

Zurich District Court
Wengistrasse 28
8036 Zurich
Phone 044 248 21 80

EINGEGANGEN
18. Juni 2021

Business No.: FR210645-L
(Please repeat in reply)

Content of service:
LG Hamburg / 310 0 99/21
Letter of May 21, 2021,
Decision of May 12, 2021,
Decision of May 20, 2021

P.P. 8004 Zürich
GU 
98.03.053794.00100993

DIE POST 

FR210645-L/EI

Quad9 Foundation
represented by the board of trustees
B. Woodcock, M. Leuthold, D. Kim,
B. Overeinder and F. Schütz
Werdstr. 2
8004 Zurich

ANGABEN ÜBER DEN WESENTLICHEN INHALT DES ZUZUSTELLENDEN SCHRIFTSTÜCKS

SUMMARY OF THE DOCUMENT TO BE SERVED

ÉLÉMENTS ESSENTIELS DE L'ACTE

Übereinkommen über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke im Ausland
in Zivil- oder Handelssachen, unterzeichnet in Den Haag am 15. November 1965.
(Artikel 5 Absatz 4)

Convention on the service abroad of judicial and extrajudicial documents in civil or
commercial matters, signed at The Hague, on the 15th of November, 1965.
(article 5, fourth paragraph)

Convention relative à la notification à l'étranger des actes judiciaires ou extra-
judiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.
(article 5, alinéa 4)

Bezeichnung und Anschrift der ersuchenden Stelle: Name and address of the requesting authority: Nom et adresse de l'autorité requérante:	Hamburg District Court, Sievekingplatz 1, 20355 Hamburg, Germany Federal Republic of Germany
Bezeichnung der Parteien *): Particulars of the parties *): Identité des parties *):	Sony Music Entertainment Germany GmbH, Balanstraße 73, Haus 31, 81541 Munich, Federal Republic of Germany against Quad9 Foundation, Werdstrasse 2, 8004 Zurich, Switzerland

*) Gegebenenfalls Name und Anschrift der an der Übersendung des Schriftstücks interessierten Person.
If appropriate, identity and address of the person interested in the transmission of the document.
S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.

<input type="checkbox"/>	GERICHTLICHES SCHRIFTSTÜCK **) JUDICIAL DOCUMENT **) ACTE JUDICIAIRE **)
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Art und Gegenstand des Schriftstücks: Nature and purpose of the document: Nature et objet de l'acte:	1. court letter from 21.05.2021 2. resolution from 12.05.2021 3. decision from 20.05.2021
Art und Gegenstand des Verfahrens, gegebenenfalls Betrag der geltend gemachten Forderung: Nature and purpose of the proceedings and, where appropriate, the amount in dispute: Nature et objet de l'instance, les cas échéant, le montant du litige:	Restraining order
Termin und Ort für die Einlassung auf das Verfahren **): Date and place for entering appearance **): Date et lieu de la comparution **):	Hamburg
Gericht, das die Entscheidung erlassen hat **): Court which has given judgment **): Jurisdiction qui a rendu la décision **):	Hamburg Regional Court, Civil Chamber 10
Datum der Entscheidung **): Date of judgment **): Date de la décision **):	12.05.2021
Im Schriftstück vermerkte Fristen **): Time limits stated in the document **): Indication des délais figurant dans l'acte **):	

<input type="checkbox"/>	AUSSERGERICHTLICHES SCHRIFTSTÜCK **) EXTRAJUDICIAL DOCUMENT **) ACTE EXTRAJUDICIAIRE **)
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Art und Gegenstand des Schriftstücks: Nature and purpose of the document: Nature et objet de l'acte:	
Im Schriftstück vermerkte Fristen **): Time limits stated in the document **): Indication des délais figurant dans l'acte **):	

***) Unzutreffendes streichen. / Delete if inappropriate. / Rayer les mentions inutiles.

Landgericht Hamburg
Zivilkammer 10

Sievekingplatz 1
20355 Hamburg

Telefon (Durchwahl): (040) 4 28 43 - 4662
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Landgericht Hamburg, 310 O 99/21
Postfach 300121, 20348 Hamburg

Quad9 Stiftung
Werdstraße 2
8004 ZÜRICH
SCHWEIZ

Bitte bei Antwort angeben:
Geschäftsnummer:
310 O 99/21

Hamburg, den 21.05.2021


In the matter of
Sony Music Entertainment Germany GmbH ./ Quad9 Foundation
for injunction

Dear Sir or Madam,

Enclosed please find a copy of the decision dated 12.5.2021, as well as a certified copy of the decision dated 20.05.2021.

Please note that this is a notification of the temporary injunction for the purpose of execution by the parties with the involvement of the court.

Yours sincerely,


Clerk of the Court

This letter was created electronically and is valid without signature.
Please call in advance for barrier-free access to the building.

Datenschutzhinweise:

Informationen zum Schutz personenbezogener Daten bei deren Verarbeitung durch die Justiz nach Artikel 13 und Artikel 14 der Europäischen Datenschutz-Grundverordnung finden sich auf der Internetseite des Hanseatischen Oberlandesgerichts unter <http://www.justiz.hamburg.de/rechtsprechung-senate/datenschutzhinweise>

Auf Wunsch übersenden wir diese Informationen auch an Verfahrensbeteiligte in Papierform.

Bitte beachten: Übersenden Sie Schriftsätze nur dann vorab per Fax, wenn dies der Fristwahrung dient. Nur das Aktenexemplar wird kostenfrei ausgedruckt. Für Mehrfertigungen werden Auslagen eingezogen.

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Deutsche Bundesbank
IBAN: DE10 2000 0000 0020 0015 01
BIC: MARKDEF 1200

Verkehrsanbindung

Messehallen: U2
Sievekingplatz: Metrobus 3
Johannes-Brahms-Platz: Bus 112
und Schnellbus 35, 36

Nachtbriefkasten

links an der Haupteingangstür

Ausfertigung



Landgericht Hamburg

Az.: 310 O 99/21



Resolution

in the case

Sony Music Entertainment Germany GmbH, represented by d. Managing Directors [REDACTED]
[REDACTED] and [REDACTED], Balanstrasse 73,
House 31, 81541 Munich

- Applicant -

Counsel:

Rechtsanwälte Rasch, An der Alster 6, 20099 Hamburg, Germany, reference number: 21-090.0220

against

Quado Foundation, represented by the trustees Bill Woodcock, Martin Leuthold, Dorian Kim,
Benno Overeinder and Florian Schütz, Werdstrasse 2, 8004 Zurich, Switzerland

- Defendant -



the Hamburg Regional Court - Civil Chamber 10 - by the Presiding Judge at the Regional Court
[REDACTED], the Judge at the Regional Court [REDACTED] and the Judge [REDACTED] decides on
12.05.2021:

1.

