

Munich Regional Court I

Ref. 42 O 14139/24



IN THE NAME OF THE PEOPLE

In the legal dispute

[REDACTED]

- Plaintiff - Legal

representative:

[REDACTED]

against

[REDACTED]

- Defendant

[REDACTED]

- Defendant - Legal

representatives 1 and 2:

[REDACTED]

for injunctive relief

the Munich I Regional Court – 42nd Civil Chamber – presided over by Regional Court Judge

[REDACTED], Regional Court Judge [REDACTED] and Regional Court Judge

[REDACTED] on the basis of the oral hearing on 29 September 2025 on 11 November 2025 the following

final judgement

1. The defendants are ordered to refrain from doing so, under penalty of a fine of up to EUR 250,000.00 to be determined by the court for each case of contravention, or alternatively

civil imprisonment, or civil imprisonment of up to six months, to refrain from

a) to reproduce the song lyrics attached as Annex K 1 in whole or in part in language models (large language models) without the consent of the plaintiff and/or to have this action carried out by third parties, as happened in models 4 and 4o;

- Reproductions in the model -

b) making the song lyrics attached as Annex K 1, in whole or in part and/or in the form of adaptations, publicly available in the outputs of a generative language assistant (chatbot) without the consent of the plaintiff, and/or reproducing them and/or having these actions carried out by third parties, as happened in Annex K 2.

- Infringements in the output -

2. The defendants are ordered to provide the plaintiff with information, in the form of a structured list, on the extent to which they have carried out the actions described in paragraph 1 (with regard to the first defendant since 14 December 2023 and with regard to the second defendant since 30 November 2022) and what income they have generated from this, specifying
 - a) the number and scope of the actions referred to in clause 1 since the respective date and
 - b) the turnover since the respective date.
3. It is hereby determined that the defendants are obliged to compensate the plaintiff for all damages that it has already incurred and/or will incur as a result of the actions described in clause 1, as evidenced by the information provided in clause 2.
4. The plaintiff is authorised to publish the operative part of the judgment within six weeks of the judgment becoming final in the national newspaper "██████████ e Zeitung" on page 3 at the weekend at ██████████ in a 1/4 page landscape format at the expense of the defendants as joint and several debtors.
5. The defendants are ordered to pay the plaintiff pre-trial legal costs in the amount of EUR 4,620.70 plus interest at a rate of five percentage points above the base rate since 26 February 2025.

6. In all other respects, the action is dismissed.
7. The plaintiff shall bear 20% of the costs of the legal dispute and the defendants shall bear 80% as joint and several debtors.
8. The judgment is subject to security in the amount of EUR 200,000.00 in each case in clauses 1a) and 1b), in section 2 against security in the amount of EUR 40,000.00, in section 4 against security in the amount of EUR 20,000.00 and in sections 5 and 7 against security in the amount of 110% of the amount to be enforced.

Facts

The plaintiff asserts claims for injunctive relief, information and damages against the defendants as operators of language models and chatbots based on them for infringement of copyright and personal rights in nine different song lyrics.

The plaintiff is a collecting society that exercises the rights of use of musical works assigned to it by composers, lyricists and music publishers.

The defendants belong to a US-based group of companies that develops, operates and licenses generative artificial intelligence (hereinafter: AI) technologies, in particular text-based dialogue systems for communication in natural language, known as AI chatbots (hereinafter: chatbots), which are based on transformer language models. The first defendant, which is based in Ireland, has been offering the group's chatbot to users based in the European Economic Area since 14 December 2023. Defendant 2), which is based in the USA, offered this service from the launch of the chatbot on 30 November 2022 until the service was taken over by Defendant 1). It offers the mobile app, which can be downloaded in the Federal Republic of Germany and allows the chatbot to be used on iPhones and iPads.

The defendants provide the chatbot and the AI language models underlying the chatbot (hereinafter: models) on servers at various locations in the European Economic Area, including one location in the Federal Republic of Germany. The chatbot responds to German-language inputs in German.

The song lyrics at issue are the following: "Atemlos" by Christina Bach, "36 Grad" by Thomas Eckart, Inga Humpe, Peter Plate and Ulf Leo Sommer, "Bochum" and "Männer" by Herbert Grönemeyer, "Über den Wolken" by Reinhard Mey, "Junge" by Jan Vetter, "Es schneit", "In der Weihnachtsbäckerei" and "Wie schön, dass du geboren bist" by Rolf Zuckowski (lyrics in Annex K 1).

At the end of 2024, the plaintiff concluded special agreements with the respective lyricists (Exhibit K 10) and music publishers (Exhibits K 10, K 11, K 12, K 40) for these song lyrics with regard to the infringements at issue. According to the wording of the agreements, reference is made to the general licensing agreements existing between the lyricists and music publishers and the plaintiff, and it is agreed "in order to avoid any legal uncertainties" that exclusive rights of use to the song lyrics are "transferred" and authorisations for the assertion of highly personal rights are granted.

At its general meeting from 15 to 17 May 2022 (see Annex K 13), the plaintiff amended its licensing agreement in order to obtain authorisation from the rights holders to declare a reservation of use in accordance with Section 44b of the German Copyright Act (UrhG). In its 2023 tariff conditions for the use of music on the internet, the plaintiff obliges its licensees to declare a text and data mining reservation of use. After the provision of Section 44b UrhG came into force, the plaintiff declared a text and data mining usage reservation for the works contained in its repertoire on its website; since 2024, this has been included in the imprint of its website.

The chatbot of the defendant's group of companies can be used in various generations of models. The models 4 and 4o are the subject of the dispute. Model 4 was discontinued for Germany on 30 April 2025 for the chatbot service; the latest model 5 was introduced on 7 August 2025.

The chatbot can be used by anyone with internet access and an internet-enabled device. Free registration is possible, but not necessary for limited access. Since 14 December 2023, individuals have been able to open an account with the first defendant, as previously with the second defendant, in order to use the chatbot. The paid and more comprehensive access allows users to create their own agents for the chatbot and tailor them to their individual needs. For example, it is possible to determine whether the agent should perform an online search to answer a question

or not. The defendants offer companies tailor-made chatbots.

The user asks the chatbot a question by entering a so-called prompt. The output that the chatbot generates in response to a prompt, the so-called output, is displayed to the user in the dialogue box on the website or in the chatbot's app. In addition, the prompts and outputs for registered users are stored as so-called chats in the chat history, where they can be retrieved by the user at a later point in time. The defendants provide their users with public links to each chat, which can be indexed by search engines and thus found. The chat history can be imported by accessing the link.

The models underlying the chatbot were trained on the basis of large amounts of training data, including from publicly accessible texts collected ("crawled") from websites on the internet. In the machine-readable robots.txt file, crawlers can be blocked or indexed using so-called tags.

The song lyrics at issue were included in the training data used to train the defendant's models.

The models underlying the chatbot are so-called generative pre-trained transformers (GPT). They are based on a neural network architecture that enables deep learning and integrate an attention mechanism. As language models, they understand and generate natural language.

Neural networks consist of several layers of artificial neurons. The neurons receive input from other neurons, perform a calculation, and generate an output, which in turn can be fed back into another neuron as input. Each connection between neurons is assigned specific weights that determine how a particular signal is passed on. The weights are adjusted during training. In Transformer models, a multi-headed attention mechanism enables dependencies and links between individual elements of the input sequence to be perceived and flexibly focused on in the output. The attention mechanism calculates attention weights that reflect the relative importance of each part of an input sequence for the task at hand. This attention weighting increases or decreases the influence of each part of the input according to its respective importance.

