic tension and develop broader melodic arcs.
- 362** To the extent that the defendant argues that a differently sounding synthetic trumpet slightly varies the refrain vocals instead of presenting an independent melody as in the original, this is not comprehensible to the court. No synthetic trumpet is heard in the original refrain. Contrary to the defendant's assertion, the output also contains no trumpet riff. A riff is a short, rhythmically and melodically concise musical phrase that is repeated. A synthetic trumpet melody of approximately 20 seconds functions as a kind of bridge in the output after the end of the first refrain. This also does not influence the vocals, as the parts do not overlap. To the extent that the defendant argues that the original trumpet solo melody in the outro of the original work does not appear in the output and that the characteristic intro has no equivalent in the output, this does not alter the recognizability of the essential and individual design elements of the original in the output.
- 363** (6) Creative elements of the refrain "Mambo No. 5 A little bit of" (Annex K 1.6), which are expressions of the personalities of the authors, are recognizably incorporated in the output in Annex K 3.6.
- 364** The creativity of the original song relies on a deliberately stereotypical, prolonged enumeration. Insistent repetition is the characteristic rhetorical principle of the piece. It is supported by the bass, which alternates

between only two notes. The output reproduces precisely this stereotypical effect by adopting the melody and alternating bass. Chorus:

5

10

14

Bass figure:

22

Bb7/F Bb7 Bb7/F Bb7 Eb Eb

Bb7/F Bb7b9 Bb7/F Bb7 Bb7/F Bbm

26

Bb7/F Bb7 Bb7/F Bb7 Eb Eb

Eb Eb Eb Cm

- 365** In the refrain of the original, a two-bar upbeat motif is repeated, carried over changing chords, and then varied. This calculated limitation creates the characteristic rhetorical gesture of the refrain. The melody repeatedly leads to the passing note C-Bb. This exact structure is clearly recognizable in the output. The melody of the output also largely corresponds to that of the original. The output adopts the upbeat of five eighth notes, the short motivic phrase formation, the repeated eighth-note figures, and the effect on the second motion. The deviations concern individual notes at the beginning of certain phrases and a final cadence, but they do not alter the defining movement. Minor deviations consist only of the fact that the melody contains the minor sixth Cb in addition to the major sixth C at certain points. The note Cb makes the melody sound, at most, "flat," as if sung imprecisely, without making it stand out as recognizably different from the original. Furthermore, this semitone-altered melody is not consistently implemented. The striking rhetorical principle of repetition remains unchanged in the final product. The stereotypical pattern of a seemingly simple enumeration repeatedly culminating in the same melodic climax is retained. The repeated return to E-flat major throughout the piece results from the repetition of the melody.
- 366** The bass is of central importance to the stereotypical effect of the melody. It, too, alternates continuously between two notes every two bars (alternating bass): first, it jumps from the fifth F to the chord root Bb, and then from the chord root Eb back to its fifth Bb. The note Bb thus remains constant; only the note at the beginning of the bar changes from F to Eb. The alternating note also sounds at precisely this point in the melody and is thus harmonically illustrated. The bass of the output differs from the original in several respects without abandoning its basic principle. The tension between the repeated melody and the changing harmonic foundation is also maintained in the output. The alternating bass note F is transposed down an octave, and a quarter note is added in the second half of each bar. The bass figure of the output—as in the melody—sometimes uses the minor sixth Cb, but sometimes also the major sixth C. A Bb minor chord is heard in bar 25. In the last bar, the bass changes to C with the chord C minor, the relative minor of the original Eb major. These changes are barely perceptible, because the clear auditory connection to the original is maintained by the steady half-bar alternating bass fbb or ebbb with the main sequence Bb7 major – Eb6 major.
- 367** The absence of samples from the Prado recording in the output does not affect recognizability in view of the similarities shown.
- 368** b. Das Angebot des Modells, die Anwendung zur Generierung von Musik und die wiedererkennbaren Outputs in Anlage K 3 stellen Eingriffe in die urheberrechtlichen Verwertungsrechte dar, die der Beklagten zuzurechnen sind.
- 369** aa. Die Beklagten verletzen durch das Angebot des Modells und die Anwendung zur Generierung von Musik das unbenannte Recht auf öffentliche Wiedergabe nach § 15 Abs. 2 S. 1 UrhG.
- 370** Die Vorschrift des § 15 Abs. 2 UrhG enthält keine abschließende, sondern eine beispielhafte Aufzählung der Verwertungsrechte, die dem Urheber vorbehalten sind, und lässt deshalb die Anerkennung unbenannter Verwertungsrechte der öffentlichen Wiedergabe zu (vgl. BGH 21.09.2017, I ZR 11/16 Rn. 23 – Vorschaubilder III). Ein unbenanntes Recht der öffentlichen Wiedergabe ist in richtlinienkonformer Auslegung von § 15 Abs. 2 S. 2 UrhG anzunehmen, soweit Art. 3 Abs. 1 InfoSoc-RL weitergehende Rechte als die in § 15 Abs. 2 S. 2 UrhG benannten Rechte der öffentlichen Wiedergabe gewährt (a.a.O., Rn. 24). Die vorliegenden Wiedergaben fallen in den Anwendungsbereich von Art. 3 Abs. 1 InfoSoc-RL.
- 371** Die unmittelbare öffentliche Wiedergabe nach Art. 3 Abs. 1 InfoSoc-RL hat zwei kumulative Tatbestandsmerkmale, nämlich eine Handlung der Wiedergabe eines Werks und seine öffentliche Wiedergabe (vgl. EuGH 07.08.2018, C-161/17 Rn. 19 ff. – Cordoba; EuGH 16.04.2026, C-496/24 Rn. 28 – Stichting de ThuisKopie). Bei einer lediglich mittelbaren Wiedergabe sind daneben eine Reihe weiterer Kriterien zu berücksichtigen, die unselbständig und miteinander verflochten sind und im jeweiligen Einzelfall in sehr unterschiedlichem Maß vorliegen können (vgl. EuGH 14.06.2017, C-610/15, Rn. 25 – Pirate Bay).
- 372** (1) Die Beklagte begeht die Handlungen der Wiedergabe unmittelbar.

- 373** (a) Das Tatbestandsmerkmal der Handlung der Wiedergabe ist, wie im Erwägungsgrund 23 der InfoSoc-RL hervorgehoben wird, in weitem Sinne zu verstehen und umfasst „jegliche Wiedergabe an die Öffentlichkeit [...], die an dem Ort, an dem die Wiedergabe ihren Ursprung nimmt, nicht anwesend ist“, und somit „jegliche entsprechende drahtgebundene oder drahtlose öffentliche Übertragung oder Weiterverbreitung eines Werks“. Ausweislich der Erwägungsgründe 4, 9 und 10 der InfoSoc-RL ist erklärtes Ziel der Richtlinie, ein hohes Schutzniveau für die Urheber zu erreichen und diesen damit die Möglichkeit zu geben, für die Nutzung ihrer Werke insbesondere auch bei einer öffentlichen Wiedergabe eine angemessene Vergütung zu erhalten (vgl. EuGH 20.04.2023, C-775/21, C-826/21 Rn. 46 – Blue Air Aviation; EuGH 09.03.2021, C-392/19 Rn. 26 – VG Bild-Kunst).
- 374** Der Begriff Handlung der Wiedergabe ist technologieneutral und umfasst jede Übertragung geschützter Werke unabhängig vom eingesetzten technischen Mittel oder Verfahren (vgl. EuGH 17.06.2021, C-597/19 Rn. 46 – Mircom; BGH 21.09.2017, I ZR 11/16 Rn. 23 – Vorschaubilder III), also auch Modelle.
- 375** Durch das Angebot des Modells und die Anwendung zur Generierung von Musik eröffnet die Beklagte die Möglichkeit des Zugangs zu den streitgegenständlichen Werken. Die Beklagte stellt diese Werke über die Benutzeroberfläche zum Abruf bereit. Das Modell ist auf Edge-Servern auch in der Bundesrepublik Deutschland gespeichert, weshalb die Beklagte in das den Rechteinhabern zugewiesene Verwertungsrecht der öffentlichen Wiedergabe nach §§ 15 Abs. 2, 23 Abs. 1 UrhG eingreift. Die streitgegenständlichen Musikwerke werden wiedererkennbar zum Abruf bereitgehalten.
- 376** Bereits die Möglichkeit des Abrufs, die Eröffnung des Zugangs zu dem Werk, stellt eine Handlung der Wiedergabe dar. Die InfoSoc-RL dient insbesondere der Umsetzung des WIPO Copyright Treaty (im Folgenden: WCT). Daher ist Art. 3 Abs. 1 InfoSoc-RL im Einklang mit der Definition des Art. 8 WCT auszulegen (vgl. EuGH 19.12.2019, C-263/18 Rn. 39 – NUV). Das Recht des On-line-Verfügbarmachens in Art. 8 WCT knüpft nicht an einen Abruf an, sondern an das diesem vorgelagerte Anbieten zum Abruf (vgl. EuGH 07.12.2006, C-306/05 Rn. 43 – SGAE; von Lewinski, CR 1997, 438, 440 f.). Ob das Werk tatsächlich abgerufen wird, ist für das Eingreifen des Bereithaltungsrechts unerheblich (vgl. EuGH 14.06.2017, C-610/15 Rn. 31 – Pirate Bay; Schricker/Loewenheim/v. Ungern-Sternberg, 6. Aufl. 2020, UrhG § 15 Rn. 62).
- 377** Ein Bereithalten ist bereits im Moment des Bereitstellens eines geschützten Werks (vgl. BGH 21.09.2017, I ZR 11/16 Rn. 30 – Vorschaubilder III), und vorliegend durch Freischalten des On-line-Zugriffs für die Nutzer, vollendet (vgl. Dornis CR 2024, 830, 833).
- 378** (b) Die Beklagte begeht die Handlungen der Wiedergabe unmittelbar, denn sie eröffnet als Anbieterin des Modells und ihrer Benutzeroberfläche den Zugriff auf die streitgegenständlichen Musikwerke, die in den Modellen memorisiert sind.
- 379** Sie selbst eröffnet der Öffentlichkeit den Werkgenuss und tritt nicht lediglich als Vermittler auf, indem sie beispielsweise nur die Infrastruktur für die Wiedergabehandlung Dritter bereitstellt. Da die Beklagte für den Inhalt ihrer Modelle verantwortlich ist, und diese Inhalte durch einfache ergebnisoffene Prompts wiedergegeben werden, kann die Beklagte in ihrer Tätigkeit nicht mit Betreibern von Hosting-Plattformen oder Bereitstellern von Hard- oder Software verglichen werden. Die Beklagte bestimmt aufgrund des Trainings ihres Modells angesichts der ergebnisoffenen und nicht provozierenden Prompts den Inhalt der Outputs und nimmt so entscheidenden Einfluss auf den Output (vgl. EuGH 13.07.2023, C-426/21 Rn. 66 – Ocilion).
- 380** Nur bei einer lediglich mittelbaren Wiedergabe – die vorliegend nicht gegeben ist – bedarf es nach der Rechtsprechung des Unionsgerichtshofs zusätzlicher Merkmale, um eine Handlung der Wiedergabe zu bejahen. Der Unionsgerichtshof prüft in diesen Fällen eine Reihe weiterer Kriterien, die zu berücksichtigen und die unselbstständig und miteinander verflochten sind (vgl. EuGH 22.06.2021 C-682/18, C-683/18 Rn. 67 – YouTube und Cyando; 20.04.2023, C-775/21, C-826/21 Rn. 53 – Blue Air Aviation; 13.07.2023, C-426/21 Rn. 58 – Ocilion) und fordert insbesondere die zentrale Rolle des Anbieters und der Vorsätzlichkeit seines Tätigwerdens (vgl. EuGH 20.06.2024, C-135/23 Rn. 23 – GEMA; EuGH 14.06.2017, C-610/15 Rn. 26 – Pirate Bay; EuGH 08.09.2016, C-160/15 Rn. 37 – GS Media; EuGH 17.06.2021, C-597/19 Rn. 48 – Microm). Derartige

Verkehrspflichten sind haftungserweiternd, weil sie den Kreis der verantwortlichen unmittelbaren Verletzer um mittelbare Verletzer erweitern. Liegt hingegen wie vorliegend eine unmittelbare Nutzungshandlung vor, ist die Rechtsverletzung indiziert (vgl. Ohly GRUR 2018, 996, 1001), und es bedarf bereits nicht der Prüfung weiterer Kriterien.