By way of interim injunction - for reasons of urgency without oral proceedings - the defendant is ordered to avoid a fine to be determined by the court for each case of culpable infringement and, in the event that this cannot be recovered, to serve a term of imprisonment of up to six months (fine in individual cases not exceeding 250,000.00, imprisonment for a total of not more than two years).

prohibited,

to enable third parties

in the territory of the Federal Republic of Germany the music album

"Evanescence - The Bitter Truth"



with the sound recordings contained thereon

1. Artifact/The Turn
2. Broken Pieces Shine
3. The Game Is Over
4. Yeah Right
5. Feeding the Dark
6. Wasted on You
7. Better Without You
8. Use My Voice
9. Take Cover
10. Far From Heaven
11. Part of Me
12. Blind Belief

to be made publicly available,

by

the applicant, as a contribution enabling this third party accessibility, provides its customers with a DNS resolver service which provides the customers with a translation of the domain "[REDACTED]" and/or the subdomain "[REDACTED]" into numeric IP addresses so that it is possible for the applicant's customers, with the help of these numeric IP addresses, to reach the website under the domain "[REDACTED]" and/or the subdomain "[REDACTED]" and to call up links to illegal storage of the aforementioned album there,

as happened,

in that the defendant provided its customers with the DNS resolver service "Quad9" at the IP address 9.9.9.9, with the help of which the customers could resolve Internet addresses

and

[http://\[REDACTED\]/links.php?action=popup&kat_id=5&fileid=551125](http://[REDACTED]/links.php?action=popup&kat_id=5&fileid=551125)

numerical IP addresses, which enabled them to access the hyperlinks provided at the aforementioned addresses to the storage locations of

[http://\[REDACTED\]/?5DF7473B2](http://[REDACTED]/?5DF7473B2)

bzw.

[http://\[REDACTED\]/?0B6DB9EB3](http://[REDACTED]/?0B6DB9EB3)

and to access the illegally stored copies of the aforementioned album.

2.

Orders the defendant to pay the costs.

3.

The amount in dispute is set at EUR 100,000.

Arguments:

The decision was issued by way of an interim injunction pursuant to Sections 935 et seq. and 922 of the German Code of Civil Procedure (ZPO). The order of the means of restraint in the operative part to I. is based on § 890 ZPO.

I.

1.

The international and local jurisdiction of the Hamburg Regional Court follows from Art. 5 No. 3 of the Lugano Convention in conjunction with § 943 I ZPO. According to Art. 5 No. 3 of the Lugano Convention, a person domiciled in the territory of a State bound by this Convention may be sued in the main proceedings in another State bound by this Convention if a tortious act or an act equivalent to a tortious act, or claims arising out of such an act, form the subject matter of the proceedings, before the court of the place where the harmful event occurred or is likely to occur. In any case, the place where the harmful event occurred is also the place of performance, i.e. the place where the asserted infringing act interferes with the property right. Art. 31 of the Lugano Convention does not contain any deviation from this for interim relief proceedings (but merely opens up additional international jurisdiction). Therefore, § 943 I ZPO intervenes for the competences in the proceedings.

Thus, the Hamburg Regional Court has international and local jurisdiction. As an infringement of rights, the applicant asserts, in relation to the unknown perpetrator of the infringement, the making available to the public, i.e. the retrievability from the Internet, of the album in dispute. The applicant has conclusively argued that the defendant is liable as a "Stoerer" (Breach of Duty of Care) in this respect (cf. below under II.). The applicant has shown and made credible that the respondent provides a so-called DNS resolver service, which can also be used from Hamburg and enables the content challenged by the applicant as infringing to be accessed from Hamburg.

2.

The application for an injunction is sufficiently specific within the meaning of Section 253 (2) no. 2 of the German Code of Civil Procedure.

a)

It is true that the applicant has chosen the words "to prohibit the music album... publicly accessible" in the wording of the primary application for an injunction, which in itself could indicate that the defendant is being held liable as a perpetrator. However, the application is to be understood as an application for injunctive relief based on the defendant's "Stoererhaftung" (Breach of Duty of Care), as is clear from an examination of the grounds for the application (cf. application on page 12 et seq.).

This main request of the applicant is formulated as a request for an injunction. The aim of this application is obviously to comprehensively prohibit the defendant from making the infringing content available to the public via the specific access route offered by the defendant via its DNS resolver service. The Board - as will be shown below under II - granted the application with regard to this request for an injunction, but made use of the possibilities of Section 938 (I) of the Code of Civil Procedure in the wording of the operative part in order to formulate the core of the requested obligation to cease and desist even more clearly in the operative part, as the applicant indicated in the statement of grounds for the application. This is because by the reference of the applicant in the main application to the "Quad9" service of the applicant "using the Quad9 DNS resolver 9.9.9.9" as well as the reference to the specifically addressable URLs, the applicant has made it clear that it has made the specific form of infringement the subject of its application, so that the possibility is opened up for the court to define this specific form of infringement more precisely in terms of language, if necessary.

d)

According to this, the auxiliary request, which only a blocking order within the meaning of Section 7 IV TMG could be achieved under substantive law, was not to be granted.

II.

The applicant has set out the prerequisites for the claim for an injunction pursuant to Section 97 I UrhG and made them credible.

I.

The applicant is the owner of the exclusive exploitation rights, including the right of making available to the public (Section 19a UrhG), with regard to the sound carrier manufacturer's rights (Section 86 UrhG) to the album in dispute, including its individual sound recordings. This is substantiated by the submission of a copy of the back cover of the CD, on which the plaintiff is named as the rightholder in the so-called P-note (cf. Annex AST 13 to the statement of claim), so that the presumption of § 10 I UrhG applies.

2.

The applicant's right of making available to the public has been encroached upon by the fact that the right of making available to the public has been infringed by the fact that via the website www.██████████

- on March 11, 2021, under the URL http://██████████/links.php?action=popup&kat_id=5&fileid=551125, posted by a user "SmilerIO"; with reference to the album in dispute, a link was made publicly accessible, which in turn referred to a storage space of the share hosting service www.██████████, namely under the URL <http://██████████/70B6DB9EB3> as well as

- on 18.03.2021 under the URL http://██████████/links.php?action=popup&kat_id=5&fileid=551499, posted by a user "beatnik", with reference to the album in dispute, a link was made publicly accessible, which in turn referred to a storage space of the share hosting service www.██████████, namely under the URL <http://██████████/75DF7473B2>.