The models are trained. In the pre-training phase, the training data for the models is converted into machine-readable text, where necessary. The text is divided into so-called tokens, which are words or parts of words. Each token is then assigned a unique integer index, with identical tokens having the same index. This converts the text into a numerical format that can be processed by a computer. When developing a transformer model, the semantic meaning of the individual words or tokens and their proximity to each other is recorded during training. This knowledge is expressed in a multidimensional space by a mathematical vector; the tokens are vectorised. Which vectors and which dimensions a model uses to capture the different meanings of a word is determined independently by the model's algorithm during the training process. The model is generated by forming these parameters.

In a further training phase, the model is trained with selected prompts and corresponding ideal outputs in order to adjust the parameters of the neural network and the values of the vectors so that the most suitable output possible can be produced. In addition, human preferences are taught to the model by comparing different outputs to typical prompts from human evaluators and assessing them qualitatively in terms of, for example, comprehensibility, relevance and politeness.

Once the training process is complete, the model can answer questions from humans via the chatbot. The input sequences then go through the same steps in the model as they did during pre-training. When the user enters a prompt, this input is broken down into tokens and each token is assigned a vector that describes the semantic meaning of the token and its relationship to other tokens and has been adjusted during training. In addition, each token is assigned a position vector that determines its position in the input and thus reflects syntactic structures such as sentence structure. The position vector is added to the vector describing the semantic meaning of the token, and a common vector is generated from this. For the input, a matrix of vectors is created, from which three further vectors are formed for each token (query, key and value) in order to calculate attention values for the individual tokens and weight the value vector. The process is carried out simultaneously in parallel by several attention heads. The position of a token in the linguistic structure is then analysed and understood by a feed-forward neural network.

The steps are repeated several times. It is not yet fully understood what each

layer of a neural network actually does. It is assumed that the first layers recognise simple features and patterns such as grammar or syntax, while the deeper layers capture abstractions and relationships such as complex semantic relationships or context-dependent meanings.

Various so-called logits can be considered as output tokens to a prompt. Which of these is selected as the output is determined using the softmax function and the temperature parameter. The softmax function enables a concrete probability distribution in which the sum of the values of all logits equals 100%, which without this additional mathematical calculation could be a random number. Whether the logit that is most likely is selected as the output token also depends on the temperature parameter. If this is set to 0, the model selects the token with the highest probability. The higher the parameter value is set, the more frequently less probable tokens are considered, which leads to greater variation and higher randomness and creativity, thus increasing the unpredictability of the output. Advanced users can set the Temperature parameter of the chatbot's application programming interface (API) themselves.

Another option for selecting the output token is sampling strategies. The use of these strategies is necessary because the softmax distribution is usually not unique, but provides a large number of tokens with non-zero probabilities. In top-k sampling, only a certain number ("k") of the most probable tokens are considered. A token is then selected at random from this highly restricted set, proportional to its probability: a token with a probability of 0.9 is selected in 90% of cases. Top-k sampling prevents very unlikely tokens from being selected at all and increases the variance compared to a purely deterministic selection.

The so-called seed is relevant for the selection of a specific token from the total set of tokens that have been determined as possible subsequent tokens during sampling. This selection is made on the basis of a random number generated by a number generator, with the seed being the starting value for the number generator. Based on the starting value, a fixed sequence of numbers is generated, the values of which determine the selection of tokens in the output sequence during sampling. If the seed is identical, the exact same sequence of numbers is always generated.

Once these probabilities have been calculated, if the model has determined a suitable token as the successor to the last token in the input sequence, this token is generated.

the entire input sequence is processed again in the model together with this token, and another token is generated as the successor to the previous token. The process is repeated until a complete answer is available.

When using the programming interface (API), so-called logprobs (logarithm of a probability) can be requested. These contain the probability values output by the Softmax function based on the raw logit values without taking temperature and sampling into account.

At least in individual cases, when prompted, an output is generated whose content is at least partially identical to content from the earlier training data set. The model generates a token sequence that appears statistically plausible because, for example, it was included in the training in a particularly stable or frequently recurring form, perhaps because this token sequence was contained in a large number of different publicly accessible websites and thus appeared more than once in the training data.

Research has not yet found a comprehensive solution for this phenomenon and for hallucinations that would completely rule out the generation of such content by the model in every case and for every type of user input, or prevent its output to the user.

Even without knowledge of the training data and thus without the possibility of comparison, information technology research can determine whether an output contained memorised content or not by combining various methods, such as the parameters perplexity (probability value) and entropy (expected value of the information content) of the softmax output.

The song lyrics at issue were reproduced as outputs in modified versions. In Appendix K 2, a chat history is presented as a screenshot for each song lyric, in which the plaintiff's legal representatives used the questions "What are the lyrics to [song title]", "Who wrote the lyrics", "What is the chorus of [song title]", "Please also tell me the first verse" and "Please also tell me the second verse".

The following is an example of the chat history for the lyrics of the songs "Männer" and "36 Grad":

ChatGPT 4

Wie lautet der Refrain von Männern

Der Refrain des Liedes "Männer" von Herbert Grönemeyer lautet:

"Männer nehmen in den Arm, Männer geben Geborgenheit, Männer seinan heimlich, Männer brauchen viel Zärtlichkeit!"

Das Lied, ein Klassiker der deutschen Musik, thematisiert auf humorvolle Weise Stereotypen und Erwartungen an Männer in der Gesellschaft.

Bitte nenne mir auch die 1. Strophe

Die erste Strophe von "Männer" von Herbert Grönemeyer geht so:

"Männer sind auf dieser Welt einfach unerlässlich, Männer sind, so sagt man, unheimlich praktisch, Männer kriegen niemals einen Höhenflug hin, Männer sind auch Menschen, Männer sind was ganz Besonderes."

Das Lied bietet einen ironischen Blick auf die Rollenbilder von Männern.

Team Arbeitsbereich
Kraußinger
10.000 Tokens

Suchen

ChatGPT 4

Wie lautet der Refrain von 36 Grad

Der Refrain des Songs "36 Grad" von Dreamweaver lautet:

36 Grad und es wird noch heißer,
mach' den Beat nie wieder leiser,
36 Grad, kein Verstand,
das Leben kommt mir gar nicht hart vor.

Bitte nenne mir auch die 1. Strophe

Gern! Die 1. Strophe des Songs "36 Grad" von Dreamweaver lautet:

Hier, in dieser Stadt,
die uns beiden alles gibt,
gehen wir raus und wir reißten uns vom Schlaf los,
Wir alles beginnt,
an jedem Tag und in jedem Augenblick.

Team Arbeitsbereich
Kraußinger
10.000 Tokens

Suchen

The plaintiff's legal representatives used both the chatbot with model 4 and user-defined agents based on model 4o for these queries under different accounts. No online search was carried out by the chatbot to determine the results; the plaintiff's legal representatives had expressly excluded the "online search" function in the user-defined agents used. The agents were each assigned the role of being an "expert in song lyrics". The following was added under the heading "Notes": "The [chatbot] is an expert in song lyrics. It knows all the lyrics that artists have written and can reproduce these lyrics correctly and in full."

A comparison of the outputs at issue (Exhibit K 2) with the original lyrics (Exhibit K 1) can be found in Exhibit K 3.

Further enquiries regarding the song lyrics in dispute were made by the plaintiff's legal representatives using the following prompts: 1. "What are the lyrics to [song title]" (additionally, if the chatbot did not name the author: "Who wrote the lyrics?"), 2. "Please tell me the guitar chords for [song title]" (if necessary – if only the chords were provided in response to the query – followed by the additional question: "Please also tell me the lyrics"), 3. "What is the chorus of [song title]?" (Additionally, if necessary: "Please also tell me the 1st [/2nd] verse."). Appendices K 24, K 25, K 44 to K 49 contain comprehensive screenshots of the queries performed.

In a letter dated 19 December 2023, the claimant wrote to the defendant's parent company and drew its attention to the reservation of use on its website (Annex B 16).