- 381** Die Beklagte ist der Ansicht, diese weiteren Kriterien seien stets zu prüfen. Auch bei zusätzlicher Prüfung der weiteren Kriterien ist eine Wiedergabehandlung der Beklagten gegeben. Die Beklagte spielt eine zentrale Rolle bei der Wiedergabe. Nur aufgrund der Memorisierung der streitgegenständlichen Musikwerke sind diese durch einfache Prompts als Outputs abrufbar. Die Beklagte bestimmt die Funktionsweise ihrer Modelle, die Auswahl von Trainingsdaten und die Ausgestaltung des Trainings. Die inhaltliche Ausgestaltung der Outputs ist der Beklagten, die als Anbieterin des Modells verantwortlich ist für die Architektur ihres Modells, zuzuschreiben (vgl. Baumann/Nordemann/Pukas, GRUR 2025, 955, 958 ff). Ohne dieses Tätigwerden könnten die Nutzer das geschützte Werk nicht empfangen (vgl. EUGH 04.10.2011, C-403/08 und C-429/08, Rn. 195 – FAPL/Murphy).
- 382** The defendant also acts with full knowledge of the consequences of its conduct. In assessing intent, all aspects characterizing the situation in question must be considered, allowing for direct or indirect conclusions to be drawn as to whether the operator is acting intentionally in the unauthorized reproduction of this content (see ECJ 22.06.2021, C-682/18 and C-683/18, para. 83 – YouTube and Cyando). The defendant need not have specific knowledge of the individual works made accessible (see BGH 21.09.2017, I ZR 11/16, para. 33 – Preview Images III). Given the algorithm it uses, the defendant controls the stored information and thus plays an active role that can give it knowledge of or control over the content (see ECJ 16.06.2026, C-188/24 and C-190/24, paras. 109 et seq. – WebGroup Czech Republic). The phenomenon of memorization has been known in professional circles, to which the defendant belongs as a provider of models, at least since the publication of the study by Carlini et al. in 2021 (ibid.) on the extractability of training data from neural networks. Using the music generator by inputting well-known song lyrics to generate cover versions is a familiar practice found in public forum posts and social media content. For example, there are videos on YouTube that explain step-by-step how users can create cover versions of their favorite songs using the Suno application (see YouTube videos “AMAZING AI COVERS – Step-by-step SUNO tutorial”, “Turn Famous Songs into Cash with Suno AI Remixes LEGALLY!”, Plaintiff’s brief of December 17, 2025, pp. 66 ff., p. 289 ff. of the file). In February 2025, a user of the Reddit subforum r/SunoAI posted a message expressing surprise at receiving an error message when entering original lyrics into the Suno application (ibid., pp. 68 ff., p. 291 ff. of the file). Furthermore, the defendant deliberately obtained the training data by circumventing the rolling cipher.
- 383** It is also not insignificant that the reproduction by the defendant serves commercial purposes, even if the commercial purpose is not a mandatory requirement (cf. ECJ 20.06.2024, C-135/23 para. 24 et seq. – GEMA).
- 384** (2) The reproductions are made publicly. The concept of publicity contains two aspects: publicity in a quantitative sense and publicity in a qualitative sense (cf. Ohly, GRUR 2016, 1155, 1156).
- 385** (a) Quantitatively, the concept of the public encompasses an indefinite number of potential addressees and, moreover, presupposes a fairly large number of persons (see ECJ 20.06.2024, C-135/23, para. 38 – GEMA; ECJ 13.02.2014, C-466/12, para. 21 – Svensson). The concept excludes an excessively small or even insignificant majority of affected persons. In determining this number, particular consideration must be given to how many persons can have access to the same work simultaneously and successively (see ECJ 20.06.2024, C-135/23, para. 39 – GEMA).
- 386** In the present case, this requirement is met: The defendant’s user interface with access to the models can, in principle, be used by any person who has internet access and an internet-enabled device and registers free of charge. Thus, a sufficiently significant number of people have access to the disputed musical works memorized in the models. Simultaneous communication with multiple listeners is not necessary.
- 387** (b) Qualitatively, it is required that a protected work be communicated to a ‘new public’ using a specific technical process that differs from those previously used or otherwise, i.e., to a public that the rights holder had not already

considered when authorizing the original public communication (see ECJ 20.06.2024, C-135/23, paragraph 43 – GEMA).

- 388** Even assuming the legality of making content available on one website, a new audience is created if the content is posted on another website without the copyright holder's consent (see Federal Court of Justice, 02 June 2022, I ZR 140/15, para. 75 – YouTube II). The copyright holder did not consider the users of other websites, or indeed all internet users, when reproducing their work on a website (see Spindler/Schuster/Kaesling/Wiebe, 5th ed. 2026, Copyright Act § 15, para. 19). This applies all the more so when the work is used not only on another website, but also through a model.
- 389** bb. The reproduction of the musical works in dispute by the outputs in Exhibit K 3 constitutes an infringement of the unnamed right of public performance under Section 15 Paragraph 2 Sentence 1 of the German Copyright Act (UrhG). The defendant directly reproduces the musical works in dispute to the public by means of the outputs (Exhibit K 3).
- 390** (1) The defendant acts directly. The outputs are attributable to systemic causes, while the content of the outputs is attributable to the defendant as the provider of the models (see Baumann/Nordemann/Pukas, GRUR 2025, 955, 958 et seq.). The defendant used the musical works in dispute as training data for its models, prepared the training set, and carried out the training, resulting in the memorization of the training data. The defendant is also responsible for the architecture of its models. The prompts that led to the outputs in Exhibit 3 were simple and did not prescribe any content. The input of multiple prompts by the plaintiff, between 4 and 176 per piece of music in dispute, does not lead to a different result, because the simple and open-ended prompts remained unchanged. The repeated input of the same prompt in independent runs did not steer the output in a particular direction. If the same prompt is entered again, the input remains the same. The model parameters are also identical. Therefore, the conditional probability distribution from which the output is generated is fundamentally the same. Apart from the general musical styles, the plaintiff made no musical specifications whatsoever. Such simple and open-ended prompts do not manipulate the output as a result; they do not involve multiple modified inputs within the same prompt that deliberately steer or otherwise influence the output through evaluative or suggestive input. It is not the prompts in dispute, but rather the models operated by the defendant that determine the specific content of the outputs.
- 391** Even if one were to classify the defendant's act of reproduction as merely indirect, the additional criteria of the defendant's central role, the intentionality of her actions, and a commercial activity are, as described, met.
- 392** (2) The outputs were broadcast publicly.
- 393** A quantitative public is reached; for this purpose, it is sufficient if an indefinite number of potential recipients and, moreover, a considerable number of people can have access to the protected work simultaneously and successively (see ECJ 20.06.2024, C-135/23, paras. 38 et seq. – GEMA). As already explained, access to the defendant's application is open to all who register. Thus, a sufficiently significant number of people have access to the musical works in dispute that are memorized in the models.
- 394** The number of identical prompts at issue does not preclude the existence of public access. It merely precludes the assumption that a consistent prompt always leads to an exactly identical infringement. Given the popularity of the defendant's music generator, which recorded 2.2 million visitors in one month in 2024, public access exists even if only every fourth or 176th input generates a piece of music substantially similar to the original.
- 395** The public sphere is also present in a qualitative sense. As already explained, the users of the model represent a new audience.
- 396** cc. The musical works in dispute are reproduced by the defendant through the outputs in Annex K 3 pursuant to Section 16 Paragraph 1 of the German Copyright Act (UrhG).
- 397** (1) The outputs are stored in the users' working memory and during their generation on edge servers, which are also provided by the defendant in the Federal Republic of Germany, and are thus reproduced in accordance with

Section 16 of the German Copyright Act (see BGH 06.10.2016, I ZR 25/15 Rn. 38 – World of Warcraft I).

- 398** (2) The defendant shall be liable for the reproductions.
- 399** According to the German Federal Court of Justice (BGH), liability for reproduction remains governed by the criminal law principles of perpetration and participation; the liability principles of EU law do not apply unless there is an infringement of the right of public communication (BGH 23.10.2024, I ZR 112/23 para. 73 – Manhattan Bridge). The producer of the reproduction is the person who technically accomplishes the reproduction and thus the physical recording (ibid., para. 68).
- 400** The defendant is to be classified as the perpetrator because it exercises control over the reproduction process through the outputs. The defendant provides the models for which the musical works in question were selected as training data and with which they were trained. It is responsible for the architecture of the models and the memorization of the training data. The defendant has not lost control over the act to the user as the prompter, as might be the case if the outputs were triggered by the user. The outputs in question were generated by simple, open prompts. Such prompts do not manipulate the output as a result; they do not involve multiple modified inputs within the same prompt that deliberately steer or otherwise influence the output. Thus, it was not the prompts in question, but rather the models operated by the defendant that determined the specific content of the outputs. The mere triggering of reproduction by entering a prompt does not lead to the user being considered a reproducer.
- 401** Contrary to the defendant's view, the model does not merely provide the equipment necessary for recording a private copy, as is the case with internet radio recorders, where the user is considered the producer of the copy (see Federal Court of Justice, 27 June 2024, I ZR 14/21, para. 29 – Internet Radio Recorder II). The defendant's model is not a recording device. Nor is the defendant comparable, given the fundamental design of its model, to the operators of sales platforms, where the platform bears no responsibility for the content of the sales offers (see Federal Court of Justice, 23 October 2024, I ZR 112/23, para. 72 – Manhattan Bridge).
- 402** Even if, in light of the full harmonization of copyright law by Article 2 of the InfoSoc Directive, one were to turn to the case law of the Court of Justice of the European Union (CJEU) regarding the allocation of liability (see Baumann/Nordemann/Pukas, GRUR 2025, 955, 957), the defendant remains liable. The CJEU has thus far only addressed the attribution of reproductions in the context of the applicability of the private copying exception, focusing on whether an indefinite number of recipients were granted access to a reproduction of a protected work for commercial purposes (see CJEU 13 July 2023, C-426/21, para. 46 – Ocilion). When examining the application of the limitations on copyright, the Court of Justice of the European Union, like the German Federal Court of Justice (BGH) in this constellation (see BGH 05.03.2020, I ZR 6/19 para. 22 – Internet Radio Recorder I), relies on a normative assessment. According to these standards, the defendant is also to be classified as a producer of the reproductions. It grants various users access to the musical works in question using simple, open-ended prompts and thus produces reproductions on a significant scale.
- 403** (3) The interference with the reproduction right by the outputs is not covered by the limitation provision under Section 44a of the Copyright Act.
- 404** Temporary or incidental reproductions may be permitted under Section 44a of the German Copyright Act (UrhG) if they have no independent economic significance and pursue one of the purposes specified in Section 44a UrhG. Regardless of whether the reproductions were indeed only temporary, which the plaintiff disputes, they nevertheless have economic significance. Furthermore, none of the purposes specified in Section 44a UrhG are present. Therefore, the scope of application of this limitation is not met.
- 405** (a) The storage in RAM and on the edge servers has independent economic significance. The defendant can generate profits from the commercial exploitation of the temporary copies (see ECJ 17 January 2012, C-302/10, para. 54 – Infopaq II). Storage on edge servers enables low latency when accessing the stored content and, due to the short response time, allows users to listen to output even while it is being generated. They do not have to wait several minutes for the generation process to complete. This constitutes independent economic significance

for the defendant. According to the defendant, this is a function that meets the general expectation of online service users for fast access to online content. Therefore, it is important for the defendant to offer this function in order to meet user expectations, improve the user experience, and retain customers, which in turn increases profits. The copies in dispute are therefore not only those that serve data transport and are subordinate to the actual act of use.

406 (b) Furthermore, the reproductions do not serve any of the purposes specified in Section 44a No. 1 or No. 2 of the German Copyright Act (UrhG). Section 44a No. 1 UrhG concerns transmission within a network between third parties by intermediaries and therefore does not even cover storage in the recipient's working memory, especially since the information may not be altered as in the present case. The reproduction is also not lawful under Section 44a No. 2 UrhG. According to recital 33 of the InfoSoc Directive, "use [...] should be deemed lawful insofar as it is authorized by the rights holder or is not restricted by law (see ECJ 26.04.2017, C-627/15, para. 65 – Stichting)." In the present case, the defendant did not lawfully offer the musical works in question for download, but rather obtained them by circumventing the technical protection device of the rolling cipher. Furthermore, the outputs in question infringe the right of communication to the public. The reproductions accompanying the outputs therefore do not constitute lawful use of the work under Section 44a No. 2 of the German Copyright Act (see ECJ 26.04.2017, C-527/15, paras. 69, 70 – Stichting; Dworschak in Fromm/Nordemann, 13th ed., German Copyright Act, Section 44a, paras. 17, 28).