The album in dispute could be downloaded from the two storage locations mentioned. These public accesses are substantiated by the affidavit of Mr. Dominik Kunath dated 12.4.2021 (Annex AST 3 to the statement of claim, there I and 4).

3.

The respondent is jointly responsible for the infringements as a disturber.

In the event of an infringement of absolute rights, a claim for injunctive relief can be asserted against anyone who - without being a perpetrator or participant - in any way willingly and adequately causally contributes to the infringement of the protected legal interest. Since the tortfeasor's liability cannot be extended unduly to third parties who have not themselves carried out the unlawful interference, the tortfeasor's liability presupposes the violation of duties of conduct. The extent of this is determined by whether and to what extent the party claimed to be the interferer can be expected to carry out an examination under the circumstances. This depends on the respective circumstances of the individual case, taking into account the function and task of the person claimed to be the interferer as well as the personal responsibility of the person who has directly carried out the unlawful interference. When imposing control measures, it should be noted that business models that do not create or promote the risk of copyright infringement in a particular way must not be economically jeopardized or made disproportionately difficult (BGH, judgment of. 15.10.2020- IZR 13/19, GRUR 2021, 63, 64 marginal no. 13 with further references - "Stoererhaftung des Registrars").

a)

The respondent is liable for the aforementioned infringement neither as a perpetrator nor as a participant, as it does not operate any of the a) The respondent is liable for the aforementioned infringement neither as a perpetrator nor as a participant, because it does not operate either of the two websites mentioned and did not set the aforementioned links itself. The applicant also does not accuse the respondent of knowingly participating in the setting of the links and their publication.

b)

With its service, the defendant makes an intentional, adequate-causal contribution to the accessibility of the links on the website www. [REDACTED] and the storage locations accessible via the links for the users of the Internet.

(1)

Irrespective of liability for perpetration and participation, in copyright law a person may be obliged to cease and desist as a "Stoerer" (interferer) if he or she has in some way - even if not at fault - made a deliberate and adequately causal contribution to a copyright infringement. In this context, the support or exploitation of the action of a third party acting on his own responsibility may also suffice as contribution, provided that the party against whom the claim is asserted had the legal possibility of preventing this action (BGH 15.10.1998, I ZR 120/96, GRUR 1999, 418, 419 - Möbelklassiker).

However, an adequate-causal contribution to an unlawful making available of protected content on the Internet is already to be affirmed if the contribution is of considerable relevance for the accessibility of the content for the users of the Internet; in this context, causality is not precluded if the website under which the affected content can be accessed is also accessible in other ways, because hypothetical causal sequences do not preclude the causality of an actual conduct for an infringement (BGH, Urt. v. 15.10.2020 - I ZR 13/19, GRUR 2021, 63, 64 f. margin no. 19 with further references - "Stoererhaftung des Registrars" (Breach of Duty of Care of the Registrar) - there on the relevance of the domain name for the accessibility of websites).

For the purposes of "Stoererhaftung" (Breach of Duty of Care), it is therefore a question of whether the contribution of the "Stoerer" is of significant relevance to the accessibility of the infringing content by means of a specific sequence of commands directed at the access and whether it is legally and factually possible for the "Stoerer" to prevent the accessibility of the infringing content via this specific access route, irrespective of whether the content can still be accessed via other access routes.

(2)

These requirements apply to the service of the respondent.

The applicant has provided information on the functioning of the Domain Name System (DNS) and the queries of the the breakdown of domains into numerical IP addresses:

"The Domain Name System (DNS) is used to translate text-based queries, e.g. for Internet pages, into IP addresses. It is sometimes compared with a telephone directory. If a user enters a domain name in the address line of the Internet browser on his computer, smartphone, etc. to call up the page, a DNS lookup first takes place - if the IP address is not already cached in the device. The terminal asks the preset DNS server for the IP address for the domain. The server responds to the request from its memory or connects to one or more DNS servers in the background to query the IP address there. Only in the second step does the user's web browser connect to the server at the IP address provided to it to call up the website. The default settings of routers supplied by Internet providers (e.g. Deutsche Telekom, Vodafone, Telefonica) usually contain the respective Internet provider's own DNS resolver."

This contract can be taken as the predominantly probable basis for the decision. It corresponds, among other things, with the description of the functioning of a DNS resolver in the decision OLG Köln, judgment of 9.10.2020 - 6 U 32/20 (LG Köln), NJW 2021, 319, 324 paras. 89 and 90:

"A DNS resolver is a software module that is installed on the computer of a DNS subscriber. 's computer. It helps the Internet user to resolve domain names into numeric IP addresses. addresses. Every step on the Internet starts with a DNS query. The information required for resolving of domain names is distributed in the Domain Name System - not the DNS resolver - on thousands of servers worldwide in a hierarchical manner. The DNS resolver is the first point of contact in the so-called DNS lookup and is responsible for dealing with the user who made the query. The DNS resolver starts the query sequence, which finally results in the URL requested by the user being translated into the required IP address. There are usually up to ten steps that have to be performed. When the user enters a domain name, the DNS resolver queries a DNS root name server. This then responds with the address of a top-level domain server (e.g. .com, .de), which stores the information for its domains. In the case of a .com page, the search is referred to the com. TLD; this responds with an IP address of the name server of the searched domain. Then the recursive resolver sends a request to the domain's name server. The name server then returns the IP address to the resolver. The DNS resolver then responds to the user's web browser with the IP address. Once the eight steps of the DNS lookup have returned the IP address that the user is looking for, the browser can make the request to the web page. [...] After that, the use of a DNS resolver in the so-called DNS lookup is indispensable for the Internet user. Only the DNS lookup enables the Internet user, to whom the IP address of the domain in dispute here is unknown, to access the page."

The respondent now offers a DNS resolver service by means of which Internet users can (according to the contract of the applicant)

"in the network settings of your computer or local network or, in the case of smartphones with an application, set the Quad9 Domain Name Server 9.9.9.9 as the default DNS resolver. Then, when a DNS query is made, the computer in use connects to DNS Resolver 9.9.9.9, which relays the query to a root name server, a top level name server, and finally to the authoritative name server in whose zone the domain is administered. The response from the authoritative name server is sent back to the Internet user as a response by the recursive DNS resolver. Much of this information is cached by the DNS resolver in its cache."

This claim is also credible and predominantly probable, because it corresponds with the self-portrayal of the respondent on its website, with which the special service of the respondent for its customers is described (Attachment Ast I p. I above, there in English, subsequently reproduced in the translation of the applicant p. 15 of the application) writing:

"When your computer executes an Internet transaction that uses DNS (and most most transactions do), Quad9 blocks the search for malicious hostnames from a current list of threats. This blocking action protects your computer, mobile device or IoT system from a variety of threats including malware, phishing, spyware and botnets, and can improve performance in addition to ensuring privacy."