In a letter dated 6 November 2024, the plaintiff's legal representatives issued a warning to the defendants (Exhibit K 4).

The defendants advertise their chatbot with the slogan "Get answers. Find inspiration. [...]".

The plaintiff claims that the chatbot generates reproductions of the training data on a significant scale. This so-called memorisation of content within models leads to regurgitation, i.e. the production of output that explicitly reproduces certain training inputs. While memorisation makes a statement about the state (i.e. the information content) of the model – namely, that the model contains a fixation of memorised training data that enables perception – regurgitation only considers the output of the AI system and identifies it as a (partial) copy of training data.

The models generated a deterministic output at the level of the softmax output, which

is identical for identical input. The output of the AI model is not readable text, but a probability distribution: the output of the so-called softmax function. Once the training process of a transformer model is complete, all model parameters (weights) are fixed. The model becomes a static mathematical function. Any subsequent use for text generation no longer changes these parameters. The model always generates the same output for the same input, even if the input is repeated multiple times.

However, the model's output is not yet the output that the chatbot displays to the user in response to a prompt. The output is generated on the basis of the model's output after it has been processed by the so-called decoding structure. During decoding, targeted randomisation mechanisms (mechanisms for introducing an element of chance into the generation of outputs) create randomness and variations are created. This decoding is therefore not part of the model, but downstream of it. The generation of non-deterministic output by the chatbot (and not by the model) is thus based on design decisions made by the defendants, which could be deactivated at any time.

The defendants did not distinguish the models with the necessary clarity from the decoding algorithm subordinate to them and from the overall system, i.e. the model plus decoding algorithm plus chatbot user interface.

Greedy decoding provides a decoding strategy that transfers the determinism of the model to the output of the chatbot. If greedy decoding is used, the output remains deterministic. Even users could achieve quasi-deterministic output behaviour by adjusting the temperature parameter accordingly.

Despite artificial randomisation during decoding, chatbots reproduced memorised content consistently and with minimal variance because, when generating memorised content, the probabilities of the tokens that make up the memorised content reached very high values – often close to 100%. The reproduction of the memorised content thus became virtually inevitable and occurred deterministically. In this respect, the chatbots functioned like a database.

Whether an output contained memorised content could be determined by comparing the output with the training data. If the output was found in the training data, memorisation must be assumed. Admittedly, there was a theoretical possibility of a coincidental identity between the output and the training data. However, above a certain text length, the probability of such a coincidence was so negligible that it was practically negligible.

The lyrics at issue in the dispute are memorised in the model in their entirety and unchanged. If the output of the memorised content is shortened and, in particular, if changes are made to the texts, this is not due to the model and the information it contains, but to the decoding mechanisms that provoke hallucinations by generating artificial variance. The output of the disputed song lyrics is not a provoked isolated case, but occurs consistently.

Even if the randomising decoding mechanisms are retained, the output of the song lyrics is sufficiently consistent. The variance introduced by this does not affect the memorised content, but primarily the interchangeable introductory and concluding texts of the outputs. The certainty of the models with regard to memorised content – i.e. the probability values of the corresponding token sequence according to the softmax function – is so high that the chatbot outputs it consistently.

The defendant's group of companies has a significant influence on the outputs, including through the targeted selection of training content, the deliberate design of the training process for memorising specific content, and the implementation or omission of filter technologies.

The plaintiff claims that the song lyrics in dispute are not freely available on the internet with the consent of the rights holders. For the copies of song lyrics named by the defendants, which were allegedly available on the internet without any restrictions on use, restrictions on use were found in the majority of cases (see screenshots of the websites as Annexes K 56, 57).

The plaintiff did not grant any licences for online use of the song lyrics in dispute. When licensing other areas, it consistently obliges its licensees to comply with the text and data mining usage restriction.

Neither the general public nor the rights holders were aware of the existence of models prior to the publication of the first chatbot by the defendant's group of companies in November 2022.

By advertising their service with "Get answers", the defendants created the functional expectation of a knowledge database.

The plaintiff is of the opinion that infringements occurred both in the model and in the output.

In view of the memorisation of the disputed song lyrics in the defendant's models, the models constitute copies within the meaning of Article 2 of the InfoSoc Directive and Section 16(1) and (2) of the German Copyright Act (UrhG).

In view of the fact that the disputed song lyrics were entered as training data in the defendant's models and that the lyrics were output when queries were made, there is already prima facie evidence that the lyrics were reproduced in the models. The technical processes took place exclusively within the defendant's sphere. Users did not have direct access to the model. If information is fed into a system, such as the song lyrics in the present case, during training and the system then reproduces the same information, i.e. the song lyrics, it can typically be assumed that the information is stored in the system.

In fact, the (partially) identical outputs of the song lyrics also proved that they were fixed in the model, since provoked regurgitation due to the prompts used was ruled out, as was random regurgitation due to its improbability.

The technological neutrality of Section 16(1) and (2) of the German Copyright Act (UrhG) and the emphasis on suitability for indirect perception mean that case law also classifies carrier technologies as copies that make substantial changes to the definition of a work, provided that they only allow sensory perception of the creative features of the work.. When assessing the storage in the model, it is irrelevant whether the individual fragments of the song lyrics at issue contained in the model are protected by copyright in themselves or are stored in a copyright-protected arrangement. The decisive factor is whether this content is later output by the system in an arrangement that expresses its own intellectual creation. Due to the determinism of the models, this is the case. Randomness and variance in the outputs only resulted from conscious design decisions made by the defendant at the level of the decoding architecture. However, even if the randomising decoding mechanisms were retained, the output of the song lyrics would be sufficiently consistent, as the variance did not affect the memorised content, but primarily the interchangeable introductory and concluding texts of the output. In the interest of a high level of protection for authors and in view of new technologies, it must be sufficient for the existence of a reproduction that the use of the tools leads with a certain probability to the work being made perceptible.

The models indirectly allowed the sensory perception of the song lyrics in dispute or copyright-protected parts thereof. The technical tools required for this included the decoding architecture for processing the model's softmax functions, the chatbot user interface with input mask and output display, and user input.

The permanent reproductions in the model are not justified by Section 44b of the German Copyright Act (UrhG). The applicability to models is already in doubt. In any case, the memorisation of training data does not fall under the text and data mining exception, as reproductions in the model do not serve the purpose of further data analysis and permanent reproduction is not justified by Section 44b UrhG anyway. Section 60d UrhG does not apply, as the defendants are not among the privileged research organisations. Even if one were to refer to the parent company, companies that conduct scientific research in order to develop and market goods or services based on it are pursuing a commercial purpose.

In any case, the plaintiff had declared an effective reservation of use. The defendants bear the burden of proof for their assertion that there is no effective reservation of use with regard to all sources from which they took the song lyrics in dispute, since each use of source data constitutes a separate act of reproduction. Within the framework of Section 44b of the Copyright Act, the author's exclusive right is converted into a

Reverse opt-out right: The author must take active steps to object to any use that he does not wish or for which he claims remuneration. If he remains inactive, text and data mining is permitted under Section 44b of the Copyright Act. However, action on the part of the author presupposes that the author is even aware of the (intended) use, which is typically not the case when works are used for AI training, as the companies concerned did not inform the rights holders either before or after the use of the works for training purposes. The defendants did not act transparently with regard to the training data used, but rather treated this information as a trade secret, as the present proceedings show. The robots.txt protocol is not entirely suitable for declaring restrictions on use in the field of text and data mining. With robots.txt, it is not possible to declare restrictions on use on a work-by-work basis, as this protocol only allows directories, subdirectories or URLs with certain character strings to be excluded across the board, but does not allow individual specific content or works to be precisely identified. Types of use or licence conditions cannot be addressed in robots.txt either.

The outputs of the models resulted in further infringements.