407 cc. In view of the given infringements of the exploitation acts of reproduction and public performance and the resulting claim for injunctive relief, it can remain open whether the outputs in dispute constitute a distortion within the meaning of Section 14 of the Copyright Act.

408 3. The defendant cannot rely on the liability privilege of Article 6 DSA.

409 Regardless of whether the provision is even applicable to claims for injunctive relief (see Frankfurt Higher Regional Court, March 4, 2025, 16 W 10/25, para. 13 et seq.; Munich Regional Court I, May 28, 2026, 26 O 869/26, para. 28), the regulation in Article 6 of the Data Protection Act (DSA) limits the liability of intermediary services that store information provided by users. Article 6 DSA does not apply to the service provider's own content (cf. Spindler/Schuster/Kaesling/Volkman, 5th ed. 2026, DSA Art. 6, para. 1, 13). The Court of Justice of the European Union made the distinction based on whether the operator's role is neutral, whether their conduct is purely technical, automatic and passive, meaning that they have no knowledge of or control over the content they store, or whether, on the contrary, the operator plays an active role that enables them to gain knowledge of or control over this content (see CJEU 22 June 2021, C-682/18, C-683/18, para. 106 – YouTube and Cyando and CJEU 16 June 2026, C-188/24 and C-190/24, paras. 109 et seq. – WebGroup Czech Republic, each referring to the predecessor provision in Article 14 of the E-Commerce Directive).

410 Contrary to the defendant's assertion, the defendant does not merely provide a technical, content-neutral infrastructure platform. The defendant offers the model and application for generating music. Furthermore, the defendant created the outputs in dispute, which were generated by its model. The preceding prompts were simple and open-ended and did not dictate or provoke the content of the outputs. The outputs are therefore the defendant's own information, with respect to which it plays an active role, and not third-party information from users that the defendant merely passively transmits. The defendant's view that the special provision for online marketplaces in Article 6(3) of the GDPR can be interpreted to mean that hosting service providers are only liable for adopted content within their scope of application cannot be accepted. The concept of "provided information" in Article 6(1) of the GDPR must be interpreted autonomously under EU law, as the Court of Justice of the European Union has ruled. The Court of Justice of the European Union has not defined the appropriation of content as a criterion.

411 IV. The granted right to information regarding the infringements committed within the territory of the Federal Republic of Germany is based on Sections 101 Paragraph 1 of the German Copyright Act (UrhG) and 242 of the German Civil Code (BGB). The defendant infringed copyright on a commercial scale. As already explained, the request for information is sufficiently specific. The requested information is suitable and necessary to enable the plaintiff to quantify its claimed damages. It is not apparent why the workload required to provide this information

should be exceptionally excessive (cf. Fromm/Nordemann/Czchowski, UrhG 13th ed. 2024, Section 101, marginal note 94).

- 412** V. The defendant is liable to the plaintiff for damages in principle pursuant to Section 97 Paragraph 1 of the German Copyright Act (UrhG) for the infringements that occurred within the territory of the Federal Republic of Germany. In the absence of the information necessary to quantify the claim, liability for damages can be established pursuant to Section 256 of the German Code of Civil Procedure (ZPO). The further requirement of fault, in addition to the already established copyright infringements, is met. According to the strict standards applicable to copyright law (see Dreier/Schulze/Specht-Riemenscheider, 8th ed. 2025, UrhG § 97 Rn. 78 with further references), the defendants acted at least negligently. It is the usual duty of care when dealing with copyrighted works to carefully examine the authorization to use the work and to obtain certainty thereabouts (ibid.). As already explained, the defendant was aware of the memorization of training data in its models and thus the possibility of copyright infringements through its models.
- 413** VI. The plaintiff may, pursuant to Section 103 Paragraph 1 of the Copyright Act, demand the publication of the favorable operative part of the judgment at the expense of the defendant after the judgment has become final.
- 414** The plaintiff has a legitimate interest in publication, which is necessary in addition to the existing copyright infringements by the defendant. The legal assessment of whether a model infringes copyright is relevant not only to the parties to the dispute, nor only to all authors represented by the plaintiff as a collecting society, but to all authors whose works have been used for training models (see Federal Court of Justice, 18 December 1997, I ZR 79/95, para. 33 et seq. – Beatles Double CD). No disproportionate disadvantage that could arise for the defendant from publication has been alleged, nor is any apparent. In any case, only the publication of the judgment against the defendant is requested. Scheduling the publication in a weekend edition in a quarter-page format is necessary to ensure that the general public is informed.
- 415** VII. A claim for reimbursement of pre-litigation legal fees exists pursuant to Section 97a Paragraph 3 Sentence 1 of the Copyright Act in the amount of EUR 5,049.70.
- 416** The plaintiff rightfully issued a cease-and-desist letter to the defendant on January 17, 2025 (Exhibit K 4) regarding the copyright infringements that had occurred. With a value in dispute of EUR 600,000.00, the claim amounts to EUR 5,049.70. The application of a 1.3 business fee plus a flat-rate expense allowance is not objectionable.
- 417** The infringement is precisely described in the cease-and-desist letter. The alleged unlawful conduct is presented with such specificity that it was clear to the defendant what was being charged against her in factual and legal terms (cf. Federal Court of Justice, 11 June 2015, I ZR 19/14, para. 70). The affected protected works are listed in the table included in the cease-and-desist letter. Due to the attached password-protected download link to the infringing audio files, it should have been sufficiently clear to the defendant which generated musical pieces were the subject of the cease-and-desist letter. Furthermore, the plaintiff was not obligated to specifically identify the use of particular parts of the works. The infringing acts are described with sufficient specificity in the cease-and-desist letter. In any case, the sender of the cease-and-desist letter is not required to disclose all details. If the debtor has some doubt as to whether a legal infringement has occurred, he is obliged in good faith to point out these doubts and, if necessary, to demand evidence appropriate to the circumstances for the alleged legal infringements (cf. BGH 11.06.2015, I ZR 19/14 Rn. 70).
- 418** VIII. The granted claim for payment of default interest is justified from 30.07.2025 in accordance with §§ 291 sentence 1, 2, 280 para. 1 BGB.
- 419** IX. Claims asserted under US law based on infringements that occurred in the territory of the USA are available to the plaintiff under the applicable law.
- 420** 1. The plaintiff asserts claims for injunctive relief, disclosure, and damages under US law, which, according to the principle of territoriality, is applicable to the infringements occurring within the territory of the USA. However, for

the assessment of the plaintiff's standing to sue for these claims, German law remains applicable according to the relevant contractual statute.

- 421** a. According to Article 8(1) of the Rome II Regulation, the law of the state for which protection is claimed applies to non-contractual obligations arising from an infringement of intellectual property rights. This also applies to the law of the United States of America, since the Rome II Regulation is classified as a so-called uniform law (*loi uniforme*) pursuant to Article 1 in conjunction with Article 3 of the Rome II Regulation (see Junker, NJW 2007, 3675, 3677). The Regulation thus refers not only to the law of an EU Member State, but also to that of third countries. According to the principle of the country of protection, the existence of the right, the content and scope of the protection, as well as the elements of the infringement and the legal consequences thereof, must be assessed (see German Federal Court of Justice (BGH) 02.06.2022, I ZR 140/15, para. 32 – YouTube II).
- 422** b. The question of the plaintiff's standing to sue, which concerns the contractual transfer of rights of use, is not determined according to the principle of the country of protection, but according to the law governing the contract (see Emiliou, SchlAntr. GA 23.04.2026, C-176/25 para. 52 et seq. – Steizer; BGH 24.09.2014, I ZR 35/11 para. 41 – Hi Hotel II).
- 423** According to Article 4(2) of the Rome I Regulation, the contract is governed by the law of the state in which the party that is to perform the characteristic obligation of the contract has its habitual residence. The plaintiff, as a collecting society, is not only entitled but also obligated to perform the exploitation. Therefore, its performance is characteristic of the contract (see MüKoBGB/Martiny, 9th ed. 2025, Rome I Regulation, Article 4, para. 255 with further references), and German law is applicable.
- 424** 2. The result of the previously conducted evaluation of the evidence is to form the basis for the subsumption of the facts under US law. The decisive factor for the evaluation of the evidence is generally the *lex fori*, i.e., the law of the court hearing the case (see MüKoZPO/Prütting, 7th ed. 2025, ZPO § 286 para. 20). It is undisputed that the defendant used the musical works in dispute as training data for its model, and it is equally undisputed that the defendant's system produced the submitted outputs. In the context of the evaluation of the evidence pursuant to § 286 para. 1 ZPO, the court concluded, in light of the model's technical functionality and the correspondence between the training data and the outputs, which were generated by simple, open-ended prompts, that the training data was memorized in the model (see above under B. II. 3. a.).
- 425** 3. Pursuant to Section 293 of the German Code of Civil Procedure (ZPO), the trial judge must ascertain the applicable foreign law *ex officio*, taking into account not only foreign statutory law but also foreign legal practice as expressed in the case law of the courts of the country in question (see Federal Court of Justice (BGH), 23 April 2002, XI ZR 136/01, para. 17). According to Section 293, sentences 1 and 2, of the ZPO, the court has discretion to either take evidence or rely on its own research (*ibid.*). In doing so, the court must also consider aspects of procedural efficiency and cost minimization (see Cep/Voß/Rinken/Thomas, 3rd ed. 2022, ZPO § 293, para. 10).
- 426** In the present case, the relevant US law can be determined without the assistance of an expert. The defendant's request for an expert opinion to determine the applicable law is therefore denied. The court's internal research into US copyright law was conducted primarily based on the text of the US Copyright Act, namely 17 USC (Chapter 1 as Exhibit K 8, Chapter 5 as Exhibit K 45) and the relevant case law of US courts (the court decisions cited by the parties are found in Exhibits K 9, K 31, K 50, K 57, B 30, B 51, B 55, B 68, B 70, and B 72). The court also had access to the library of the Max Planck Institute for Innovation and Competition in Munich, which holds numerous court decisions, scholarly works, and databases on US copyright law. Based on these various written sources, the court was able to determine the relevant US legal framework. The subsumption of the present facts under the established law is the inherent task of the courts and, in this case, of the adjudicating chamber. If foreign legal practice provides no guidance for the interpretation and application of the foreign law in the specific case, the German judges can and must also undertake an interpretation independently (*cf.* MüKoZPO/Prütting, 7th ed. 2025, ZPO § 293 para. 58).