Thus, the action of the defendant is deemed to be adequately causal for the infringement taking place on the website [www.██████████](#) and [www.██████████](#) by linking to illegal download offers. This is because the Internet users who use the DNS resolver of the defendant only gain public access to the page when they use the DNS resolver of the defendant to translate the domain name into the IP address. Without the DNS resolver, they are "prevented" from accessing the site (according to the assessment of the "Stoererhaftung" (Breach of Duty of Care) of the operator of a DNS resolver in OLG Köln, judgment of October 9, 2020 - 6 U 32/20 (LG Köln), NJW 2021, 319, 324 para. 90) or they are dependent on having to choose another technical access route while avoiding the service of the respondent:

This is because if the DNS resolver settings are retained and thus if the DNS resolver of the respondent is used, the retrievability is dependent on its service. In this case, the applicant would have the technical and legal possibility to prevent accessibility on this specific retrieval path, since it can block the quasi-translation process for [www.██████████](#) and [www.██████████](#) by means of filtering options - which it advertises itself as being able to do. The defendant would also be in a legal position to do this, because it is contractually bound to the Internet user using its service, but not to the operators of the [www.██████████](#) site.

However, if the Internet user, for example, were to discover that the respondent's service no longer allows the URL to be translated into an IP address, were to select a different DNS resolver in the default settings of his terminal or router, the user would change the specific retrieval path under which the infringing offer is accessible. However, the alternative accessibility under a different retrieval path does not call into question the adequate causality of the contribution of the defendant with regard to the specific retrieval path possible via its service (cf. above (I)). The same assessment is reached by OLG Cologne, judgment of October 9, 2020 - 6 U 32/20 (LG Köln), NJW 2021, 319, 324 para. 90 with reference to the BGH case law on access provider liability:

"The assumption of the Ag. that the page [...] is already made publicly accessible without the involvement and intervention of the Ag.'s DNS resolver as soon as the website is online, and thus even the causality as such is lacking, is lacking. [...] The fact that there are a large number of providers of DNS resolvers on the Internet is just as irrelevant to the question of causality as the fact that there are a large number of access providers to whom one can switch (cf. BGHZ 208, 82 = NJW 2016, 794 - Breach of Duty of Care of the Access Provider)."

c)

The defendant has violated its duties of verification and conduct by continuing to use its DNS resolver even after the 26.03.2021, 4 p.m., it continued to have its DNS resolver translate, among other things, the URLs of the links on the page www.██████████ into IP addresses.

(l)

Since the "Stoererhaftung" (Breach of Duty of Care) may not be unduly extended to third parties who are neither the perpetrators neither as perpetrators nor as participants for the copyright infringement committed, the liability of the liability of the "Stoerer" (Breach of Duty of Care) presupposes the violation of duties of conduct. The scope of these obligations is determined by whether and to what extent the party claimed to be the interferer can be reasonably expected to carry out checks or monitoring to prevent the infringing actions of third parties under the circumstances of the individual case. This is determined by the respective circumstances of the individual case, taking into account the function and task of the party held liable as a "Stoerer" (Breach of Duty of Care), as well as with regard to the personal responsibility of the party who directly carried out the unlawful interference (BGH, decision 13.09.2018, I ZR 140/15, NJOZ 2019, 25, 29 marginal no. 48 -YouTube).

According to the case law of the Federal Court of Justice, "Stoererhaftung" (Breach of Duty of Care) for content on the Internet that is objected to as infringing is subject to different requirements depending on the structure of the function and activity of the party making the claim (cf. overview of different types of Internet service providers BGH, Urt. v. 15.10.2020 - I ZR 13/19, GRUR 2021, 63, 65 para. 21 et seq.). However, the question of whether there is an obligation to review without cause can be left open if the party claimed to be the interferer is made aware of a clear and readily ascertainable infringement of the law that he is making possible by his contribution, if it is reasonable for him to follow up on such a notice and to end his contribution to the infringement (see BGH loc. cit. para. 30). This applies in any case if - as is the case here - the rightholder claims "Stoererhaftung" (Breach of Duty of Care) only for the time since the notice was given. The circumstances that may trigger an obligation to check or monitor must be sufficiently clear from the notice issued by the right holder. This applies first of all in particular to the asserted infringement (thus on the registrar's "Stoererhaftung" (Breach of Duty of Care) BGH, Urt. v. 15.10.2020 - I ZR 13/19, GRUR 2021, 63, 65 Rz. 35 with further references).

(2)

The applicant has credibly shown that on March 24, 2021, employees of its service provider proMedia were able to access the links of the user "SmilerIO" and the user "beatnik" on www.██████████, which led to the storage locations with the disputed album on www.██████████ and that a download of the illegal copy of the album in dispute stored there was undertaken from the storage location linked by "SmilerIO" and that the conformity with the recordings of the original was established in a listening comparison (affidavit Kunath, annex Ast 3 to the statement of claim, there no. 2).

In a letter dated March 26, 2021 (Exhibit 4), the defendant was requested by the applicant's legal representatives to prevent access to the infringing offer by 4:00 p.m. on March 26, 2021. The letter stated which URLs relating to the linking and storage of the album in question had been accessible via the service of the applicants. the service of the applicants had been accessible.

It was reasonable for the defendant to follow up on this information and to check the contributory cause DNS resolver service for the accessibility of the infringing offer.

Irrespective of whether any DNS resolver service could reasonably be expected to carry out such an examination, this is true in the case of the defendant. This applies in the case of the respondent in any case because it advertises that it will prevent domain name translations in its service that pose a risk to its customers. It is true that this offer obviously refers primarily to the prevention of sites that could install unwanted malware on the respondent's customer's computer during data transmission or that could spy out the customer's data. However, the offer shows that the respondent undertakes, as part of its business model, to check the content and functionality of the websites to which the DNS resolver it operates provides accessibility. In that case, there are no reasons why the respondent cannot reasonably be expected to check a clearly recognizable and ascertainable copyright infringement on pages accessible via its DNS server, if - as in the present case - the necessary indications for this are contained in the notice provided by the right holder.

(3)

The defendant has further made it credible that the defendant has not complied with its obligation to check the notice triggered by notice Ast 4 after March 26, 2021.