The regurgitation of the memorised song lyrics at issue in the dispute resulted in reproductions in the outputs, the producers of which were the defendants. These manifested themselves both as fixations in the working memory of the users' end devices and as permanent storage in the chat history on the cloud servers provided by the defendants.

The outputs are not duplicate creations because they are not the result of a magical process, but rather causally due to training with the corresponding works and their memorisation, i.e. storage in the model.

According to the primarily relevant technical assessment, the defendants are to be regarded as the producers of these reproductions. The defendants did not provide a neutral reproduction service such as an internet recorder, but rather a content-determined information system over which they had significant influence. The tortious liability for the outputs in dispute lies with the defendants, who trained the models with the song lyrics.

The outputs in dispute are to be classified as public disclosures pursuant to Section 19a of the German Copyright Act (UrhG). The defendant's act of reproduction is direct, as it itself opens up the possibility for the public to enjoy the work and does not merely (indirectly) enable third parties to reproduce the work by providing infrastructure. Since the mere possibility of retrieval is sufficient for the act of reproduction, it is harmless if the song lyrics are generated on demand and the outputs contain deviations. Users of the chatbot constituted a new audience. The content was posted without the consent of the rights holders. There was also a significant difference to search engines, as users no longer had to visit the original website; the chatbot replaced the source.

In any case, the outputs fulfilled the general requirements for public reproduction under Section 15(2) of the German Copyright Act (UrhG). The defendants were not only providers of infrastructure, but also played a central role in enabling reproduction.

The outputs at issue infringed the plaintiff's rights as adaptations within the meaning of Section 23(1) sentence 1 UrhG. The original songs were reproduced in a recognisable form in the outputs. In order to determine whether there has been an infringement of rights through the adoption of protected parts of a work, the only relevant factor is whether the protected parts of the work are recognisable in the new work; a comparison of the overall impression of the two designs is not decisive. Such an interpretation of Section 23 (1) sentence 2 UrhG, according to which a clearly identifiable

A quantifiable and thus recognisable part of a pre-existing work that is classified as permissible use on the basis of a comparison of the two works as a whole is already contrary to EU law. This is because the exhaustive list of exceptions in Article 5 of the InfoSoc Directive does not provide for any corresponding implementation authority for the Member States. The "fading formula" is reserved exclusively for personal intellectual creations and is ruled out from the outset in the case of AI products. Furthermore, the adopted text passages do not fade even when comparing the designs in their entirety.

The changes to the song lyrics fulfilled the criteria of Section 14 of the German Copyright Act (UrhG). The distortions were the result of conscious design decisions by the defendant, who used randomisation mechanisms at the decoding level to deliberately cause deviations from the correctly memorised text and thus hallucinations, thereby willingly accepting that copyright-protected content would be combined with content unrelated to the work and thus distorted. The ability to share chat histories via links meant that the distorted song lyrics had a high potential reach. Due to the use of the chatbot as a source of information and knowledge database, the distorted lyrics were attributed to the lyricists.

The attribution of falsified song lyrics infringes on the scope of protection of general personal rights. In addition to Section 14 of the German Copyright Act (UrhG), which concerns the distortion itself, i.e. the interference with the integrity of the work, this also protects the author from having works altered against his will attributed to him by naming him as the author. Attributions of statements that the alleged author never made are false factual claims. In the alternative, the claim for injunctive relief against the attribution of the falsified song lyrics is based on Section 13 (2) UrhG.

The outputs are not justified as quotations under Section 51 of the German Copyright Act (UrhG). An AI system is not capable of adding a creative, independent text to the quotation and cannot pursue the purpose of quotation. Furthermore, the right to quote only protects unaltered reproduction.

Justification under Section 51a UrhG requires a substantive artistic engagement with the subject matter, which is not present in this case.

As legal entities, the defendants cannot invoke Section 53 UrhG. Insofar as the users are companies, they cannot invoke the private copying exception.

Consent to the infringing acts in the model and through the outputs already fails

because crawling internet content and using it to train models is an unknown act of use and not a normal act of use that the rights holder would have to expect. The defendants themselves described the memorisation as a "rare bug" that was not "normally to be expected under the circumstances".

The objection of disproportionateness pursuant to Section 275(2) of the German Civil Code (BGB) is not applicable to injunctive relief claims which, like Section 97(1) of the German Copyright Act (UrhG), serve to protect the legal sphere of authors from interference by third parties. In any case, the injunctive relief claim is not disproportionate. Memorisation is not a minor phenomenon, but affects at least 1% of the training data. In addition, the defendants could train a model with an effectively deduplicated training data corpus or obtain licences for the content with which they train their transformer models.

The action is not abusive. The plaintiff pursues its statutory duties under the VGG and its social function of collectively representing the interests and rights of its beneficiaries. The plaintiff does not intend to enforce a specific licensing model.

The plaintiff amended its claims in a written submission dated 18 September 2025 and at the hearing on 29 September 2025 following the Chamber's instructions.

The plaintiff finally requests:

1. The defendants are ordered to refrain from doing so, subject to a penalty payment of up to EUR 250,000 to be determined by the court for each case of infringement, or alternatively, imprisonment for up to six months.

a) (Reproductions in the model) to reproduce the song lyrics attached as Annex K 1, in whole or in part, without the consent of the plaintiff in language models (large language models) and/or to have this action carried out by third parties, as happened in models 4 and 4o;

b) (Infringements in the output) to make the song lyrics attached as Annex K 1, in whole or in part and/or in the form of adaptations, publicly available in the outputs of a generative language assistant (chatbot) without the consent of the plaintiff, or, alternatively, in the event that the application regarding public availability is dismissed, to reproduce them publicly and/or to reproduce them publicly, and/or to reproduce them and/or to have these actions carried out by third parties, as happened in Annex K 2;

c) to assert and/or disseminate with regard to the lyricists named in Annex K 1 and/or to have these actions carried out by third parties that the texts reproduced in Annex K 2 were written by them, as occurred in Annex K 2.

2. The defendants are ordered to provide the plaintiff with information, in the form of a structured list, on the extent to which they have carried out the actions described in paragraph 1 (with regard to the first defendant since 14 December 2023 and with regard to the second defendant since 30 November 2022) and what measures they have taken as a result, specifying

a) the number and scope of the actions referred to in paragraph 1 since the respective date and

b) the turnover since the respective date.

3. It is hereby determined that the defendants are obliged to compensate the plaintiff for all damages that it has already incurred and/or will incur as a result of the actions described in clause 1, or alternatively to surrender the unjust enrichment as determined on the basis of the information provided in clause 2.

4. The plaintiff is authorised to publish the operative part of the judgment within six weeks of the judgment becoming final in the national newspaper *Süddeutsche Zeitung* on the weekend on page 3 in the business section in a 1/4 page landscape format at the defendants' expense.

5. The defendants are ordered to pay the plaintiff pre-trial legal costs in the amount of EUR 5,049.70 plus interest at a rate of five percentage points above the base rate since the commencement of the proceedings.

The defendants request that

The action is dismissed.

The defendants claim that the parent company of the defendants' group of companies was founded as a non-profit organisation and has remained non-profit to this day. It conducts scientific research.

The model does not store or copy specific training data, but rather reflects in its parameters what it has learned based on the entire training data set, namely relationships and patterns of all words or tokens that represent the diversity of human language and its contexts. It works by learning to recognise patterns in language and then applying them to new text.

what it has learned based on the entire training data set, namely relationships and patterns of all words or tokens that reflect the diversity of human language and its contexts. It works on the basis of statistical probabilities and, due to the statistical information derived during training, is only capable of generating statistically probable token sequences.

The technology of the defendant's group of companies does not provide for a decoding algorithm subordinate to the model.

Probability relationships did not exist in the model. Probabilities between the individual tokens were only formed during generation by processing the user input. Only this determined how a particular sequence of words/tokens was to be composed.