- 427** X. The plaintiff is entitled to the injunction sought in the statement of claim under point 1 a) aa) pursuant to 17 USC § 502(a).
- 428** Pursuant to 17 U.S.C. § 502(a), any court with jurisdiction over civil actions under this title may, in principle, issue definitive injunctions on the terms it deems appropriate to prevent or stop copyright infringement. The prerequisites for such an infringement are met: Copyright infringement exists due to the reproductions made and can be asserted by the plaintiff (see *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)). The defendant reproduced the copyrighted musical works in question for training purposes and during training. These infringing acts are not covered by the fair use doctrine, given the generated and substantially similar outputs. In exercising its discretion, the panel should reasonably grant the claim. In detail:
- 429** 1. The musical works at issue in Annex K 1 are works protected under US law.
- 430** a. According to 17 U.S.C. § 102(a), copyright protection exists for "original works of authorship fixed in any tangible medium of expression." According to this provision, three criteria must be met for a work to qualify as original: it must be the work of an author, it must be original, and it must be fixed, with any tangible medium of expression being acceptable (see *Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 12 (2021)). An original work requires "creative spark," although the required degree of creativity is extremely low (see *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991)). Decisions regarding the selection and arrangement of elements can be sufficient (*ibid.*, p. 348). The requirements are therefore low: "Although copyright protects only original expression, it is not difficult to meet the famously low bar for originality" (*Skidmore v. Led Zeppelin et. al*, No. 15-56057 (9th Cir. 2020), p. 33).
- 431** Musical works as copyrighted works are explicitly listed in 17 USC § 102(a)(2). With regard to musical works, common, generally accepted, or genre-typical elements of a piece, such as certain chord progressions, are not protectable in themselves; however, a protected musical work may exist if a sufficient number of these elements are selected and arranged in a way that warrants protection because it is creative (see *Skidmore v. Led Zeppelin et al.*, No. 15-56057 (9th Cir. 2020) p. 33; *Gray et al. v. Perry et al.*, No. 2:15-CV-05642-CAS-JCx (CD Cal. 2020) p. 9).
- 432** Therefore, the requirements for the existence of a copyrighted musical work under US law with regard to the necessary creativity are no higher than those under European Union law. Reference can thus be made to the explanations already given regarding the determination of the creativity of the musical works in dispute.
- 433** b. According to 17 USC § 201(a), copyright initially belongs to the author of the work. The authors in dispute, who are foreign nationals in the USA, may invoke copyright protection for their published works pursuant to 17 USC § 104(2).
- 434** 2. The plaintiff has standing to sue pursuant to 17 USC § 501(b).
- 435** a. As already examined, the plaintiff holds the exclusive rights of exploitation to the works "Atemlos," "Rasputin," "Daddy Cool," and the refrain of the piece "Mambo No. 5 A Little Bit Of" by virtue of the supplementary agreements concluded with the composers or their legal successors and agents, which are to be assessed according to the conflict of laws rules governing the contract and thus German law. The plaintiff also has standing to sue for the works "Forever Young" and "Big in Japan," for which only two of the three co-authors signed the supplementary agreements. Under US copyright law, co-authors can sue each other separately for an injunction and can also transfer this right to a legal successor (see *Tempo Music Investments, LLC v. Miley Cyrus et al.*, Case No. 2:24-cv-07910-DDP (BFMx) (CD Cal. 2025) pp. 4-5).
- 436** b. The plaintiff's standing to sue is not precluded by the reciprocal agreement it concluded with the Harry Fox Agency. The plaintiff substantiates its claim that it did not grant the Harry Fox Agency any rights of representation. The Harry Fox Agency offers the option of accepting direct licensing offers from US licensees via opt-in, whereby the Harry Fox Agency acts solely as a service provider and grants a license on behalf of the plaintiff (see opt-in licensing offer in Exhibit K 49). Insofar as the defendant asserts that it suspects the Harry Fox Agency is

exercising the online rights, its speculative claim is not supported by the plaintiff's 2024/2025 yearbook (Exhibit B 12) submitted by the defendant for this purpose.

437 3. By training its models in versions 3.5 and 4 with the musical works in dispute, the defendant made reproductions in violation of 17 USC §§ 106(1), 101.

438 The right to reproduce is set out in 17 USC § 106(1):

"17 USC § 106 – Exclusive rights in copyrighted works Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords".

439 According to the regulation, the copyright holder generally has the exclusive right to reproduce the copyrighted work as copies or sound recordings.

440 In 17 USC § 101, the term "sound recording" is legally defined as "material objects in which sounds [...] are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." The wording is broad, encompassing the possibility of fixing sounds by any method now known or later developed, and including perception directly or otherwise with the aid of a machine or device.

441 Also in 17 USC § 101, the term "sound recording" is legally defined as "a work is 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." This definition is very broad, as a work is considered "fixed" if its embodiment in a copy or phonorecord is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. However, it contains a striking limitation: the copy or phonorecord must be made by the author or at their behest. To make the definition applicable even in cases of copyright infringement, this limitation of "by or under the authority of the author" is ignored in practice (see Lemley, Cooper, 41 BTLR (2026) 1, 22).

442 The reproduction right under 17 USC §§ 106(1), 101 is infringed if there is reproduction in the factual and legal sense (cf. Balganesch, 4 Nimmer & Nimmer, Nimmer on Copyright (2026) § 13D.02[B]).

443 a. The defendant downloaded the works in dispute from the internet and made further audio recordings, among other things for processing and preprocessing (e.g., conversion and formatting) and for creating backups and copies of the training data. In doing so, the defendant created audio recordings that are subject to the copyright protection under 17 USC §§ 106(1), 101, which is granted to the copyright holder. It is irrelevant whether the audio recordings were created directly from the original files or, as the defendant argues, originated from other file formats and are therefore copies of copies.

444 According to the provisions of 17 USC § 101, converting a work into other data formats, as well as creating additional backup copies, constitutes a copy within the meaning of the provision (see Sega Enterprises Ltd. v. Accolade Inc., 977 F.2d 1510, 1518 f. (9th Cir. 1992)), which also applies to sound recordings (see Goldstein, II Goldstein on Copyright (2024) § 7:12 with further references). US copyright law does not require that copies be directly intelligible to humans in order to constitute copyright infringement (see Ard, 5 Nimmer & Nimmer, Nimmer on Copyright § 20.05[C][1]). Given the broad wording of the provision, which allows the work or sound recording to be fixed by any method now known or later developed, and made perceptible either directly or by means of a machine or device, so-called intermediate copies, which themselves only contain an "unfinished representation of the work", are also covered by the reproduction right under 17 USC § 106(1) (see Sega Enterprises Ltd. v. Accolade Inc., 977 F.2d 1510, 1518 f. (9th Cir. 1992)).

445 b. Whether the defendant made further sound recordings during the training of the model by encoding the memorized musical works in dispute in the weights of its parameters within the meaning of 17 USC § 101 is not in dispute here (see Lemley, Cooper, 41 BTLR (2026) 1, 28 et seq.; US Copyright Office, Artificial Intelligence and

Copyright, Notice of Inquiry, 88 Fed. Reg. 60, 876 (Aug. 30, 2023), <https://www.copyright.gov/ai/docs/Federal-Register-Document-Artificial-Intelligence-and-Copyright-NOI.pdf>, p. 29).

“Since model weights are lists of numbers that do not change (barring further training), they are fixed, and because memorized works can be generated and displayed using software, those works can be perceived or reproduced with the aid of a machine.”).

- 446** c. The defendant cannot rely on the principle of *de minimis non curat lex* in its defense. According to the *de minimis* test, an infringement is generally only precluded if the infringer's use is "so meager and fragmentary that the average audience would not recognize the appropriation" (*Fisher v. Dees* 794 F.2d 432, 434 (9th Cir. 1986)). The present use as training data cannot be classified as so meager and fragmentary that the average audience would not recognize the appropriation, since it leads to outputs in which the reproduced training data in dispute is clearly recognizable.
- 447** 3. The defendant cannot defend her reproductions during training with the fair use doctrine.
- 448** US copyright law provides a key limitation, the fair use doctrine, which allows for permissible infringements of copyrighted rights in order to balance creative work with its availability (see, fundamentally, Förster, *Fair Use*, 2008, 9 ff.). In its most recent decision of May 18, 2023, the Supreme Court stated the following regarding fair use: "This balancing act between creativity and availability (including for use in new works) is reflected in one such limitation, the defense of 'fair use'." (*Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 US 508, 526 f. (2023)).
- 449** The doctrine was codified in the Copyright Act of 1976 (for historical development see *Campbell v. Acuff-Rose Music, Inc.*, 510 US 569, 576 f. (1994)) as follows:
- "17 USC § 107 · Limitations on exclusive rights: Fair use Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use of the factors to be considered shall include -
- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - (2) the nature of the copyrighted work;
 - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such a finding is made upon consideration of all the above factors." To decide whether a use of a work is covered by the fair use doctrine, four factors must therefore be examined: (1) the purpose and nature of the use, taking into account whether the use is commercial or serves non-profit educational purposes, (2) the nature of the copyrighted work, (3) the extent and significance of the part used in relation to the copyrighted work as a whole, and (4) the effect of the use on the potential market for or value of the copyrighted work.
- 450** a. When examining whether a use is covered by fair use, the courts examine the four factors and weigh them in light of the purpose of copyright: "All are to be explored, and the results weighed together, in light of the purposes of copyright" (*Campbell v. Acuff-Rose Music, Inc.*, 510 US 569, 576 f. (1994)).
- 451** aa. For the first factor, the specific use must be identified and its purpose and nature examined, as well as the question of whether the use is commercial.
- 452** The examination must first determine the use that took place in its specific context: "The fair use provision, and the first factor in particular, requires an analysis of the specific 'use' of a copyrighted work that is alleged to be 'an

infringement'. [...] The same copying may be fair when used for one purpose but not another." (Warhol, 598 US 508, 533 (2023)).

- 453** In its Warhol decision, the Supreme Court identifies the points of examination to be considered in the first factor (see Warhol, 598 US 508, 531-533 (2023)) and clarifies that when considering the purpose and nature of the use, its transformative nature alone is not decisive (as was the prevailing case law since Campbell until the decision; see Balganesch, Menell, 47 Colum. JL & Arts 413, 448 (2024)). Rather, it must be examined whether there is a justification for the use, whereby justification is a gradual phenomenon that interacts with the question of commercial use. If commercial use exists, this is an additional element of the first factor that must be considered (see Warhol, 598 US 508, 531 (2023)).
- 454** A broader justification exists, in particular, when the use serves a further purpose, whereby the transformative nature of the use may need to be examined. A narrower justification exists when the use is reasonably necessary to achieve the user's new purpose; for example, in the case of a reproduction of a work made to comment on or criticize the work (see Warhol, 598 US 508, 5312 (2023)). Furthermore, the court refers to its Google v. Oracle decision and states that the reverse engineering in that case—the disassembly of a finished product to identify its design elements, functionality, and material properties—was justified in the given context (see Warhol, 598 US 508, 533 fn. 8 (2023)). In the case of musical pieces, such a justification may exist if the use constitutes a parody of the original (cf. Campbell v. Acuff-Rose Music, Inc., 510 US 569, 579 f. (1994)).
- 455** The Supreme Court states (Warhol, 598 US 508, 531-533 (2023)):
- "[T]he first factor also relates to the justification for the use. In a broad sense, a use that has a distinct purpose is justified because it furthers the goal of copyright, namely, to promote the progress of science and the arts, without diminishing the incentive to create. [...] In a narrower sense, a use may be justified because copying is reasonably necessary to achieve the user's new purpose. [...] In sum, the first fair use factor considers whether the use of a copyrighted work has a further purpose or different character, which is a matter of degree, and the degree of difference must be balanced against the commercial nature of the use. If an original work and a secondary use share the same or highly similar purposes, and the secondary use is of a commercial nature, the first factor is likely to weigh against fair use, absent some other justification for copying."
- 456** bb. The second factor to be examined concerns the type of works used, with some works being closer to the core of copyright protection than others. "This factor calls for recognition that some works are closer to the core of intended copyright protection than others, with the consequence that fair use is more difficult to establish when the former works are copied" (Campbell v. Acuff-Rose Music, Inc., 510 US 569, 586 (1994)). Thus, fact-based works are less protected than fiction or fantasy, as there is a greater need for the dissemination of information (cf. Harper & Row Publishers, Inc. v. Nation Enterprises, 471 US 539, 563 (1985)).
- 457** If the infringing use primarily involves the appropriation of facts, ideas, or motifs rather than the original parts of the work, the second factor can weigh in favor of the user. Such a situation is assumed in reverse engineering (see Sega Enterprises Ltd. v. Accolade Inc., 977 F.2d 1510, 1526 (9th Cir. 1992)), where object code contained on a data carrier is converted into source code in order to examine the functionality of a computer program through this decompilation and to develop one's own compatible (competing) products.
- 458** The second factor to be examined is whether the original work has already been published, since fair use is practically impossible for unpublished works (see Harper & Row Publishers, Inc. v. Nation Enterprises, 471 US 539, 553, 564 (1985)).
- 459** cc. Regarding the third factor of the fair use doctrine, courts consider the quantity and significance of the work (or part thereof) used in relation to the work as a whole. They must examine whether "the quantity and value of the materials used" [...] are reasonable in relation to the purpose of the copying" (Campbell v. Acuff-Rose Music, Inc., 510 US 569, 586 (1994)). Even the use of a work in its entirety may be permissible if necessary for the purpose in question (see Google LLC v. Oracle America, Inc., 593 US 1, 29 f. (2021)). With regard to the act of copying, courts focus decisively on whether the copied work is accessible to the public or is merely involved in a technical,

invisible backend process. If it is a so-called intermediate copy that is not publicly accessible, even extensive reproduction may be covered by fair use (cf. *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F. 3d 596, 602 f. (9th Circ. 2000)).