After the deadline of 26.03.2021, 4 p.m., the legal representative of the applicant (who gave a lawyer's assurance to make this credible) verified that the DNS resolver of the respondent continued to resolve the domain [www.██████████](#) and its subdomain [www.██████████](#) to the respective IP addresses. The "Blocked Domains Tester" on the respondent's website also led to the result that the domain [www.██████████](#) had not been blocked by the respondent. Furthermore, the legal representative has convinced himself that the post with the disputed offer was still available on [www.██████████](#). This has been additionally substantiated by the legal representative. This is additionally substantiated by submission of the three screenshots in Annex Ast 5 to the statement of claim.

4.

The defendant cannot rely on a liability privilege for service providers according to SS 7 to 10 TMG.

a)

Pursuant to Section 8 I and 2 of the German Telemedia Act (TMG), service providers shall not be liable for third-party information which they transmit in a communications network or to which they provide access for use, subject to specified conditions, and may then not be held liable for an unlawful act of a user, either to cease and desist from the infringement or with regard to the costs of asserting and enforcing these claims. According to § 7 II TMG, service providers in this sense are not obliged to monitor the information they transmit or to investigate circumstances that indicate illegal activity.

A service provider within the meaning of Section 2 sentence 1 no. 1 of the German Telemedia Act (TMG) is anyone who makes his own or third-party telemedia available for use, provides access for use or, in the case of on-demand audiovisual services, effectively controls the selection and design of the content. The term "service provider" is to be defined functionally. The service provider must enable the dissemination or storage of information through its instructions or its power over computers and communication channels, and must appear to the outside world as the provider of services. TheAdmin-C, for example, is not a service provider because it only facilitates the processing of domain registration, but neither provides information nor mediates access to it. The registrar also does not provide users with information or mediate access to the use of telemedia, but merely handles the administrative processing of domain registration by providing the registry with the data required for the registration of the Dpmain. In particular, it is not an access broker within the meaning of Section 8 of the German Telemedia Act (TMG), because it neither provides access to a network nor passes on information (BGH, judgment of October 15, 2020 - I ZR 13/19, GRUR 2021, 63, 64, margin no. 15-17 with further references).

b)

The privilege under Section 8 I TMG is not applicable in the present case. Section 81 of the German Telemedia Act does not apply to a DNS resolver either directly or by way of an extended interpretation or corresponding application. (The Board leaves open an application to a DNS resolver - i.e. to those computers on which the translations are directly and authoritatively stored from which the query is made on the part of the DNS resolver services - because the applicant does not claim that the respondent operates such a service, and the self-description of the respondent's service does not provide any indications in this respect either).

With regard to the non-direct applicability of Section 8 I TMG, the Cologne Higher Regional Court (judgment of 9.10.2020 - 6 U 32/20 (Cologne Regional Court), NJW 2021, 319, 325 para. 99) states:

However, the DNS resolver only forwards the query for the matching IP address to the DNS servers and returns the determined answers back to the web browser of the Internet user, so that a connection to the searched Internet page can be established elsewhere - and not via the DNS resolver, which is only responsible for the IP address query. The DNS resolver is [...] an important component in the translation of a domain name into an IP address. However, it neither transmits the information on the searched website nor does the resolver itself provide access to it. It only triggers the IP address query against the DNS servers."

An extended interpretation of § 8 I TMG or its corresponding applicability to DNS resolvers is rejected by the OLG Cologne (loc.cit.) on the following grounds:

"Even if DNS servers [...] were to be subject to Section 8 I of the German Telemedia Act (TMG), equal treatment of the DNS resolver is in any case not appropriate, because the provision of Section 8 TMG regulates precisely the liability for third-party information transmitted or for third-party information to which access is provided, and the privilege does not include any adequately causal contribution in connection with the transmission/ access provision. As an exceptional privilege against liability, the provision cannot be interpreted without further ado to the effect that every adequately causal act in connection with the transmission of information or the provision of access to third-party information would be covered by the exclusion of liability. There are no indications for such an interpretation can be found neither in the explanatory memorandum (BT-Drs. 18/12202) or in the e-commerce directive. in the E-Commerce Directive."

The recognizing court agrees with these assessments.

c)

The privilege under Section 9 I TMG is not relevant. According to this provision, service providers are not liable for automatic, time-limited intermediate storage, which serves the sole purpose of making the transmission of third-party information to other users more efficient upon their request. Such caching does not take place

The applicant does not claim, nor does Annex Ast I indicate, that the respondent's service is caching the infringing information.

of the infringing files from the storage locations on www. [REDACTED] when the files are retrieved by a customer of the respondent.

The privilege under Section 10 sentence 1 of the German Telemedia Act (TMG) also does not apply. According to this provision, service providers are not responsible for third-party information that they store for a user under certain circumstances. Such hosting of the infringing files does not take place in the service of the respondent either (rather, it takes place on www. [REDACTED] or, with regard to the linking, on www. [REDACTED] or www. [REDACTED]).

The fact that the respondent's service stores domains and/or URLs to be blocked in order to prevent a translation by its own DNS resolver in the case of queries by its own customers regarding "dangerous" websites also does not lead to the applicability of Sections 9, 10 TMG. The accessibility of the infringing offers is not made possible by the corresponding storage of blockade information, but the omission of the storage for the translation blockade is the contribution for which the applicant claims the respondent as interfering party.

5.

A claim against the defendant is also not excluded in the present case from the point of view of a possible subsidiarity of the "Stoererhaftung" (Breach of Duty of Care) according to the perpetrator/participant liability; because the claim against the direct perpetrators and participants of the infringements appears - at least with the overwhelming probability sufficient in the preliminary injunction proceedings - to be hopeless for the applicant.

(I)

In principle, "Stoererhaftung" (Breach of Duty of Care) is not subsidiary to claims against the perpetrator (BGH NJW 2007, 2558 = GRUR 2007, 724 = WRP 2007, 795 marginal no. 13; BGHZ 173, 188 = NJW 2008, 758 marginal no. 40 -Jugendgefährdende Medien bei eBay).

However, the Federal Court of Justice has assumed such subsidiarity with regard to claims against the access provider from the point of view of reasonableness on the one hand and the avoidance of otherwise existing gaps in legal protection on the other (Federal Court of Justice GRUR 2016, 268, 278, margin no. 83 -Störerhaftung des Access-Providers):

"In view of the fact that the access provider pursues a business model that is approved by the legal system and is and neutral with regard to infringements of the rights of third parties, it is appropriate in the context of the examination of the reasonableness of monitoring and blocking measures to demand priority legal action against those parties who - like the operators of objectionable websites - either committed the infringement themselves or contributed to the infringement - by providing services. In contrast, the assertion of claims against the access intermediary can only be considered from the point of view of proportionality if the claim against the operator of the website lacks any prospect of success and would therefore otherwise create a gap in legal protection. This result is also supported by the fact that the operator of the website and its host provider are significantly closer to the infringement than the person who only generally provides access to the Internet."