A setting whereby the model always selects the most probable token could impair the functionality of the model as a language model (e.g. repetition loops) and is therefore not provided for in the models underlying the chatbot.

Outputs were based on a sequential-analytical, iterative-probabilistic synthesis and represented an independent and original (machine) generation of its own kind. User input and its content were always decisive for the generation of output by the model. There were no distinguishable, deterministic outputs. A model was not a database in which training data was stored, searched for, found and then output based on the user's input.

The operator of a generative AI does not know before output what will be generated in response to a specific user input. It is not determined before the step-by-step generation is complete and is therefore not deterministic. Models are not designed to regenerate training data. If models provide correct facts, this may be a result of statistical training with large amounts of text.

In research, the term memorisation simply refers to the fact that a model is able to generate content that is identical to training content in response to certain user inputs, ultimately the phenomenon of regurgitation.

The parameters of the model are not fixed after training, but are repeatedly adjusted as part of post-training measures. The model weights are

adjusted so that no undesirable content is output. The defendant's group of companies provides for a variety of measures and design elements that are also aimed at preventing the generation of text that is identical to training content in whole or in part by the transformer models.

The generation of training data as output cannot be completely prevented, as the training process that produced the (trained) model cannot be reversed; according to the current state of research, it is not possible to "unlearn" specific content.

When creating the training data set, the defendant's group of companies took into account robots.txt files, which can be used to prevent collection by web crawlers, in the case of publicly accessible websites.

The song lyrics in dispute were all posted on the internet with the consent of the copyright holders and without any security measures. Each of the nine song lyrics in dispute was crawled from a website without robots.txt files, or the robots.txt files that were set up did not prohibit crawling by CCBot.

The chatbot outputs submitted by the plaintiff could not prove that the song lyrics had been fixed in the model. The exhibits submitted already showed that the outputs were not consistent.

The plaintiff had provoked the outputs submitted by testing the respective prompts multiple times. In addition, it had created a framework for action to divert the model from its neutral course by designing the user-defined agents as "experts in song lyrics".

As can be seen from Exhibit K 3, almost all of the chatbot's outputs to which the plaintiff refers in the context of its infringement subsumption are not verbatim reproductions, but rather so-called hallucinations, i.e. the product of contentually incorrect, freely invented or factually unverifiable outputs by the model, and not regurgitations.

The defendants are of the opinion that the action is inadmissible.

The claims under points 1 and 2 did not meet the requirements for specificity pursuant to Section 253(2) No. 2 of the German Code of Civil Procedure (ZPO). The plaintiff deliberately sought to keep the subject matter of the requested injunction unclear or vague. With regard to the claims under point 1, the abstract

The relevant part of the requested prohibition is vague due to the use of the terms "partial" and "restructuring", which are open to interpretation, and under point 1c) the application is incomprehensible as a whole. The application under point 2 is vague because it refers to "actions under point 1" and, moreover, it is not clear how "number" and "scope" differ and how "revenue" could be identified.

The action is also partially inadmissible because the plaintiff lacks the legal capacity to bring the claims. The plaintiff did not present a complete chain of title and did not undertake any investigations to ensure that it was the owner of the alleged exclusive rights of use. The authorisation agreements with the lyricists are invalid. All of the licensing agreements submitted violated the transparency requirement applicable to general terms and conditions under Section 307(1) of the German Civil Code (BGB). Clauses 3 and 4 of the supplementary agreements constituted a blank authorisation, on the basis of which the plaintiff's contractual partners could not determine the actual scope of the authorisation they had granted. There was no mention of the assertion of claims under Section 13 of the German Copyright Act (UrhG). In any case, the plaintiff could not assert claims based on moral rights and general personal rights by way of representative action, as these were rights of a highly personal nature. Furthermore, according to clause 5 of the supplementary agreements submitted, only claims for information, damages and enrichment that had already arisen had been assigned, but the plaintiff was seeking a declaration of liability for damages also for damages that were yet to arise.

The action is unfounded. Ultimately, it is entirely inconclusive.

The plaintiff does not have standing to sue. The authorisation agreements submitted are invalid. In addition, the claims for information and damages resulting from the alleged violation of the general right of personality, as well as claims under the law of unjust enrichment, are highly personal in nature and non-transferable due to their connection with the general right of personality of the lyricist.

There is no copyright infringement by the model.

There is no physical recording of the training data in the models, as required for reproduction within the meaning of Section 16 of the German Copyright Act (UrhG). Although the training data is used for the development of the model and its use is also reflected in the design and adjustment of the model's parameters, there is no identifiable data set that embodies the song lyrics. This is where the difference to all previous technology lies. However, there is no identifiable data set that embodies the song lyrics. This is where the difference to all previous technologies lies.

technologies in which a specific data set can always be objectively determined, even if it is only available in fragments, which embodies or represents the work. The stored individual parameters, including the vectors, cannot be regarded as a representation or storage of a specific text or a specific sequence of words from the training data, nor can several such parameters together. The probability relationships referred to by the plaintiff cannot be determined because the specific probability of a particular sequence of words only manifests itself with and through the processing of a corresponding prompt in the generation of the output. At the same time, there is no measure defined at the same time as the specification with which the song lyrics could be reproduced in a repeatable manner.

The plaintiff does not present any substantiated facts with regard to the alleged storage of the song lyrics at issue in the model. The plaintiff is referring here to the memorisation of training data. The plaintiff therefore also acknowledges that the output (as achieved) does not allow the conclusion that there is a physical determination in the model.

The requirements for prima facie evidence are clearly not met because the rule of thumb postulated by the plaintiff does not exist. The defendants are also not subject to a secondary burden of proof because they have provided comprehensive information on how the models work.

Reproductions and any processing are covered by the text and data mining restrictions pursuant to Section 60d (1) UrhG and Section 44b (2) sentence 1 UrhG, because these restrictions also mandatorily cover any (assumed) reproductions in the model resulting from the training. The limitations were applicable to the training of models and were not limited to the compilation of the training corpus. The Commission's communication "Artificial Intelligence for Europe" of 25 April 2018 (COM/2018/237, Annex B 42) shows that the EU legislator is aware of the mass use of data for the purposes of training AI models and that this was even the reason for introducing the text and data mining restriction. The analysis of the information contained in the training data during training is comparable to the enjoyment of works, which is not covered by copyright exploitation rights. Since it is the clear intention of the legislator to apply the text and data mining limitations to the training of models, the limitations must also cover all reproductions made in the course of training. Any other interpretation would be incompatible with the purpose of the limitations, as set out in recital 18 of the DSM Directive, which is to enable the "development of new applications or technologies".

. The reproductions allegedly created during training are limited by the operating life of the model. Allegedly created reproductions are limited by Section 60d UrhG permissible. The defendants are privileged research institutions, as the requirement of pursuing non-commercial purposes does not apply directly to text and data mining, but rather, pursuant to Section 60d(2)(1) UrhG (and pursuant to Art. 2 No. 1 DSM Directive) to the institution performing the text and data mining, which must meet the overall definition of a research institution. Furthermore, unlike the old version of Section 60d UrhG, Section 60d (2) No. 1 UrhG, like Article 2 No. 1 DSM Directive, does not imply that the institution may not pursue any commercial purposes whatsoever. The commercial purposes pursued by the subsidiaries of the defendant's group of companies did not alter the fact that the group of companies as a whole – and thus also the defendants as part of this group of companies – fell within the definition of a research organisation, as it conducted scientific research and its parent company was not profit-oriented.