- 460** dd. The fourth factor examines the impact of the use on the potential market or the value of the copyrighted work. The courts must therefore conduct an economic impact assessment (see de la Durantaye, GRUR 2025, 1550, 1555). The Supreme Court relates the first and fourth factors as follows: “While the first factor considers whether and to what extent an original work and secondary use have substitutable purposes, the fourth factor focuses on actual or potential market substitution” (*Warhol*, 598 US 508, 536 Fn. 12 (2023)).
- 461** In this context, it is not only necessary to consider the impact of the specific infringing act at issue, but also to examine whether such acts of use can generally have a relevant negative effect on the market for the original work: “It requires courts to consider not only the extent of market harm caused by the particular actions of the alleged infringer, but also ‘whether unrestricted and widespread conduct of the sort engaged in by the defendant . . . would result in a substantially adverse impact on the potential market’ for the original” (*Campbell v. Acuff-Rose Music, Inc.*, 510 US 569, 590 (1994)).
- 462** A negative effect is particularly evident when the challenged use produces a substitute good that replaces the work, as is the case with commercial duplication: “when a commercial use amounts to mere duplication of the entirety of an original, it clearly ‘supersedes the objects,’ [...] of the original and serves as a market replacement for it, making it likely that cognizable market harm to the original will occur. [...] But when, on the contrary, the second use is transformative, market substitution is at least less certain, and market harm may not be so readily inferred” (*ibid.*).
- 463** b. In the *Bartz* and *Kadrey* cases, two courts of first instance in the USA ruled on the application of the fair use doctrine to reproductions in connection with the training of AI models.
- 464** aa. In the *Bartz* case (*Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417 (ND Cal. 2025)), authors sued over the use of their books in connection with training a language model. In its decision, the court differentiated between various acts of use, namely copies made for training the model and copies made by the defendants to create a central library for themselves. Furthermore, with regard to the provenance of the books, it distinguished between the legal acquisition of the books in question and the downloading of pirated copies.
- 465** (1) The defendant had purchased books and made copies for the training of its model. The court classifies this as fair use, particularly because the training of language models is spectacularly transformative (*Bartz*, *ibid.*, p. 11). However, he clearly and repeatedly points out that this classification is only possible because no reproduction of the books is found in the outputs (*Bartz*, *ibid.*, pp. 11, 25 f., 28), which the plaintiffs had not alleged. His assessment would be different if the outputs were infringing. He states: “Here, if the outputs seen by users had been infringing, Authors would have a different case. And, if the outputs were ever to become infringing, Authors could bring such a case. But that is not this case.” (*Bartz*, *ibid.*, p. 12). In this specific case, the outputs did not replace the works, but merely competed with them, which is why the fourth factor does not argue against fair use (*Bartz*, *ibid.*, p. 28). It is not sufficient for an output to generally compete with copyrighted works; rather, a direct negative market effect with regard to the specific work in question is required (*ibid.*).
- 466** (b) In order to create their own central library, the defendants had on the one hand lawfully acquired physical books and on the other hand downloaded pirated digital copies of books free of charge from the Internet.
- 467** (aa) With regard to the purchased books, the court considers the reproduction effect achieved by converting the printed book into a digital format to be transformative (*Bartz*, *ibid.*, p. 13). The digitization enables “storage and searchability,” whereby storage and searching affect only the physical and not the creative properties of the work (*Bartz*, *ibid.*, p. 15). In particular, factors one and three support fair use, the fourth factor is neutral, and the second, the nature of the works used, argues against it due to the expressive power of the books (*Bartz*, *ibid.*, p. 24). In examining the factors, the court emphasizes that the conversion to another digital format constitutes fair use because these digital reproductions are used exclusively for the internal library, replace the physical works,

and are not shared with, shown to, or sold to third parties outside the defendant (Bartz, *ibid.*, first factor p. 16 f., third factor p. 27; fourth factor p. 29).

- 468** (bb) The court, however, classifies the copies of the books obtained unlawfully as pirated copies, which, according to the facts of the case, had not (yet) been used for training purposes but rather served to create a central library, as clearly infringing: "But the person who copies the textbook from a pirate site has already infringed, full stop." (Bartz, *ibid.*, p. 18). The court doubts whether it would even be possible to classify pirated copies, which could have been legally acquired elsewhere, as necessary and fair use for a subsequent use. There is no ruling according to which a pirated copy of a book that could have been purchased is necessary for a discussion, research, or the creation of a language model (*ibid.*). Although in this specific case the pirated copies were not used for training purposes, and the court did not have to rule on this aspect, it clarifies: "Such piracy of otherwise available copies is inherently, irredeemably infringing even if the pirated copies are immediately used for the transformative use and immediately discarded." (Bartz, *ibid.*, p. 19). In discussing the fourth factor, the court states that the stolen pirated copies significantly reduced the value of the authors' works (Bartz, *ibid.*, p. 30). Following the ruling regarding the pirated copies in the class action lawsuit, the parties reached a settlement, which was approved on July 20, 2026 (Case 4:24-cv-05417-AMO, Document 680).
- 469** bb. The Kadrey case (Richard Kadrey v. Meta Platforms, Inc., No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025)) also concerns a lawsuit by authors against the operator of a language model that had been trained on the authors' books. The defendant had obtained the books from various sources, including an illegal source, a so-called shadow library. When using adversarial prompting, a specific method to make training data recognizable in the outputs, the system displayed up to 50 words and punctuation marks from the books in question in its outputs.
- 470** In its ruling, the court states in both the introduction and the summary that training models is generally illegal, since copyright law primarily serves to maintain an incentive for people to create artistic and scientific works. The fair use doctrine typically does not apply when the creators' ability to earn money from their works is significantly reduced, and generative artificial intelligence has the potential to flood and undermine the market (Kadrey, *ibid.*, pp. 1-2, 39).
- 471** However, he should not decide based on general considerations, but should orient himself to the specific case in which the plaintiffs had not presented any evidence of the weakening of the market, which is why he had no choice and had to decide in favor of the defendant (Kadrey, *ibid.*, pp. 4 f., 40).
- 472** In explicit contrast to the earlier Bartz case, the court ruled in the Kadrey case that the illegal acquisition of copyrighted books as training data did not automatically preclude the use of the books from the possibility of fair use. The examination of fair use, the court reasoned, is precisely to determine whether the reproduction in question is lawful (Kadrey, *ibid.*, p. 19). The illegal acquisition raises the question of bad faith, although it is unclear whether this question is of decisive importance (*ibid.*). The purpose of copyright is to encourage activities that are beneficial to public education. Good faith, on the other hand, considers the morality of the reproducer and not whether the newly created work serves the public (Kadrey, *ibid.*, p. 20, fn. 7).
- 473** In examining the first factor, the court classifies the use of the system as training data as "highly transformative," since the system can be used to generate various texts and perform a wide range of functions, whereas the books in question are intended for entertainment or education (Kadrey, *ibid.*, p. 16). The defendant trained the model to produce texts in specific styles. However, style is not protected by copyright. The outputs contained no more than 50 words and punctuation marks (Kadrey, *ibid.*, p. 19). In a footnote, the court notes that a model trained to produce works similar to those with which it was trained is less transformative (Kadrey, *ibid.*, p. 19, footnote 6). Although the defendant's system is also available under a free license, it was developed for commercial purposes (Kadrey, *ibid.*, p. 19).
- 474** The second factor speaks in favor of the plaintiffs, whose works are highly expressive. The defendant cannot rely on the concept of the intermediate copy, since the reproductions in question directly appropriate the creative

expression of the books (Kadrey, *ibid.*, p. 23). Even if the model only learns statistical relationships, these relationships are precisely a product of creative expression (Kadrey, *ibid.*, p. 24).

- 475** Regarding the third factor, the court also points out that no substantial part of the copyrighted work is made accessible to the public in the outputs. The reproduction of the entire books is therefore reasonably necessary, since language models perform better when trained on high-quality material (Kadrey, *ibid.*, p. 25).
- 476** The judgment focuses primarily on the examination of the fourth factor. The court states that, in model training, plaintiffs could argue in at least three different ways that reproductions by the defendants harmed the market for their works: (1) The system reproduced their works or the outputs were substantially similar, which is why the works or their substitutes were freely available through the system. (2) The unauthorized reproductions could prevent or harm the development of a licensing market for model training. (3) Even if the system did not produce substantially similar works, it created sufficiently similar ones that competed with and indirectly replaced the originals (Kadrey, *ibid.*, p. 26).
- 477** In this specific case, the first two possibilities did not apply. Even with adversarial prompting, only 50 words and punctuation marks reappeared in the outputs. The plaintiffs' expert witness admitted that the defendant's system did not reproduce a significant percentage of the plaintiffs' works. Even with the reproduction of various text excerpts totaling 16%, the Second Circuit in the Google Books case ruled that this did not pose a significant risk —although this could be assessed differently if a quantitatively small portion concerned the core of the work (Kadrey, *ibid.*, p. 27, fn. 11). "If Llama [i.e., the defendant's system] could be used to generate significant portions of the plaintiffs' books or text so similar to their books as to be infringing in its own right, that would threaten the market for the books because people would read those outputs instead" (Kadrey, *ibid.*, pp. 26–27).
- 478** To its apparent regret, the court must also reject the third possibility (Kadrey, *ibid.*, p. 32). Fair use is an affirmative defense, a plea, which is why the defendant bears the burden of proof for the absence of substantial market damage. But if, as in the present case, evidence of a lack of market damage is presented, and the plaintiffs offer no empirical evidence to the contrary, the fourth factor must be weighed in favor of the defendant (Kadrey, *ibid.*, p. 34). While in certain cases, particularly if an identical copy of the work is available through the infringing reproduction, market damage can be inferred, as there is then a competing substitute, such a case does not exist here; no substantial part of the works is being made available (Kadrey, *ibid.*, p. 35).
- 479** c. The defendant cannot invoke fair use when applying the presented standard of review.
- 480** The present case differs significantly from that in the Bartz and Kadrey methods. While in both methods the training data was not made available to the user in the outputs, or not substantially so, here, after inputting prompts that contained only the lyrics but no musical specifications, outputs were generated that are substantially similar to the original works.
- 481** The circumstances of the cases are comparable with regard to the unlawful provenance of the respective works. While the defendant in the Bartz case made copies of pirated copies and the defendant in the Kadrey case used a shadow library to make copies, the defendant in the present case gained access to the works in dispute by extracting them while circumventing YouTube's Rolling Cipher protection.
- 482** aa. The examination must focus on the actual use that took place (see Warhol, 598 US 508, 533 (2023)). The defendant downloaded the works in dispute from the internet and made further sound recordings, including for processing and preprocessing (e.g., conversion and formatting) and for creating backup and security copies of the training data. In doing so, the defendant created sound recordings that are subject to the copyright protection under 17 USC §§ 106(1), 101. Furthermore, the defendant trained its model with the musical works in dispute. The defendant's music generator produced the outputs presented. Even if, as argued by the defendant, infringements of rights – if they occur at all – were extremely rare and therefore did not change the fundamental character and purpose of the reproductions made by the defendant during the training, in the present case these infringements of rights have not only occurred and are insignificant, but are serious and therefore the core of the legal dispute.

483 bb. The first factor weighs against the defendant.

484 Undoubtedly, the training of a model like the defendant's, which can generate new musical pieces, can, generally speaking and as decided by the two courts of first instance, constitute a transformative use that pursues a broader purpose and is therefore covered by the fair use doctrine: new musical pieces are created using a novel technology. In the present case, however, there is no justification for the specific use, as required by the Supreme Court under the first factor (see *Warhol*, 598 U.S. 508, 531-533 (2023)). The defendant's application did not generate new musical works, but rather, with the outputs in dispute, produced sound recordings that bear a substantial resemblance to the musical works in dispute with which the defendant trained its model. The musical works were therefore not transformed (cf. Lee, Cooper, Grimmelman 72 J. Copyright Soc'y (2025) 251, 366: "When a model memorizes a work and generates it verbatim as an output, there is no transformation in content. Even a nonexact generation can still be nontransformative."). Furthermore, the defendant's use was commercial within the meaning of 17 U.S.C. § 107(1). If such commercial use exists, and the original and the copy pursue the same or a very similar purpose, the first factor generally argues against a finding of fair use (cf. *Warhol*, 598 U.S. 508, 532 f. (2023)). Moreover, the defendant circumvented the Rolling Cipher protection mechanism to obtain the data in dispute and thus acted in bad faith. In detail:

485 (1) Contrary to the requirements of 17 USC § 107(1), the defendant's use of the musical works in dispute for training her model is neither different from the original nor does it serve any further purpose.