With regard to the registrar's "Stoererhaftung" (Breach of Duty of Care), the Federal Court of Justice (BGH) also assumed only subsidiary liability and justified this additionally with the burden on the neutral business model of checking specific content of infringing pages (BGH GRUR 2021, 63, 66 marginal no. 31 - Stoererhaftung des Registrars):

"Unlike a trademark infringement, which can be read off from the domain name itself the examination of a complaint, which refers to the content provided under the domain, requires findings on the page content, of which the registrar usually has no knowledge. Even in the case of a clear infringement, this may require a not inconsiderable effort. When weighing the fundamental rights involved [...], the risk that this will result in a disproportionate burden on the registrar and thus endanger his business model must be taken into account by assuming his merely subsidiary liability, which only arises when the right holder has unsuccessfully taken action against those parties who - like the operator of the website - have committed the infringement themselves or - like the host provider - have contributed to the infringement by providing services, unless such action lacks any prospect of success. The registrar's liability, like that of the Internet access provider, is *ultima ratio* if copyright protection cannot be effectively ensured in any other way [...]"

According to the case law of the Federal Court of Justice (BGH), in the case of only subsidiary "Stoererhaftung" (Breach of Duty of Care) it must be clear from the circumstances/which are intended to trigger a duty of inspection or monitoring on the part of the "Stoerer" (Breach of Duty of Care) must be sufficiently clear from the notice issued by the rightholder, and not only with regard to the asserted infringement itself. Rather, in the case of the subsidiarity of the "Stoererhaftung" (Breach of Duty of Care), the rightholder must state in the notice that he has taken unsuccessful action against the operator or the host provider of the domain or that such action lacks any prospect of success (cf. BGH GRUR 2021, 63, 66, para. 35 and para. 40, there on the lack of factual findings in this regard in the appellate instance there),

(2)

By providing access to the Internet, the defendant is operating a business model that is approved by the legal system and socially desirable, and as such does not create a particular risk of copyright infringement in the absence of contractual obligations and ties to the infringing website operator, their conduct is also fundamentally neutral. Thus, in this case a comparable interest situation as in the case of the access provider is given and a merely subsidiary liability is to be assumed (so also already OLG Cologne, judgment of 9.10.2020 - 6 U 32/20 (LG Cologne), NJW 2021, 319, 324 marginal no. 94). However, the applicant has made a credible case that a claim against the direct perpetrators of the infringements in question has no prospect of success and that it has informed the defendant of this fact also informed the respondent of this circumstance in the context of the references to the infringements, which were intended to trigger the duty of the respondent to interfere.

The direct perpetrators of the infringing acts are the persons who uploaded the infringing copy files to the storage locations of www.shareplace.org and who used the storage locations via the links on www.██████████ made the storage locations publicly accessible via the links on www.██████████. These persons hide themselves (with regard to the linking) behind the user pseudonyms "SmilerIO" and "beatnik". It is currently not apparent how their real names can be clarified.

The applicant has made a credible case that she has attempted to have the illegal uploads at www.sharelace.o deleted, but that further action here offers no prospect of success. It has been affirmed in lieu of an oath (Annex Ast 3 under No. I) that the employees of the service provider proMedia reported the two URLs of the storage locations with the illegal copies of the album in dispute to the share hosting service "shareplace.org" for deletion after March 11, 2021 and March 18, 2021, but that there was no reaction from there and no deletion was made. It has been further affirmed in lieu of an oath that the sharehosting dienst is known for not responding to such requests for deletion and that proMedia alone has almost 8000 pending requests for deletion with this service, which have so far gone unanswered, the oldest since 18.10.2019 (Exhibit Ast 3 item I). This shows that the operator of the service is obviously resisting all requests for deletion and is not fulfilling its duty to interfere with the operation of the service following corresponding notices. It can therefore be left open whether there is any subsidiarity at all in the liability of the respondent as a disruptor vis-à-vis the service www.shareplace.org as another disruptor with a "greater proximity" to the actual act of infringement.

The applicant has also shown credibly that it has attempted to identify the perpetrators by making a claim against the operators of www.██████████ also by making a claim against the other service providers supporting this service, but that this procedure also promises no success with regard to ending the making available to the public of the infringing download offer in dispute:

The applicant has credibly shown that on March 23, 2021, a message was sent to the administrator of the www.██████████ by the employees of its service provider proMedia via a contact form provided on the site under the URL <http://www.██████████/memberlist.php?mode=contactadmin>, in which a total of 95 infringing offers of the website were pointed out, including the two links mentioned above under number 2 regarding the illegal copies of the album in dispute. The administrator has been set a deadline of 24.3.2021 to delete the links. This was obviously not complied with, because on 8.4.2021 the download via the links was still possible (affidavit Kunath Annex Ast 3, there number 4.). On April 12, 2021, the offers continued to be linked to www.██████████ (affidavit Ast 3, item 5).

By means of a lawyer's statement (application p. 9), the applicant has also plausibly shown that there is no imprint available on the website www.██████████ and that Whois entries for the domain holder are not available. The applicant has also provided a lawyer's assurance that advertising is placed on the www.██████████ website via PopMyAds and that donations can be made for the www.██████████ website via Buy Me a Coffee. In order to determine the operators of the website www.██████████, the advertising marketer PopMyAds and the payment service Buy Me a Coffee were requested to provide information about the operators in a lawyer's letter dated March 23, 2021, setting a deadline of March 26, 2021, at 11 a.m. (credible letters, Annexes A. 8 and A. 9 to the application). There were no reactions from either service, as was assured by the lawyer (application p. 9).

The applicant also made a further attempt to block the website www.██████████ by contacting the site's host provider. The website ██████████ and the offers of the subdomain ██████████ are maintained under the IP addresses 46.148.26.194 and 46.148.26.245 (credible screenshot of nslookup query, page 10 of the application). A search at RIPE.net shows that both the IP address 46.148.26.194 and the IP address 46.148.26.245 fall within the address range 46.148.16.0 - 46.148.31.255, for which the responsible organization is Infium UAB. Jurgio Baltrusaicio g. 9, LT-06145 Vilnius is listed as the responsible organization and Infium Ltd, Traktorostroiteley 156/41, office 301, 61129, Kharkov, Ukraine is listed as the administrative and technical contact; this has been made credible by submitting the relevant search results as per Annex Ast. 10 to the application. Both Infium UAB and Infium Ltd. were informed of the infringements in question by e-mail letters from lawyers dated 23.03.2021 and requested to block these offers by 26.03.2021 at 11 a.m. (substantiated by submission of Annexes Ast. 11 and Ast. 12). However, there was no reaction, which was assured by the lawyer (application p. 10).

