



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 98/19

Luxembourg, 29 July 2019

Judgment in Case C-476/17

Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hütter and Florian Schneider-Esleben

Sampling without authorisation can infringe a phonogram producer's rights

However, the use of a sound sample taken from a phonogram in a modified form unrecognisable to the ear does not infringe those rights, even without such authorisation

In 1977, the group Kraftwerk published a phonogram featuring the song *Metall auf Metall*. Mr Moses Pelham and Mr Martin Haas composed the song *Nur mir*, which was released on phonograms recorded by Pelham GmbH in 1997. Some members of Kraftwerk, Mr Ralf Hütter and Mr Florian Schneider-Esleben, claim that Pelham copied, by means of the technique known as sampling,¹ approximately 2 seconds of a rhythm sequence from the song *Metall auf Metall* and used that sequence in a loop in the song *Nur mir*. On the basis that their related right as the producers of the phonogram² in question was infringed, Mr Hütter and Mr Schneider-Esleben seek, inter alia, a prohibitory injunction, damages and the surrender of the phonograms featuring the song *Nur Mir* for the purposes of their destruction.

The Bundesgerichtshof (Federal Court of Justice, Germany), before which an appeal has been brought, in particular, asks the Court of Justice, in essence, whether the non-authorised inclusion of a sound sample in a phonogram by means of sampling taken from another phonogram constitutes, in the light of EU copyright and related rights law³ and of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, an infringement of the rights of the producer of the phonogram from which the sample in question was taken. The German court also seeks clarification on the exceptions and limitations set out in EU law to the rights of rightholders. On that basis, that court wishes to know whether the German legislation, which allows an independent work created in free use of a protected work, in principle, to be published and exploited without the consent of rightholders, is compatible with EU law. In addition, it wishes to know whether sampling is capable of falling with the 'quotation exception', which exempts a user from the need to seek the authorisation of the appropriate phonogram producer.

In today's judgment, the Court states, first of all, that phonogram producers have the exclusive right to authorise or prohibit reproduction in whole or in part of their phonograms. Consequently, **the reproduction by a user of a sound sample, even if very short, taken from a phonogram must, in principle, be regarded as a reproduction 'in part' of that phonogram** so that such a reproduction falls within the exclusive right granted to the phonogram producer.

However, the Court notes that, **where a user, in exercising the freedom of the arts, takes a sound sample from a phonogram in order to embody it, in a modified form unrecognisable to the ear in another phonogram, that is not a 'reproduction'**. In that context, the Court underlines that to regard such use of a sound sample taken from a phonogram as a reproduction subject to the authorisation of the phonogram producer would run counter, in particular, to the requirement to strike a fair balance between, on the one hand, the interests of the holders of

¹ *Sampling* is a technique consisting in taking, by means of electronic equipment, extracts from a phonogram in order to use those elements for a new composition in another phonogram.

² Phonogram producers are natural or legal persons who finance the creation of phonograms.

³ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

copyright and related rights in the protection of their intellectual property rights guaranteed by the Charter and, on the other hand, the protection of the interests and fundamental rights of users of protected subject matter, which are covered by the freedom of the arts, also enshrined in the Charter, as well as the public interest.

Next, the Court finds that an article which reproduces all or a substantial part of the sounds fixed in a phonogram amounts to a copy of that phonogram, in relation to which the phonogram producer enjoys an exclusive right of distribution. However, the Court adds that **an article which, as is the case in the main proceedings, merely embodies sound samples, where relevant in a modified form, transferred from that phonogram for the purposes of creating a new and distinct work from that phonogram does not amount to such a copy.**

The Court also considers that the exceptions and limitations to the rights of rightholders provided for in EU law already reflect the fact that the EU legislature has taken into account the interests of the producers and users of protected subject matter and the public interest. Furthermore, those exceptions and limitations were determined exhaustively in order to ensure the proper functioning of the internal market for copyright and related rights. Consequently, **the German legislation, which, notwithstanding that the abovementioned exceptions and limitations are listed exhaustively, provides for an exception or limitation not referred to under EU law allowing a distinct work, created in the free use of a protected work, in principle, to be published and exploited without the consent of the rightholders, is not in conformity with EU law.**

As regards the exceptions and limitations to rightholders' exclusive rights of reproduction and of communication which the Member States have the option of enacting under EU law in relation to quotations from a protected work, the Court finds that **the use of a sound sample taken from a phonogram allowing the work from which that sample was taken to be identified may, subject to certain conditions, amount to a quotation, in particular, provided that such use is aimed at entering into a 'dialogue' with the work in question. However, use of that sample if it is not possible to identify the work in question is not a quotation.**

Lastly, the Court notes that, where the action of the Member States is not entirely determined by EU law, the Member States may, in applying EU law, apply national standards for the protection of fundamental rights, provided, in particular, that the application of such fundamental rights does not compromise the level of protection laid down in the Charter. However, the substantive law relating to a phonogram producer's exclusive right of reproduction has been the subject of full harmonisation so that such national standards are, in that regard, inapplicable.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106