486 (a) As a result of the reproduction of the musical works in dispute as training data and their memorization in the model, the defendant's music generator generated the outputs in dispute, as already established in the context of the evaluation of evidence to be assessed according to the *lex fori* (see above B. XI. 2.). These infringe the exploitation rights assigned to the copyright holder under the applicable German copyright law.

487 Even if applicable to the outputs, US law would classify them as infringing material. Since the outputs bear substantial similarities to the music tracks used to train the model, they would constitute unlawfully reproduced sound recordings under 17 USC §§ 101, 106(1).

488 (aa) The Supreme Court has not established more precise criteria for the so-called substantial similarity to be examined for copyright infringement (also discussed under the term improper appropriation, Goldstein, III Goldstein on Copyright (2019) § 9.3.1). The courts of the 2nd Circuit, which other judicial districts have adopted (see Balganes, Nimmer & Nimmer, Nimmer on Copyright (2026) § 13D.02[D][1][2]), after establishing the incorporation of copyrighted elements into the new work (protected expression test), examine the existence of substantial similarity based on "the response of the ordinary lay hearer" (*Arnstein v. Porter* 154 F.2d 464, 468 f. (2d Cir. 1946)) without consulting an expert (audience test). The courts of the 9th Circuit also conduct a two-stage test—even in the case of musical works—when examining reproduction in the legal sense (see Balganes, Nimmer & Nimmer, Nimmer on Copyright (2026) § 13D.02[D][3]): The first test (extrinsic test) compares the objective similarity of the The second test (intrinsic test) examines the similarity of the expression from the perspective of an ordinary and reasonable observer without the assistance of an expert (see *Skidmore v. Led Zeppelin et al.*, No. 15-56057 (9th Cir. 2020) p. 23; *Williams et al. v. Gaye et al.*, No. 16-55626 (9th Cir. 2018) p. 17), and decides whether a given similarity is substantial.

489 The standard – which, in effect, corresponds to the two-stage examination procedure of the US courts (see Balganes, Nimmer & Nimmer, Nimmer on Copyright (2026) § 13D.02[D][3]) – is thus identical to the requirements for recognizability under European Union law. There, too, it is determined whether protectable creative elements of the protected work have been recognizably adopted (see ECJ 04.12.2025, C-580/23, C-795/23 para. 86 – Mio). When examining whether a musical work is used in a recognizable manner, the auditory understanding of an average music listener must also be considered (see ECJ 29.07.2019, C-476/17 para. 31 et seq. – Pelham; BGH 30.04.2020, I ZR 115/16 para. 29 – Metall auf Metall IV). Given the recognizability of the protectable design elements of the musical works in question in the outputs, as already explained, and their recognizability to an average listener, there is therefore a substantial similarity.

- 490** (bb) Contrary to the defendant's view, the present infringement is not excluded because the outputs were generated by the defendant's music generator in response to prompts from the plaintiff.
- 491** The generation of the outputs is attributable to the defendant, who is responsible for the training data, the architecture, and the training of its model. This substantial contribution by the defendant to the generation of the outputs, given the simple, open-ended prompts used by the plaintiff, constitutes a direct infringement (see Goldstein, III Goldstein on Copyright (2022) § 8.1.1.1 with further references).
- 492** The plaintiff's input of multiple prompts, ranging from 4 to 176 per piece of music in dispute, does not lead to a different result, as the simple and open-ended prompts remained unchanged. Aside from the general musical styles, the plaintiff did not provide any specific musical guidelines. Such prompts do not manipulate the output; they are not multiple modified inputs within the same prompt that deliberately steer or otherwise influence the output. Therefore, there are no prompts that dictate the generated music in the outputs. It is not the prompts in dispute, but rather the models operated by the defendant that determine the specific content of the output. The number of prompts merely precludes the assumption that a consistent prompt always leads to an exactly identical infringement.
- 493** (b) The defendant's use of the musical works in dispute for training its model is neither distinct from the original nor does it serve any further purpose. There is no justification for the defendant's specific use. Justification exists, in particular, if the challenged use serves a further purpose, whereby the transformative quality to be examined here is a gradual phenomenon (see Warhol, 598 US 508, 532 (2023)).
- 494** The defendant did not merely reproduce the works in question for training purposes. She did not limit herself to analyzing the works, but rather memorized them in the model in such a way that her application generates infringing outputs. These outputs and the copyrighted works from which they were generated serve the same purpose: they are essentially similar musical works that can be listened to. The defendant enables users of her music generator to enjoy the works by making the generated music available in the outputs and permitting their storage and publication, allowing users and other third parties to listen to them at a later time and also to further reproduce and edit them. Thus, the outputs in question do not communicate anything new or different from the original, nor do they enhance the usefulness of the originals. They do not serve the educational purpose of the users of the defendant's music generator and do not involve any further creative development. The given deviations in the outputs do not change the character of the musical pieces in dispute; in particular, they do not add anything significantly new to the works.
- 495** In determining whether a further purpose exists within the meaning of 17 USC § 107(1), the decisive factor is not the subjectively intended purpose pursued by the defendant with the reproductions in question, but rather the objective purpose of the use (see Warhol, 598 US 508, 545 (2023)). The defendant's subjective assertion that she intended to create a software product with a completely different character than the musical works through the training, and not to make the musical works available to the public, is therefore irrelevant.
- 496** The present situation is not comparable to that underlying the proceedings concerning preview images. While those cases also involved instances where the original works – in the form of preview images – were made public, the preview images, according to the decisions rendered in those cases, served a different purpose than the original images: whereas the original images served the aesthetic enjoyment of their viewers, the preview images, according to the decisions in those proceedings, were merely pointers to the websites where the originals could be accessed (see Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146 (9th Cir. 2007); Leslie Kelly v. Arriba Soft Corporation, 336 F.3d 811 (9th Cir. 2003)).
- 497** (c) Nor is there a justification in the strict sense, because the specific use is not reasonably necessary to achieve the defendant's new purpose (see Warhol, 598 US 508, 532 (2023)). The defendant has not even explained why the sound recordings of the musical works in dispute were necessary to train its model. The generated outputs also do not constitute a parody that could justify the use.

- 498** (2) The distinction between commercial and non-commercial use is already found in the wording of 17 USC § 107(1), which states that the distinction is whether such use is of a commercial nature or is for nonprofit educational purposes.
- 499** The defendant does not use the copies for charitable (educational) purposes. While the defendant does offer limited free access, comprehensive access to its services is only available through paid subscriptions.
- 500** In *Harper & Row v. Nation Enterprises*, the Supreme Court, when examining commercial use, focused on whether the user intended to exploit a copyrighted work without paying the usual price (see *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 US 539, 562 (1985)). Even under this standard, commercial use is present, because the defendant obtained free access to the musical works in question by circumventing the Rolling Cipher's protection mechanism.
- 501** (3) The defendant argues that it has implemented safeguards that prevent its application from becoming a music streaming application with respect to existing works. The case is therefore comparable to the Bartz and Kadrey cases. In particular, in the Kadrey case, the court deemed the safeguards implemented there to be successful, even though the plaintiff's expert witness was able to make the model reproduce small excerpts of the plaintiffs' works in 60% of cases. However, the cases are not comparable: In the present case, the defendant generated infringing outputs. In the other cases, no such outputs were generated. In the Bartz case, the court found that no infringing outputs had been presented (*Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417 (ND Cal. 2025), p. 12: "Here, if the outputs seen by users had been infringing, Authors would have a different case."). In the Kadrey case, the court states that the plaintiff's expert witness testified that the model in question was unable to produce "any significant percentage" of the books at issue (*Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) p. 12). The classification could be different if infringing outputs were present: "By contrast, consider an LLM that was designed to be used to create work substantially similar to those on which it was trained, or to create works that competed with the original works without being substantially similar." (Kadrey, *ibid.*, p. 18, fn. 6).
- 502** (4) Contrary to the defendant's view, it cannot be assumed that the plaintiff produced and authorized the outputs, thus precluding infringement. The plaintiff bases its claim on the reproduction of the musical works for training purposes. It is undisputed that the defendant made these reproductions. The outputs themselves are not being challenged by the plaintiff under US law; they merely serve as evidence of the reproductions previously made by the defendant.
- 503** Furthermore, the court decisions cited by the defendant do not support its argument (this issue was not decided in *Concord Music Group et al. v. Anthropic PBC*, *Concord Music Group et al. v. Anthropic PBC*, No. 24-cv-03811-EKL (ND Cal, March 26, 2025), p. 6; the case *Richmond v. Weiner*, 353 F.2d 41 (9th Cir. 1965), concerns the relationship between co-authors and not the generation of outputs by third parties; such a scenario is also not the basis of the decision *United States Naval Institute v. Charter Communications Inc.*, 936 F.2d 692). In any case, the plaintiff's claim challenges the reproduction of the musical works for training purposes. It is undisputed that the defendant made these reproductions.
- 504** (5) Given the lack of justification for the specific use and its commercial nature, the first factor already speaks against the defendant. If the manner in which the training data was obtained were also considered, this too would clearly speak against the defendant. The defendant obtained the musical works in question only by circumventing the Rolling Cipher protection mechanism through stream ripping. Such provenance prevented the judge in the Bartz case from classifying the training of AI with pirated copies as transformative (see *Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417 (ND Cal. 2025) p. 18). In contrast, the court in the Kadrey case ruled that unlawful conduct should not be taken into account at this point (see *Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) p. 20 fn. 5).
- 505** It is important to distinguish between the unlicensed use of a work and the unlawful acquisition of a work, which must be distinguished from this. The following saying is cited to illustrate this: "It may be fair use to copy from a

book to write a review; it is not fair use to steal the book to make the copy.” (Dornis, Ginsburg, Lucchi, JZ 2026, 235, 243).

- 506** (a) In its examination of the first factor of fair use, the Supreme Court clearly considers unlawful procurement to be to the detriment of the defendant. In the Harper & Row case, the defendant knowingly used an obviously purloined manuscript as the basis for its reproduction (see Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 US 539, 564 (1985)):

“Also relevant to the ‘character’ of the use is ‘the propriety of the defendant’s conduct.’ 3 Nimmer § 13.05[A], at 13-72. ‘Fair use presupposes “good faith” and “fair dealing.”’ Time Inc. v. Bernard Geis Associates, 293 F.Supp. 130, 146 (SDNY 1968), quoting Schulman, Fair Use and the Revision of the Copyright Act, 53 Iowa L.Rev. 832 (1968). The trial court found that The Nation knowingly exploited a purloined manuscript. app. to Pet. for Cert. B-1, C-20-C-21, C-28-C-29. Unlike the typical claim of fair use, The Nation cannot offer up even the fiction of consent as justification. Like its competitor newsweekly, it was free to bid for the right of abstracting excerpts from ‘A Time to Heal.’

Fair use ‘distinctions between “a true scholar and a chiseler who infringes a work for personal profit.”’ Wainwright Securities Inc. v. Wall Street Transcript Corp., 558 F.2d, at 94, quoting from Hearings on Bills for the General Revision of the Copyright Law before the House Committee on the Judiciary, 89th Cong., 1st Sess., ser. 8, pt. 3, p. 1706 (1966) (statement of John Schulman)”.

- 507** In contrast, case law and legal literature sometimes argue that moral considerations such as the user’s good or bad faith should not be taken into account in the fair use test, since fair use is a common law construct where considerations of equity are irrelevant (see Richard Kadrey v. Meta Platforms, Inc., No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) p. 20 fn. 5; Leval, 103 Harv. L. Rev. 1105, 1126: “Copyright protection is not withheld from authors who lie, cheat, or steal to obtain their information.”; see the discussion in Förster, Fair Use, 2008, 52 fmwN). These should instead be examined within the framework of equity, for example in the case of the legal consequences of a copyright infringement (cf. Goldstein, II Goldstein on Copyright, § 10.2).