The unsuccessful attempts to identify the perpetrators directly responsible or the "closer" to the infringement, the operators of the pages www.██████████ and www.██████████, the applicant has informed the defendant of the unsuccessful attempts, cf. first of all letter of advice of 26.03.2021, Annex Ast 6, there p. 3 below to p. 5 above, essentially corresponds to the description in the application).

6.

The blocking demanded by the applicant from the respondent is also proportionate.

a)

Even if the right holder has previously unsuccessfully taken action against primarily responsible parties of infringements on certain Internet pages, liability of the interferer who enables the accessibility of these pages for termination of this page accessibility as a whole is only given if the blocking of the objected Internet page appears to be proportionate with regard to legal content available there (BGH, *Urt. v. 15.10.2020 - I ZR 13/19, GRUR 2021, 63, 65 Rz. 25 zur Störerhaftung des Registrars*).

This consideration also applies in principle in a case such as the present one, in which the blocking requested by the blocking requested by the applicant is limited to the specific access path to the infringing content made possible by the defendant and the "overblocking" therefore only covers this specific access path, but not alternative access paths. Nevertheless, the respondent does not have to accept that its DNS resolver service has to carry out blockades that are not based on its special business model for the protection of malware and the like, but serve to block infringing content, while at the same time legal content is also blocked, so that the functionality of the respondent's DNS resolver may appear to be limited from the perspective of its customers compared to other DNS resolver offerings.

However, the blocking of the access path to the affected Internet site must be assumed to be proportionate if it is a structurally infringing Internet site with predominantly illegal offers. In this regard, the Federal Court of Justice has stated in connection with the registrar's "Stoererhaftung" (Breach of Duty of Care) (BGH, judgment of October 15, 2020 - I ZR 13/19, GRUR 2021, 63, 65 para. 26):

"With regard to the fundamental right of Internet users to freedom of information (Art. 11 I EU-GRCh, Art. 5 I I GG), the ECJ requires that blocking measures imposed on an Internet access provider be strictly goal-oriented in that they put an end to copyright infringement without depriving users of the possibility to lawfully access information (ECJ GRUR 2014, 468 marginal no. 56 = WRP 2014, 540-UPCTelekabel). However, blocking cannot be permissible only if exclusively illegal information is made available on the website, because the provider of a business model based on infringements could otherwise hide behind a few legal offers (BGHZ 208, 82 = GRUR 2016, 268 marginal no. 55 - Stoererhaftung des Access-Providers, mwN). In the context of the consideration of fundamental rights, in which, in addition to the fundamental right of the access provider to entrepreneurial freedom (Art. 16 EU-GRCh) and freedom of occupation (Art. 12 I GG), the fundamental right of the copyright holder to protection of his intellectual property (Art. 17 II EU-GRCh, Art. 14 I GG), the ECJ has formulated the criterion of strict targeting to the effect that the blocking measures taken must not "unnecessarily" deprive Internet users of the opportunity to lawfully access the available information (ECJ GRUR 2014, 468 marginal no. 63 - UPC-Telekabel). It is therefore necessary to consider the overall ratio of lawful to unlawful content that can be accessed via the disputed domain and to ask whether, in view of a large preponderance of illegal content, there is a negligible amount of legal content (see BGHZ 208, 82 = GRUR 2016, 268 marginal no. 55 - Störerhaftung des Access-Providers, mwN)."

If the rights holder refers to structurally infringing content of the challenged website in this sense, he must demonstrate and prove in the infringement proceedings against the interferer or make it credible that the conditions described by the Federal Court of Justice of the Federal Republic of Germany of a wide preponderance of illegal content actually exist and that this circumstance was pointed out to the interferer in the notices issued to trigger the inspection obligations (Federal Court of Justice, judgment of. 15.10.2020 - I ZR 13/19, GRUR 2021, 63, 66 para. 35, cf. further para. 39 and 41).

b)

In the present case, the required weighing of the interests and fundamental rights concerned is in favor of the applicant. fundamental rights in favor of the applicant. The notifications of the circumstances required to trigger the duty to interfere on the part of the respondent, which effect the weighing of interests in favor of the applicant, have been communicated to the respondent with the references to the infringements of rights.

(1)

The applicant has shown that it has no other effective possibility to take action against the direct perpetrators or the website operators of [www.██████████](#) or [www.██████████](#). The applicant has also shown that it has no other effective possibility to take action against the direct perpetrators or the website operators of [www.██████████](#) or [www.██████████](#).

Corresponding notification had already been made under 23.03.2021 (cf. Ast 4).

(2)

The defendant is - as explained - technically able to prevent the translation of the domain or URL [www.██████████](#) into an IP address, because such blockades are - albeit for other legal albeit for other legal reasons - part of the business model of the applicant.

Legally, the respondent is not entitled to check concrete, clearly recognizable indications of legal infringements, as in this case. infringements, as in the present case. There are no contractual obligations to the site operators of [www.██████████](#).

The entrepreneurial freedom of the respondent is not unduly affected with regard to a possible "overblocking" effect of blocking the domain translation for [www.██████████](#) or [www.██████████](#) because there is no legitimate interest of the customers of the respondent to obtain access to these pages. This is because the applicant has plausibly shown that the offers at [www.██████████](#) are predominantly links to copyrighted content that has been illegally posted on the Internet.

In more detail:

The applicant has made submissions in this respect (application p. 5-6):

"It is a direct download site. The service lists and categorizes music content. The content is not stored on the company's own servers, but is made available via hyperlink on sharehosting services. The content can be downloaded directly from the share hosts (direct download).

The service offers downloads of sound and video recordings in the categories charts, maxi/singles, albums, samplers, individual songs, mixes, music videos and audio books without prior registration.

By means of a search function, a user of the site can search in all or in selected categories."

This technical functioning of the site www. [REDACTED] is plausibly demonstrated by the screenshots in the application p. 5-6.

The applicant has further asserted (application p. 5 and 6):

' [REDACTED] is a structurally copyright-infringing website on which music and radio play albums are offered for download without the consent of the rightholders....

The total number of offers amounted to a total of 49,239 products of music, music video and radio play releases, according to an investigation by the company proMedia GeSeilschaft zum Schutz geistigen Eigentums mbH on 08.01.2021. An expert evaluation of the offers came to the conclusion that they were almost exclusively unauthorized publications of protected sound or video recordings."