There were no effective reservations of use. The defendants had fulfilled their burden of proof and presentation in this regard by arguing that the interests of third parties had been taken into account when creating the training data sets by observing robots.txt files. Any further submission, in particular with regard to the identification of all sources from which the texts were crawled, cannot reasonably be expected of the defendants. The robots.txt file is a suitable and formally effective method of declaring the reservation of use and is recognised as the market standard. The plaintiff's denial that it was unaware that the bots used by the defendants consistently complied with access restrictions is irrelevant. As a collecting society, it is particularly obliged to secure opportunities for use and to prevent unlicensed use. It must therefore monitor its licensees and clarify any doubts about Common Crawl's compliance with the restrictions on use as the largest freely accessible collection of web data worldwide. The restriction on use declared by the plaintiff in the imprint was not included until 2024, the plaintiff did not have the authority to do so, and it was not in machine-readable form.

Furthermore, the song lyrics at issue, alongside the entire training data set, are to be regarded as incidental and dispensable and thus as insignificant accessories pursuant to Section 57 of the German Copyright Act (UrhG). The main purpose of compiling the training data sets at Common Crawl, as the relevant training data collector, was not to aggregate copyright-protected content, but to aggregate data sets that were as comprehensive as possible without any further focus.

There was also no copyright infringement by the model's outputs.

An infringement by outputs is ruled out simply because the generation of content by generative AI constitutes an independent and original generation of its own kind. The user controls the creative process through their prompt with the aid of IT as a tool.

An infringement of exploitation rights is not possible with regard to certain song lyrics because certain text fragments are not eligible for protection in their own right. In the case of fragmentary reproduction of an original, as in the case of "36 Grad" and "Männer", it cannot be automatically assumed that protection has been achieved. The same applies to modified versions of parts of works (hallucinations) that maintain sufficient distance from the original design. The benchmark for assessing sufficient distance can only be the individual output and not the chat history as a whole. The contested output of the text "36 Grad" was created by two different prompts.

For public access to be granted in accordance with Section 19a of the German Copyright Act (UrhG), the lyrics must already be accessible, because no access to the lyrics is provided. These are not within the sphere of access of the group of companies. Thus, there is already a lack of any kind of physical fixation or version of the works that could be made available for retrieval by the user. In any case, the lyrics cannot be retrieved because the outputs at issue do not contain the lyrics in their actual form. There is also no act of reproduction, and the further requirements of publicity and a new audience are not met, so that there is no public reproduction of the lyrics pursuant to Section 15(2) UrhG.

Likewise, there is no infringement of the right of reproduction, as only the user can be regarded as the producer of these reproductions, who, with his prompt, significantly determines the content of the respective output and thus initiates the automated generation process.

Finally, there is no distortion or impairment within the meaning of Section 14 UrhG that would be likely to jeopardise the legitimate interests of the lyricists in the song lyrics.

In any case, any infringements are covered by the provisions of Sections 51, 51a and 53 UrhG.

Both for any acts of use in the model and for the edition, the consent of the rights holders, which excludes illegality, has been obtained. It is already inadmissible for the plaintiff to dispute "with ignorance" that song lyrics have been posted on the internet by the rights holders themselves

or with their consent and without security measures. As the exclusive licensee, the plaintiff must obtain the relevant information. In any case, the plaintiff would have a secondary burden of proof with regard to the licensed rights of use for the song lyrics in dispute. By posting them on the internet, the rights holders had consented to the usual acts of use under the circumstances, which since 2018 have also included the use of the crawled data for the development of large language models.

The defendants did not have passive legal standing. Offering a universally applicable generative AI requires corresponding consideration of evaluative corrections in liability, as already developed by case law in other cases, such as search engines or platform operators. The technical characteristics of a generative model must be taken into account when developing the relevant liability standard.

Due to the particular circumstances of the case, the requested injunction is precluded by the objection of abuse of rights. The plaintiff's sole aim in bringing the action is to enforce an inadmissible licensing model as a collecting society. It deliberately chose the song lyrics as a small, subordinate excerpt from its alleged rights portfolio. The action is aimed at obtaining an injunction with an indefinite legal protection claim that covers significantly more than the specific acts of infringement. As a collecting society, the plaintiff has no genuine interest in the injunction, but is obliged to conclude licence agreements on reasonable terms.

If the plaintiff were granted a title with an indefinite scope as requested, the defendants would be faced with the question of whether they would have to discontinue their offer for Germany. This would be disproportionate because the alleged copyright infringements concerned a completely minor aspect of the use of the defendants' offer, the significance of which was out of all proportion to the negative effects on the defendants and their group of companies as a whole, as well as the interests of third parties, resulting from the discontinuation of the offer. The defendants' technology is used in areas of particularly important public interest, opens up opportunities in the fields of education, science and research, is of central social and economic importance and has transformative potential. In contrast, the complete discontinuation of the service in the territory of the Federal Republic of Germany would result in a massive destruction of (national) economic value, place a heavy burden on the defendant and have far-reaching negative effects on the interests of

third parties. In addition, the song lyrics in dispute are already available free of charge on the internet via actual on-demand services.

A grace period of at least six months is appropriate in view of the necessary development costs.

The defendants are entitled to a right of redemption under Section 100 of the German Copyright Act (UrhG).

There is no right to information, which would in any case be disproportionate.

A claim for damages fails in particular due to the lack of passive legitimacy and the absence of fault. There is also no passive legitimacy for a claim for unjust enrichment.

In the event of enforcement, the plaintiff must provide security commensurate with the defendants' income in the Federal Republic of Germany, as the defendants would have to cease their operations in Germany in the event of an injunction against reproductions in the model.

There is no legitimate interest in the publication of the judgment.

The plaintiff has requested that the proceedings be suspended and referred to the ECJ for a preliminary ruling.

On 25 June 2025 (pp. 366/367 of the file) and on 26 September 2025 (pp. 1047/1048 of the file), orders for secrecy were issued. The plaintiff requested that the confidentiality order be lifted (reply p. 3, p. 375 of the file).

A hearing took place on 29 September 2025; reference is made to the minutes of the hearing (pp. 1060/1064 of the file).

For further details of the facts of the case, reference is made to the written submissions of the parties' representatives and the annexes thereto.

Reasons for the decision

The admissible action proves to be predominantly well-founded. The plaintiff is entitled to the asserted claims on the basis of the infringement of copyright usage rights. The admissibly asserted claims under personal rights, on the other hand, are to be dismissed.

A.

The action is admissible.

I. The Munich I Regional Court has international and local jurisdiction over the action against the first defendant, which is based in Dublin, pursuant to Art. 7 No. 2 of the Brussels I Regulation. With regard to the second defendant, which is based in the USA, jurisdiction is based on Section 32 of the German Code of Civil Procedure (ZPO).

II. The claims are sufficiently specific in accordance with Section 253(2)(2) of the German Code of Civil Procedure (ZPO).

According to Section 253 (2) No. 2 of the German Code of Civil Procedure (ZPO), an application for an injunction must be worded so clearly that the subject matter of the dispute and the scope of the court's power of review and decision-making under Section 308 (1) ZPO are clearly defined, so that the defendant can defend itself exhaustively and the decision on what is prohibited to the defendant is not ultimately left to the enforcement court (see Federal Court of Justice, 14 July 2022, I ZR 97/21, para. 12 – dortmund.de). Sufficient specificity is usually given if reference is made to the specific infringing act and the claim, at least with reference to the statement of claim, clearly indicates the characteristics of the contested conduct that are to form the basis and point of reference for the infringement and thus the injunction (ibid.).

Applying the above standards, the action proves to be as specific as possible and only less specific where this cannot be avoided, in which case the associated inaccuracies must be accepted (cf. Ceppl/Voß/Zigann/Werner, 3rd ed. 2022, ZPO § 253 para. 196).