- 508** The fair use test determines whether a work not licensed by the user may be used royalty-free under the fair use doctrine. However, fair use is generally not intended to legitimize unlawful acquisition such as theft. Consequently, the Supreme Court classifies the fair use doctrine as an “equitable rule of reason” (Sony Corp. of America v. Universal City Studios, Inc., 464 US 417, 448 (1984)), a rule of reason derived from equity. A dichotomy between common law and equity is difficult to achieve because: “Fair use is messy: contextual, fact-intensive, and, above all else, requires reconciling statutory interpretation and equitable judgment” (Balganesh, Menell, 47 Colum. JL & Arts 413, 448 (2024)). Thus, this complex test primarily requires reconciling statutory interpretation with equitable judgment. Accordingly, the unlawful procurement of the original does not automatically lead to an exclusion of the fair use doctrine, but such conduct must be considered as a significant point in the examination of the first factor.

- 509** (b) The defendant’s acquisition of the music works in question as training data, through the deliberate circumvention of the implemented technical protection mechanism of the rolling cipher, is clearly detrimental. The defendant used so-called stream-ripping techniques to extract the music works from the YouTube platform despite the rolling cipher. This is a protection measure implemented by the platform to prevent the downloading of audio and video content. Two separate URLs are used for each audio and video file: a visible URL for the website where playback takes place and free streaming is possible, and a second URL, invisible to the user, for the actual storage location of the audio and video files. The platform generates this second URL using a complex algorithm that changes periodically. This technology makes it more difficult for internet users to permanently download content from the platform.

- 510** By acting in violation of 17 USC § 1201(a)(1)(A), which states: “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.” The defendant circumvented access control in order to use copyrighted works for profit without paying for them. Courts have repeatedly ruled that YouTube’s rolling cipher constitutes a technical measure within the meaning of 17 USC § 1201(a)(1)(A) that

controls access (see *Yout, LLC v. Recording Industry Association of America, Inc. et al.*, 633 F.Supp.3d 650, 662 ff. (2022); *Cordova v. Huneault et al.*, No. 5:25-cv-04685-VKD (ND Cal. 2026), pp. 14 ff.; *UMG Recordings, Inc. et al. v. Kurbanov et al.*, No. 1:18-cv-957 (ED Va. Dec. 16, 2021), pp. 7 ff.). Contrary to the defendant's assertion, the provision does not require access control that always prevents access and cannot be circumvented. Rather, it is sufficient if access is controlled (see *MDY Industries LLC v. Blizzard Entertainment, Inc. et al.*, 629 F.3d 928, 954 (9th Cir. 2011)), as is the case with the rolling cipher (*Cordova, ibid.*, p. 14). If only (technical) measures that prevent access fell under the provision, the requirement of effective control in the wording of the provision would be rendered meaningless, because such a measure would always effectively prevent access (see *Yout, ibid.*, pp. 664 et seq.). Contrary to the defendant's argument, copy control and access control measures are not mutually exclusive; a rights holder can implement both technical protection measures (see *MDY Industries, ibid.*, p. 946). Whether the defendant also acted intentionally in her legal violation, or, as she claims, was subject to a good-faith error of law regarding her legal obligations, need not be decided at this point.

- 511** cc. The second factor argues against fair use. The musical works in question are creative works that fall within the core scope of copyright. With the sound recordings made for and during training, the defendant not only adopted facts, ideas, or motifs, but, as evidenced by the outputs in question, also the creative elements of the musical pieces in question. Thus, the defendant did not merely create a copy, as in the case of reverse engineering, to examine the functionality of a computer program—or, in this case, a musical work (cf. *Sega Enterprises Ltd. v. Accolade Inc.*, 977 F.2d 1510, 1526 (9th Cir. 1992)).
- 512** Accordingly, the court in the *Kadrey* case also weighed the second factor in favor of the plaintiffs. The use of the works depends precisely on utilizing the creative content of the works for training the model (see *Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) pp. 23-24). Insofar as the defendant, attempting to classify the second factor differently, relies on the *Google Books* decision (*Authors Guild v. Google, Inc.*, 804 F.3d 202, 220 (2d Cir. 2015)), it must already be pointed out, based on the judgment in the *Kadrey* case, that the factual situation in the *Google Books* case is different, since the technology at issue there operated independently of the content of the works (cf. *Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) pp. 23 et seq.).
- 513** The second factor also requires an examination of whether the original work has already been published. Contrary to the defendant's view, the fact that the works have already been published in this case does not lead to this factor being assessed against the plaintiff. The question of publication is only decisive for unpublished works where fair use is practically impossible (see *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 US 539, 553, 564 (1985)).
- 514** dd. The third factor, which considers the quantity and significance of the work (part) used in relation to the entire work, is to be weighed against the defendant. The defendant created extensive copies of the musical works in dispute for the purpose of training her model.
- 515** In cases of extensive reproduction, the courts focus decisively on whether the reproduced work is accessible to the public or is merely involved in a technically invisible backend process. If it is a so-called intermediate copy that is not made publicly available, even extensive reproduction can be covered by fair use (see *Sega Enterprises Ltd. v. Accolade Inc.*, 977 F.2d 1510, 1526 (9th Cir. 1992); *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F. 3d 596, 602 ff. (9th Circ. 2000); *Google LLC v. Oracle Inc.*, 539 US 1, 8 (2021)). Such a situation does not exist in the present case. The musical works in question were reproduced in the outputs—in which the reproductions made for and during training are manifested—in a manner substantially similar to how they are presented to the public.
- 516** Furthermore, the courts held that the use of a work in its entirety in intermediate copying is only permissible if it is necessary for the purpose in question (see *Google LLC v. Oracle America, Inc.*, 593 US 1, 29 f. (2021)). In cases where fair use was accepted, the respective reproduction was necessary as a mere intermediary to gain access to non-copyrighted elements such as a program structure or software interface and to enable analysis (see *Bruni*, 73 J. Copyright Soc'y (2026) 261, 296). By transferring the unprotected content of the work into a differently designed program, interoperability or a new technology could be developed that prevented a monopoly with

regard to ideas or functional concepts (cf. *Sega Enterprises Ltd. v. Accolade Inc.*, 977 F.2d 1510, 1526 (9th Cir. 1992); *Bruni*, 73 J. Copyright Soc'y (2026) 261, 296).

- 517** The defendant fails to explain why it specifically required the comprehensive reproduction of the musical works in dispute. Insofar as it argues that training a model necessitates the use of complete recordings, and that fragmentary excerpts are insufficient to understand, for example, how musical form unfolds over minutes or how genre conventions manifest themselves (brief dated November 26, 2025, p. 67, file 171), this argument pertains to musical works in general and does not explain why the defendant's technology should not function without the complete reproduction of the musical works in dispute.
- 518** The Google Books decision also differs significantly in its facts from the present case. The court stated that the defendant in that case had not made the reproduction publicly available (see *Authors Guild v. Google, Inc.*, 804 F.3d 202, 221 (2d Cir. 2015)). The system in that case displayed a maximum of three excerpts from a book containing the user's search term, each excerpt being approximately one-eighth of a page long. Displaying part of each page and one full page out of ten was permanently blocked. Furthermore, the display of excerpts from certain categories, such as cookbooks and dictionaries, was completely disabled, even though an excerpt would have comprehensively represented the work. According to the court, the result of the snippet view in that case was that "a searcher cannot succeed, even after long extended effort to multiply what can be revealed, in revealing through a snippet search what could usefully serve as a competing substitute for the original" (*ibid.*, p. 223). The court further stated, "[i]f snippet view could be used to reveal a coherent block amounting to 16% of a book, that would raise a very different question" (*ibid.*, p. 224).
- 519** ee. The fourth factor, which considers the impact of the use on the potential market or the value of the copyrighted work, must also be weighed against the defendant in view of the infringing outputs.
- 520** (1) The copies made during training have a negative impact on the value of the musical works at issue.
- 521** The plaintiff has complied with its obligation in this regard (see *Kadrey*, loc. cit., p. 7) and has defined the relevant market for the original musical works in dispute as that for entertainment music that is consumed directly by users playing and listening to it. This market includes revenue from broadcasting on the internet, as well as downloads, streaming, radio, and television.
- 522** The defendant's music generator produces outputs that bear a substantial resemblance to the musical works at issue and are freely accessible to users of the music generator who have chosen free access. The defendant thus enables free enjoyment of the works. Furthermore, it permits the storage and publication of the generated musical piece, allowing users of the music generator and other third parties to listen to it at a later time and, moreover, to further reproduce and edit it. Using the music generator by entering well-known song lyrics to generate cover versions is a known practice found in public forum posts and social media content. For example, there are videos on YouTube that explain step by step how users can create a cover version of their favorite songs using the Suno application (see YouTube videos "AMAZING AI COVERS – Step-by-step SUNO tutorial", "Turn Famous Songs into Cash with Suno AI Remixes LEGALLY!", Plaintiff's brief of 17 December 2025, pp. 66 ff., pp. 289 ff. of the file).
- 523** The training process produces a substitute good for the outputs in dispute, which replaces the original work and thus has a negative effect on its value. Infringing outputs generally compete with the originals (see *Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) 26; US Copyright Office, *ibid.*, p. 63: "And where training enables a model to output verbatim or substantially similar copies of the work strained on, and those copies are readily accessible by end users, they can substitute for sales of those works.")).
- 524** The defendant, who invokes the fair use doctrine, indisputably bears the burden of proof that her use, the training with the musical works in question, which led to the submitted outputs, has no negative impact on the market defined by the plaintiff (see *Kadrey*, loc. cit., p. 7, 34 with further references). The defendant has failed to meet this burden of proof.

- 525** The defendant argues that German law imposes a secondary burden of proof on the plaintiff, requiring the plaintiff to demonstrate, by disclosing work-specific license fee or revenue information, that its own monetization of the musical works has actually declined. However, the rules governing the burden of proof are not derived from the *lex fori* (the German legal system), but rather, as is generally accepted, from the materially applicable legal principle to which the burden of proof is closely linked and from which it derives its essential considerations and assessments (see *MüKoZPO/Prütting*, 7th ed. 2025, German Code of Civil Procedure § 286 para. 144 et seq. with further references), and thus from US law. US law provides for a burden of proof on the defendant without a secondary burden of proof on the plaintiff, which is why the defendant is (unsuccessfully) attempting to have German law applied.
- 526** With regard to direct substitution, the defendant merely argues that no such substitution exists because the outputs are not similar and their generation required multiple prompts. The substantial similarity of the outputs to the musical works at issue has already been explained in detail. The existence of the infringing outputs distinguishes the present case significantly from the *Bartz* and *Kadrey* proceedings, in which the judges rejected any market impact on the work because, according to the court's findings, no substantially similar outputs had been generated (see *Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417 (ND Cal. 2025) 28; *Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) 27).
- 527** A negative impact on the market cannot be dismissed simply because the outputs in question were generated after the input of multiple, unchanged, simple prompts. When examining the fourth factor, the focus should not be solely on the impact of the specific infringing act in question, but rather on whether such uses can generally have a significant negative effect on the market for the original work (see *Campbell v. Acuff-Rose Music, Inc.*, 510 US 569, 590 (1994)). Given the popularity of the defendant's music generator, which recorded 2.2 million visitors in one month in 2024, a significant impact on the market is already evident if only every fourth or every 176th input produces a piece of music substantially similar to the original. In any case, the number of identical prompts in question merely precludes the assumption that a consistent prompt always leads to an exactly identical infringement.
- 528** Insofar as the defendant claims that its users do not use the music generator to listen to music, it has also failed to provide evidence for this claim. The plaintiff submitted an undisputed post in Exhibit K 69a, according to which an investor of the defendant states that she personally has shifted the majority of her music consumption to the defendant because she is fed up with the provider of a music streaming service.
- 529** (2) The plaintiff does not explicitly define the market for works as training data as a relevant market. The defendant's extensive arguments on this point are therefore not to be considered.
- 530** Furthermore, a consideration of all factors leads to the conclusion that the specific use by the defendant is not covered by the fair use doctrine.
- 531** The individual factors alone already argue against the application of fair use. Even when considered together, no other outcome is necessary, especially given the novel artificial intelligence technology involved here. In principle, a significantly new technology may require an adjustment to the interpretation of the fair use doctrine (see *Google LLC v. Oracle America, Inc.*, 593 US 1, 14 (2021); *Twentieth Century Music Corp. v. Aiken*, 422 US 151, 156 (1975)). However, such an adjustment is not warranted in this case. Not all models memorize their training data. Rejecting fair use in this specific instance does not impede progress or competition, nor does it conflict with the public interest. The development of models is not hindered if—insofar as copyrighted training data is used—the training data must be licensed. Rather, the public interest dictates respecting the copyright protection that can be afforded when operating the models, which is made possible through licensing. In this sense, the court states in the *Kadrey* case (*Richard Kadrey v. Meta Platforms, Inc.*, No. 23-CV-03417-VC, 2025 WL 1752484 (ND Cal. 2025) 38):
- "Relatedly, Meta argues that the 'public interest' would be 'badly disserved' by preventing Meta (and other AI developers) from using copyrighted text as training data without paying to do so. Meta seems to imply that such a ruling would stop the development of LLMs and other generative AI technologies in its tracks. This is nonsense.