This contract has been made credible by submission of the private expert opinion, Annex Ast 2 of the Mr. Alexander Fuhrmann, Dipl.-Ingenieur of the technical computer science and MBA of the 22.02.2021. With the appraisal of the side www. [REDACTED] 80 linked contents were selected randomly and examined whether a copyright protection existed at them; this was with all 80 the case. The expert opinion concludes from this by way of extrapolation that on the www. [REDACTED], the proportion of unprotected products is close to zero (Ast 2 p. 9).

The file content consisted of charts, maxi/singles, albums, samplers, individual songs, mixes, music videos and audio books. It was therefore content for which it could not be expected that the rights holders had consented to it being made available on storage sites linked via www. [REDACTED] but that it was uploads by users of such content. This is also shown by a look at the list Ast 2 p. 10-17 with the listing of the contents by name, many of which are from generally known and court-known artists and are recognizably commercially exploitable, so that an approval of free downloads from the Internet cannot be expected.

All of these circumstances make it at least predominantly probable that the website www. [REDACTED] is in fact predominantly links to copyrighted content held illegally on the Internet. The technical mode of operation and the qualification of the linked content at www. [REDACTED] was sufficiently clearly pointed out by the applicant's representatives in the notification of the respondent on 23.03.2021 (Annex Ast 4 p. 2-3) and in the warning of 26.03.2021 (Annex Ast 6 p. 2-3).

A ground for injunction exists. The applicant side has pursued the matter sufficiently swiftly. The album in dispute was regularly published on 03/26/2021. It has been plausibly been made that the determination of the offer of the album in dispute here took place on 18.03.2021 took place.

It can remain open whether one should assume with the OLG Munich (GRUR 2019, 507), that, as a result, a work-related view (as used here by the applicant) should not be considered if the request for injunctive relief ultimately amounts to the blocking of a domain - or, as here: a specific access path to a page - as a whole and the rights holder has already been aware for a period of time detrimental to the urgency that copyright infringements are being committed on the website in question. The Higher Regional Court of Cologne stated that a work- and infringement-related assessment of the need for urgency is in any case again permissible and appropriate if, in the case of high awareness of the artist concerned, it is a question of an infringement almost seamlessly following a current publication (Higher Regional Court of Cologne, judgment of 9.10.2020-6 U 32/20 (LG Köln), NJW 2021, 319, 325 Rz.101). The Chamber considers such a view to be all the more necessary if - as in the present case - the unlawful making available of a sound carrier takes place before its official release date and the infringement thus falls into the core phase of the exploitation of the sound carrier.

The decision on costs follows from § 91 ZPO.

The amount in dispute is estimated, whereby the assumption of an interest in injunctive relief for the unlawful making available of a complete sound carrier with 12 individual titles on a structurally infringing Internet site, which is in the current peak phase of exploitation, appears to be reasonable at EUR 100,000.

Remedies:

The decision may be appealed. The appeal is not bound to a time limit.

The appeal must be lodged with the

Hamburg Regional Court
Sievekingplatz 1
20355 Hamburg

to be filed.

The objection must be filed in writing by a lawyer.

An appeal may be lodged against the decision by which the amount in dispute has been determined, if the value of the subject matter of the appeal exceeds 200 euros or if the court has allowed the appeal.

The appeal must be lodged within six months with the

Hamburg Regional Court
Sievekingplatz 1
20355 Hamburg

to be filed.

The time limit shall commence when the decision on the merits of the case becomes final or when the proceedings are otherwise settled. If the amount in dispute has been determined later than one month before expiry of the six-month period, the appeal may still be lodged within one month of the service or informal notification of the decision to set the amount in dispute. In the case of informal notification, the decision shall be deemed to have been notified on the third day after posting.

The appeal shall be lodged in writing or by a statement on the record at the office of the said court. It may also be filed in the court registry of any district court;

However, the time limit shall be observed only if the record is received in due time by the above-mentioned court.

The participation of a lawyer is not required.

Appeals may also be submitted as an electronic document. A simple e-mail does not meet the legal requirements.

The electronic document must

- be provided with a qualified electronic signature of the responsible person, or
- signed by the responsible person and submitted via a secure transmission channel.

An electronic document bearing a qualified electronic signature of the responsible person may be transmitted as follows:

- by a secure means of transmission; or
- to the electronic court and administrative mailbox (EGVP) of the court established for the receipt of electronic documents.

With regard to secure means of transmission, reference is made to Section 130a(4) of the Code of Civil Procedure. With regard to the further requirements for electronic communication with the courts, reference is made to the Ordinance on the Technical Framework Conditions for Electronic Legal Transactions and on the Special Electronic (Electronic Legal Transactions Ordinance - ERW), as amended from time to time, and to the website www.justiz.de.

██████████
Vorsitzender Richter
am Landgericht

██████████
Richter
am Landgericht

██████████
Richter

Für den Gleichlaut der Ausfertigung mit
der Urschrift

Hamburg, 21.05.2021

██████████
Urkundsbeamtin der Geschäftsstelle





Beglaubigte Abschrift

Landgericht Hamburg

Az.: 310 O 99/21



Resolution

in the case

Sony Music Entertainment Germany GmbH, represented by d. Managing Directors [REDACTED]
[REDACTED] and [REDACTED], Balanstrasse 73,
House 31, 81541 Munich

- Applicant -

Counsel:
Rechtsanwälte Rasch, An der Alster 6, 20099 Hamburg, Germany, reference number: 21-090.0220

against

Quado Foundation, represented by the trustees Bill Woodcock, Martin Leuthold, Dorian Kim,
Benno Overeinder and Florian Schütz, Werdstrasse 2, 8004 Zurich, Switzerland


- Defendant -


decides the Regional Court Hamburg - Civil Chamber 10 - by the presiding judge at the District Court Hartmann, the District Court Judge Dr. Heineke and the District Court Judge Lauritzen on 20.05.2021:

The diplomatic service of the preliminary injunction of 12.05.2021 for the purpose of the execution of the preliminary injunction by the parties with the intervention of the court is ordered.

Pursuant to Section 184 of the German Code of Civil Procedure, the respondent is required to name an authorized recipient who lives in Germany or who has a business premises within four weeks, unless a lawyer is named as an authorized representative within this period.

If no person authorized to accept service is appointed or if no lawyer is instructed, subsequent service may be effected up to the time of subsequent appointment by posting the document at the address of the respective defendant. The document shall then be deemed to have been served two weeks after posting.



Vorsitzender Richter
am Landgericht


Richter
am Landgericht


Richter
am Landgericht



Für die Richtigkeit der Abschrift
Hamburg, 21.05.2021


Urkundsbeamtin der Geschäftsstelle
Durch maschinelle Bearbeitung beglaubigt
- ohne Unterschrift gültig