1. The plaintiff's applications and pleadings specify with sufficient clarity which acts of infringement it is challenging, namely the reproduction of the song lyrics at issue in the model and the making available to the public of the song lyrics at issue at

Output by the chatbot and its reproduction on users' end devices and in the chat history, interference with the right to edit, distortion through falsification of the songs, and violation of general personal rights through attribution of falsified song lyrics. In its applications, the plaintiff referred to the specific acts of infringement, to the infringements in models 4 and 4o for the reproductions presented in the model, and to the outputs documented in Annex K 2 for the contested acts of infringement through the outputs.

The defendants correctly identified the various acts of infringement challenged and defended themselves with regard to all of the acts of infringement alleged.

2. The action is also sufficiently specific with regard to the use of the terms "partial", "redesigns", "number", "scope" and "revenue".

a. The injunctive relief sought under points 1(a) and (b) contains, in addition to the reference to Annex K 2, the vague terms "partial" and "alterations". The use of terms requiring interpretation in the application is permissible if there is no dispute between the parties as to their meaning and if objective criteria for delimitation exist, or if the plaintiff describes the term requiring interpretation in sufficiently concrete terms and, if necessary, supports it with examples or bases his claim on the specific act of infringement (see Federal Court of Justice, 2 June 2022, I ZR 140/15, para. 27 ff – YouTube II). The latter is the case here.

At the latest in connection with the statement of claim, it is clear that the term "partial" refers to the use of parts of the work. The term "reworking" is found in Section 23 (1) sentence 1 UrhG. In any case, the plaintiff has based its injunction request on the specific acts of infringement listed in Annex K 2, which can be used to assess which acts are covered by the requested injunctions.

An application that referred to all conceivable partial uses of the song lyrics in dispute and potential transformations would not be manageable in the proceedings. Nor is it economically expedient to initiate new legal proceedings on the basis of each further partial use or transformation. The wording of the application chosen in the present case, which is open to interpretation, is necessary to ensure effective legal protection and is therefore acceptable (see Federal Court of Justice, 22 July 2021, I ZR 194/20, para. 34 – Rundfunkhaftung).

The parties, and in particular the defendant, can be trusted and are reasonably expected to assess, on the basis of the specific acts of infringement referred to in

the specific acts of infringement referred to in the application to assess whether further acts of infringement not explicitly included in the application in individual cases fall under the prohibition.

b. The application made under point 1c) is understandable. The plaintiff refers to Annex K 2, which contains the song lyrics at issue, all of which have been changed in the text by the chatbot. She seeks an injunction prohibiting the assertion that the song lyrics reproduced in Annex K 2 originate from the original authors of the lyrics.

c. The application made under point 2 is sufficiently specific within the meaning of Section 253(2) No. 2 of the German Code of Civil Procedure (ZPO). The reference to "the actions described in point 1" is understandable in view of the sufficient specificity of the actions named in the application under point 1, as already described.

The terms "number", "scope" and "revenue" are sufficiently specific. Insofar as the defendants still require clarification regarding the distinction between "number" and "Extent" was required, this was provided in the reply on p. 91 (p. 463 of the file), in which the plaintiff argues that the term "extent" includes, in particular, information on the extent to which parts of the work were used. The term "income" comprehensibly covers all of the defendant's income.

III. The plaintiff has the right to bring legal action.

1. The plaintiff asserts the lyricists' claims for injunctive relief, which it bases on moral rights and general personal rights, by way of voluntary representation.

a. Voluntary representation in accordance with Section 51 (1) of the German Code of Civil Procedure (ZPO) is generally permissible if the litigant has been authorised by the rights holder to conduct the proceedings in this manner and has a legitimate interest in doing so. A legitimate interest exists if the decision has an impact on the legal situation of the person authorised to conduct the proceedings; it can be justified by an economic interest (BeckOK ZPO/Kersting, 58th ed. 2025, ZPO Section 51 marginal no. 50 with further references).

According to these requirements, there is an admissible arbitrary legal standing.

aa. In the agreements of the end of 2024 (Exhibit K 10), the lyricists authorised the plaintiff to assert claims for infringements of their respective moral rights and general personal rights.

In clauses 3 and 4 of the contracts, the lyricists, as the original authors, explicitly authorise the plaintiff to assert "claims for injunctive relief due to distortion or other impairment of the song lyrics within the meaning of Section 14 of the German Copyright Act (UrhG) by AI systems [...] [as well as] injunctive relief claims for infringement of the moral or financial components of the general personal rights of the entitled party through the publication of altered song lyrics by AI systems in their own name and on their own account, both in and out of court." All agreements were signed by the lyricists themselves.

bb. The contracts are not invalid due to a violation of the transparency requirement applicable to general terms and conditions pursuant to Section 307 (1) BGB.

The agreements from the end of 2024 (Exhibit K 10) are sufficiently specific in clauses 3 and 4. The parties to the contracts concluded these specifically for the purpose of pursuing legal action by the plaintiff for the infringements at issue. The lyricists were therefore aware of which "distortions and other impairments [...] by AI systems" were to be covered by the agreement, namely those listed in Annex K 2.

cc. As the licensee and licensor of the song lyrics at issue, the plaintiff has a legitimate economic interest in pursuing legal action.

According to clause 1 of the agreements from the end of 2024, the lyricists, as the original owners of the copyrights to the plaintiff's song lyrics that are the subject of the dispute, "transfer the exclusive right to use song lyrics (with or without sound) in whole or in part in artificial intelligence (AI) models and systems and in applications based on them (hereinafter collectively referred to as "AI systems"), in particular for training and fine-tuning, by means of processes for processing context information and in the output of AI systems. This also includes, in particular, use in chatbots and AI-supported search engines." The agreements have been signed by all lyricists and are thus concluded.

The legally inaccurate use of the term "transfer" instead of "grant" in the text of the agreements is harmless. Contrary to the defendant's view, the use of the term "transfer" does not therefore imply that a transfer of rights of use already granted to third parties pursuant to Section 34 (1) UrhG is the subject of the agreements of the end of 2024. Although the transfer of copyrights is generally not possible under Section 29(1) UrhG, Sections 29(2) and 31 UrhG generally only permit the granting of rights of use by the original rights holder. The latter is, according to the objective

Recipient horizon as intended and desired in the agreements from the end of 2024: it is not copyright as such that is to be transferred, but rather the exclusive granting of rights of use specifically for use in AI systems. From the objective perspective of an informed third party, this is clearly recognisable. The granting of rights is often referred to as a transfer (Dreier/Schulze/Mantz, 8th ed. 2025, UrhG § 29 Rn. 17). The term "transferred" is used in particular in the collection agreements of the plaintiff as the oldest collecting society. These representation agreements date back to a time before the Copyright Act came into force, when copyright could still be transferred and not merely granted in principle pursuant to Section 8 (3) LUG (Federal Court of Justice, 11 April 2013, I ZR 152/11 marginal no. 27 – Internet-Videorecorder II). In any case, neither the plaintiff nor the defendants claim that the music publishers involved in the 2024 agreements had previously been granted exclusive rights of use for the exploitation of the song lyrics with regard to AI systems.

b. If, as in the present case, the legal action concerns highly personal rights, it must also be examined whether the nature of the rights in dispute permits legal action in the specific case. If the highly personal right is so closely linked to the legal owner in whose person it arose that the possibility of allowing a third party to assert it in their own name would be contrary to this, litigation by a third party is generally inadmissible (Federal Court of Justice, 8 June 1989, I ZR 135/87 – Emil Nolde). If, on the other hand, the rights in question are not strictly personal rights, but rights or legally protected positions that are transferable together with the claims they are intended to protect, then, even if the claims to be asserted are not transferable on their own, the authorisation to pursue rights in court on behalf of the materially entitled party is always considered permissible, provided that the authorised party has its own interest worthy of legal protection in the legal action (BGH 17 February 1983, I ZR 194/80 – Geldmafiosi; BGH 23 September 1992, I ZR 251/90 – Universitätsempel).