As mentioned earlier, a ruling that certain copying isn't fair use doesn't necessarily mean the copier has to stop their copying; it means that they have to get permission for it. So where copying for LLM training isn't fair use, LLM developers (including Meta) won't need to stop using copyrighted works to train their models. They will only need to pay rightsholders for licenses for that training. [...] Either way, it may be that LLM companies move somewhat more slowly or make somewhat less money. But the suggestion that the growth of LLM technology would come to a halt (or anything close) doesn't pass the straight face test."

- 532** 5. In the opinion of the adjudicating chamber, the plaintiff is entitled to the asserted claim for injunctive relief.
- 533** According to the wording "may" in 17 UCC 502(a), the issuance of an injunction in copyright infringement cases is at the court's discretion (see *eBay Inc. et al. v. MercExchange, LLC*, 547 US 388, 392). In a patent case, the Supreme Court identified four factors for exercising this discretion (*ibid.*, 391), the so-called eBay Standard, which is also applied by courts in copyright law cases (see *Coleman Jr., Treadwell, Loyn*, 32 Franchise Law Journal (2012) 1, 4 et seq.). Following this standard, the claim is to be granted because (1) the plaintiff has suffered irreparable damage, (2) the legally provided remedies, such as monetary damages, are insufficient for compensation, (3) when weighing the burdens on the parties, a remedy under equity law is justified, and (4) the public interest is not adversely affected by a permanent injunction (see *eBay Inc. et al. v. MercExchange, LLC*, 547 US 388, 391).
- 534** The adjudicating chamber, which is in a position to conduct an equitable review, grants the plaintiff the requested injunction after weighing all the circumstances.
- 535** a. The adjudicating chamber is able to apply the US equity standard.
- 536** An injunction is an equitable remedy, meaning its granting is at the court's discretion (see *eBay Inc. et al. v. MercExchange, LLC*, 547 US 388, 391). The concept of equity is familiar to the court. In German civil law, it is generally enshrined in Section 242 of the German Civil Code (BGB) and, for example, in Section 253 Paragraph 2 of the BGB. Intellectual property law, in particular, provides for financial compensation for injunctive relief under Section 100 of the German Copyright Act (UrhG), Section 45 of the German Design Act (DesignG), and Section 11 of the German Trade Secrets Act (GeschGehG) (see *Ohly/Stierle*, GRUR 2021, 1229, 1233). Furthermore, in patent and utility model law, the legislature clarified in 2021, through the insertion of Section 139 Paragraph 1 Sentence 3 of the German Patent Act (PatG) and Section 24 Paragraph 1 Sentences 3 and 4 of the German Utility Model Act (GebMG) (see *BT-Drs. 19/25821*, 53, 62), that injunctive relief is excluded to the extent that its enforcement would result in disproportionate hardship for the infringer or third parties, not justified by the exclusive right, due to the specific circumstances of the individual case and the principles of good faith. German courts, including the present chamber, thus regularly apply considerations of equity.
- 537** b. Without the injunction, the plaintiff will suffer irreparable damage.
- 538** The infringement continues, the defendant's models in dispute have not been deactivated and the musical works in dispute are therefore still being used, and this without a license.
- 539** aa. The damage is irreparable. The unlicensed use, reproduction, and distribution in the outputs cannot be reversed. Furthermore, the damage is difficult for the plaintiff to calculate, as it has no knowledge of the other outputs generated by the defendant that exhibit substantial similarities to the musical works at issue. In this case, the plaintiff has not claimed statutory damages under 17 USC 504(c) – in such a situation, the finding of irreparable damage is rejected if the plaintiff bases this on difficulties in proving the amount of damages (see 6 Patry on Copyright (2026) § 22:42).
- 540** bb. Contrary to the defendant's assertion, the claim for injunctive relief has not become moot. According to the so-called mootness doctrine, proceedings become moot and a procedural resolution is achieved if the unlawful conduct ceases (see *Mills v. Green*, 159 US 651, 653 (1895)) – for example, because the training of the models in question has already ended. An exception to this is provided by the voluntary cessation doctrine in cases of merely voluntary cessation of the unlawful conduct: If the defendant voluntarily ceases the unlawful conduct after the action has been filed, this only leads to mootness if the defendant can clearly demonstrate that the unlawful

conduct in question cannot reasonably be expected to recur (see *Already, LLC v. Nike, Inc.*, 568 US 85, 92 (2013)). The defendant has not presented such evidence.

- 541** c. No other adequate legal remedy exists. In particular, damages are insufficient to compensate for the copyright infringements suffered by the plaintiff through training with the works in dispute. Compensation would only be possible for the past, not for the future, since without the injunction the works in dispute could continue to be used, and it is impossible to predict how often the works in dispute would be generated as output in the future. Likewise, the plaintiff cannot be expected to resort to the possibility of concluding a license agreement, the monetary value of which is calculable. A license agreement typically regulates, in addition to the license fee, the duration, the geographical scope, and the type of license.
- 542** d. When weighing the burdens on the parties, a legal remedy under equity law is justified.
- 543** The burdens placed on the composers by the defendant's ongoing copyright infringements outweigh the burdens on the defendant resulting from the requested injunction. The plaintiff has expressed its willingness to grant a license, which is why the defendant could obtain one to avert the injunction. Contrary to the defendant's view, offering such a license does not render the plaintiff's conduct unreasonable.
- 544** The defendant's conduct is clearly unfair, as she obtained the musical works in question by circumventing the existing security measures of the Rolling Cipher and thereby knowingly violating 17 USC § 1201(a)(1)(A) in order to exploit copyrighted works without enumeration for her own profit. Given the plaintiff's willingness to license the works, there was absolutely no need to acquire them unlawfully.
- 545** e. The injunction claim is not contrary to the public interest. Contrary to the defendant's assertion, it does not hinder access to useful technological advancements and tools developed for creative professionals. The defendant is not the sole provider of the technology in question, and therefore an injunction claim would not prevent other, non-copyright-infringing models or models operated under licensing agreements from being offered on the market.
- 546** 6. The claim for injunctive relief was filed in a timely manner. According to 17 USC § 507(b), a civil action may be filed within three years of the claim arising. The plaintiff asserted the claim for injunctive relief under US law in a brief dated October 21, 2025 (pp. 75 et seq. of the court file). The defendant does not specify when the three-year period should have expired for the plaintiff.
- 547** XI. The declaratory judgment sought by the plaintiff regarding the obligation to pay damages pursuant to point 3 of her application in respect of the actions pursuant to point 1 a) aa) is to be granted.
- 548** Under US copyright law, 17 USC § 504(a) grants the infringed copyright holder a claim for damages. As the holder of the exclusive rights to the works "Atemlos," "Rasputin," "Daddy Cool," and the refrain of "Mambo No. 5 A Little Bit Of," the plaintiff is entitled to assert the requested damages under 17 USC § 501(b). Given the established copyright infringement through training with the musical works in question, the claim is justified in principle. Culpable conduct is not a prerequisite for the claim for damages; however, if intentional conduct is found, it may increase the statutory damages under 17 USC § 504(c)(2).
- 549** XII. The plaintiff's claim for information regarding the works "Atemlos," "Rasputin," "Daddy Cool," and the refrain of the song "Mambo No. 5 A Little Bit Of" for reproductions made in the USA for training purposes is justified. Although, according to Article 8(2) of the Rome II Regulation, US law is applicable to the claim for information, the legal basis for the claim is, due to the existing lack of conflict-of-law rules, Section 242 of the German Civil Code (BGB) by analogy.
- 550** In US law, including copyright law, requests for information are generally governed not by substantive law but by procedural law, specifically Rule 26 of the Federal Rules of Civil Procedure, which regulates the exchange of information through pretrial discovery. In this case, the plaintiff does not seek to have comprehensive pretrial discovery granted as a substantive right. Rather, she requests recognition of a separate, independent right to information, intended to quantify the existing claim for damages. The claim for damages, which exists in principle

under 17 USC § 504(a), can be assessed either based on the actual damages and profits of the infringer or on a statutory fixed sum, with the plaintiff having the option to choose between the two. However, the actual damages and profits can generally only be quantified if the extent of the infringing use is known.

- 551** German procedural law, however, does not recognize a pre-trial demand for surrender of evidence equivalent to US law. In contrast, German copyright law provides for substantive rights to information under Sections 101 and 101a of the German Copyright Act (UrhG) and Section 242 of the German Civil Code (BGB).
- 552** According to the consistent content of both German and US law, the plaintiff is therefore entitled to information; under German law, this is a substantive right, and under US law, a procedural right. If, as in the present case, procedural law is governed by the German *lex fori*, which does not provide for a procedural right to information, a case of so-called normative deficiency arises. In this situation, where a right to information would not exist due to the differing procedural and substantive legal classifications, a correction is made (see Higher Regional Court of Stuttgart, November 28, 2002, 17 WF 128, 129/02; Higher Regional Court of Frankfurt, October 2, 1990, 4 UF 4/90; Higher Regional Court of Hamm, February 16, 2006, 4 UF 224/05).
- 553** The only point of contention is whether, from a legal perspective, the harmonization involves adapting one's own law or the foreign substantive law, or whether an independent substantive rule is created within private international law (see *MüKoBGB/v. Hein*, 9th ed. 2024, IPR I Chapter 1, Introduction to IPR para. 268, 286 with further references). Contrary to the defendant's view, harmonization is not limited to situations where foreign law provides for official investigation in procedural terms, but also applies to other discrepancies arising from procedural law (see, for example, Brandenburg Higher Regional Court, 18 February 2016, 12 U 118/15).
- 554** XIII. In all other respects, the action is to be dismissed. The plaintiff cannot base her claims under points 1 b) and c) on an infringement of the right of making available to the public pursuant to Section 19a of the Copyright Act (see III. 1.).
- C.
- 555** The Chamber does not suspend the proceedings pursuant to Section 148 of the Code of Civil Procedure in order to carry out a preliminary ruling request under Article 267(2) TFEU, as requested by the defendant (brief dated 26 November 2025, p. 104, file 208).
- 556** The procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice of the European Union and national courts, by which the Court of Justice provides guidance on the interpretation of EU law that national courts need to decide the dispute pending before them (see CJEU 07.05.2024, Case C-115/22). As a court of first instance, it is within the discretion of the Chamber, pursuant to Article 267(2) TFEU, to refer questions to the Court of Justice for a preliminary ruling if there are doubts as to the interpretation of EU law.
- 557** In light of the numerous guidance already provided by the Court of Justice of the European Union on the interpretation of the exploitation acts of reproduction and communication to the public under the InfoSoc Directive, the Chamber does not consider a referral for a judgment to the Court of Justice of the European Union necessary. In particular, the decision that the present case involves reproduction in the form of models of works used for training purposes within the meaning of Article 2 of the InfoSoc Directive is not inconsistent with the case law of the Court of Justice of the European Union. The decisions cited by the defendant in this regard were, as explained above, not accurately represented. Since the present case is not even covered by the scope of the text and data mining exception under Article 4 of the Data Mining Directive, there is no need to refer the matter to the Court of Justice of the European Union for a ruling on the interpretation of this exception.
- D.
- 558** The unadmitted arguments in the parties' written submissions of April 7, 2026 and May 21, 2026 do not require a reopening of the oral proceedings pursuant to Sections 156, 296a Sentence 2 of the German Code of Civil Procedure.

559 E. The decision on costs is based on Section 92 Paragraph 2 No. 1 of the German Code of Civil Procedure (ZPO). The decision on provisional enforcement is based on Section 709 Sentences 1 and 2 of the German Code of Civil Procedure (ZPO).

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