Court of Justice of the European Union: Sampling allowed, subject to restrictions

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In a ruling of 29 July 2019, the Court of Justice of the European Union strengthened the rights of artists with regard to so-called sampling and decided that the use of sound samples taken from a phonogram may, under certain circumstances, be used in a new piece of music without the consent of the phonogram producer. At the same time, however, a special rule on 'free use' in German copyright law was classified as incompatible with EU law.

The procedure concerned a legal dispute in Germany that has gone unresolved for more than 20 years. In 1997, the composers Moses Pelham and Martin Haas had copied a two-second rhythm sequence from the song 'Metall auf Metall' by the group Kraftwerk and had used it as a continuous loop in their own song 'Nur mir'. Two members of the Kraftwerk group claimed that, as producers of the phonogram concerned, their copyright-related rights had been infringed. They therefore sought 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 – BGH), before which the latest appeal had been brought, submitted a number of questions to the CJEU on the interpretation of EU law in this respect,includingquestions onthe technique of sampling itself and the scope of various exceptions and limitations tocopyright and related rights.

Regarding sampling itself, the CJEU stated that phonogram producers have the exclusive right to authorise or prohibit reproduction in whole or in part of their phonograms – a right that is fully harmonised at EU level and is therefore not open to any national discretion. However, if 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'. It is therefore necessary to strike a fair balance between the interests of the holders of copyright and related rights and those of the users of protected subject matter, whoare covered by the freedom of the arts.

The CJEU also considered that the exceptions and limitations to the rights of rightsholders provided for in EU law were determined exhaustively and that a fair balance had been struck between the conflicting interests. Therefore, an additional copyright limitation linked to 'free use', contained in Article 24 of the

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German Urheberrechtsgesetz (Copyright Act), was incompatible with EU law.

Judgment of the CJEU (Grand Chamber), Case C-476/17, 29 July 2019

http://curia.europa.eu/juris/document/document.jsf;jsessionid=B4B4D7E69DF74C6C20B5A56D9EE8D809?text=&docid=216552&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7848

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