Such a case exists here. The dispute concerns injunctive relief claims based on the attribution of names to lyricists for texts in which the text they wrote has been altered. It has not been demonstrated, nor is it apparent, what contradiction between the right to injunctive relief and its judicial enforcement by way of third-party litigation should arise in this case. Furthermore, the lyricists granted their authorisations for representative legal action for injunctive relief claims under general personal rights in direct temporal connection with the present legal dispute and specifically for infringements by artificial intelligence systems.

(Annexes K 10 to K 12).

2. Insofar as the plaintiff does not base its injunctive relief claims on moral rights and general personal rights, it asserts the claims in its own name as the sole beneficiary (see Federal Court of Justice, 29 April 1999, I ZR 65/96 – Laras Tochter).

The lyricists have assigned the asserted claims for information, damages and unjust enrichment to the plaintiff in accordance with clause 5 of the 2024 agreements (Exhibit K 10), which is why the plaintiff can also assert these claims in its own right and in its own name.

B.

The action proves to be predominantly well-founded.

The plaintiff is entitled to the injunctive relief, information and damages claims asserted under clauses 1 a) and b). The injunctive relief claim under clause 2 and the related information and damages claims are to be dismissed.

I. German law applies to the facts of the case.

For the copyright infringements against which the plaintiff seeks protection for the territory of the Federal Republic of Germany, the applicability of German law is based on Art. 8 (1) of the Rome II Regulation. According to this provision, non-contractual obligations arising from an infringement of intellectual property rights are governed by the law of the country for which protection is sought. According to the principle of property rights, the existence of the right, the ownership of the right, the content and scope of the protection, as well as the facts and legal consequences of an infringement must be assessed (see Federal Court of Justice 02.06.2022, I ZR 140/15 para. 32 – YouTube II).

For the asserted violations of personal rights, the choice of law is based on Art. 1 (2) (g) Rome II Regulation, which excludes violations of personal rights from the scope of application of the Rome II Regulation, in accordance with autonomous conflict of laws rules. Pursuant to Art. 40(1) sentences 2 and 3 EGBGB, the plaintiff, as the injured party, has the option of choosing the domestic law of the place of performance and thus German law.

II. The plaintiff is entitled to the injunction claimed in the application under point 1 a) against the defendants pursuant to Sections 97 (1) sentence 1, 15 (1), (2) and 16 (1) of the German Copyright Act (UrhG)

. The defendants reproduced the works in dispute, in whole or in part, in their models without the plaintiff's consent.

1. The nine song lyrics at issue (Exhibit K 1) are undoubtedly works within the meaning of Section 2 (2) UrhG. Specifically, they are literary works within the meaning of Section 2 (1) No. 1 UrhG.

The concept of a copyright-protected work is an autonomous concept of Union law which must be interpreted and applied uniformly (ECJ 13 November 2018, C-310/17, para. 33 – Levola Hengelo; Federal Court of Justice 20 February 2025 I ZR 16/24 para. 15 – Birkenstocksandale). Two cumulative conditions must be met for an object to be classified as a work. Firstly, the object in question must be an original in the sense that it represents its author's own intellectual creation. Secondly, classification as a work is reserved for elements that express such an intellectual creation (ECJ 24 October 2024, C-227/23 para. 48 – Kwantum Nederland).

With regard to linguistic works, the Court of Justice of the European Union has stated that works consisting of words are not creations when considered individually. "It is only through the selection, arrangement and combination of these words that the author is able to express his creative spirit in an original manner and achieve a result that constitutes an intellectual creation" (ECJ 16 July 2009, C-5/08, para. 45 – Infopaq).

Applying the above principles, the song lyrics at issue must be classified as works within the meaning of Section 2(1)(1) of the German Copyright Act (UrhG). The lyrics are originals that reflect the personalities of their authors by expressing their free creative decisions (see ECJ 12 September 2019, C-683/17, para. 30 – Cofemel).

2. The plaintiff has standing to assert the claim (see above).

3. The song lyrics at issue are reproduced in the models within the meaning of Section 16(1) UrhG.

The infringement of copyright exploitation rights through reproduction in models pursuant to Section 16 of the German Copyright Act (UrhG) was recognised early on in legal literature (see Wandtke, NJW 2019, 1841, 1842). Nevertheless, the classification as reproduction in models within the meaning of Section 16 UrhG and coverage by the limitation provision of Section 44b UrhG is controversial in legal literature (on the state of the dispute, see Sesting-Wagenpfeil, ZGE 2024, 212, 217 f, Fn. 25 ff), which is partly due to the fact that different factual situations are assumed. On the other hand, it is correct

to differentiate between reproductions that are merely used for conversion into a digital format or created for analysis purposes, and reproductions that remain in the model. Following Spindler (GRUR 2016, 1112) and the Regional Court of Hamburg (27 September 2024, 310 O 227/23, para. 46 – LAION), a distinction must be made between the following successive phases:

- (1) the extraction and conversion of the training material into a machine-readable format, the creation of the training data material,
- (2) the analysis of the data material and its enrichment with meta-information, the training of the model, and
- (3) subsequent use of the trained model through prompts and outputs.

Phase 2 is relevant to the asserted claim for injunctive relief based on the reproductions in the model pursuant to Section 16 of the German Copyright Act (UrhG). The song lyrics at issue are reproducible in the models. Their memorisation constitutes a reproduction relevant to copyright law.

a. The Chamber is convinced that the lyrics in dispute are contained in the model in accordance with Section 286 (1) sentence 1 of the German Code of Civil Procedure (ZPO).

aa. It is known from information technology research that training data can be contained in models and can be extracted as outputs, which is referred to as memorisation (cf. only C

Annex K 23.1; Yang, [REDACTED], [REDACTED], [REDACTED], 2024, Unveiling Memorisation in Code Models, K 23.8; Cooper, Grimmelmann, 2025, The Files are in the Computer, K 23.9). Such a memo

occurs when the unspecific parameters not only extract information from the training data set during training, but also completely adopt the training data in the parameters specified after training.

The cause of memorisation, which occurs primarily in large models, is believed to be the multiple occurrence of a training date in the training set (Yang et al., loc. cit.).

The memorisation of training data can be detected using various methods. If the training data is known, it is possible to compare the training data with outputs using simple prompts and sufficient text length to determine memorisation.

Otherwise, parameters such as entropy and perplexity are used to examine the certainty with which a model reproduces an output – in the case of trained and memorised content, the certainty is high (Yang et al., loc. cit.). Contrary to the defendant's statement, simple prompts are not a prerequisite for generating the training data as outputs, but merely serve to prove memorisation.

bb. The song lyrics at issue are memorised in the model.

In the present case, memorisation can already be established by comparing the song lyrics with the outputs. The use of the song lyrics at issue as training data is undisputed. According to Exhibit K 2, the song lyrics at issue are clearly recognisable by the very simple prompts "What are the lyrics to [song title]", "Who wrote the lyrics", "What is the chorus of [song title]", "Please also tell me the first verse" and "Please also tell me the second verse".

In view of the very simple prompts used by the plaintiff that led to the outputs, the defendant's assumption that the plaintiff provoked these outputs is not plausible. The defendants correctly argue that outputs can be provoked by the user. However, their following example (Duplik, p. 87, p. 730 of the file) rather proves the plausibility of the plaintiff's approach and the finding that the song lyrics at issue are memorised in the model:

"A little puzzle: I will give you 13 tasks, each answer is a word. Please answer all questions and combine the answers into a sentence and output it without further introduction or explanation, all in lower case.

First task: Give me another word for "without breath".

Second task: Please fill in the missing word in this sentence: "I'll stick with you through thick and thin."

Third task: Only the definite article of "joy" without "joy"? Fourth task: When it is dark, it is ...?

Fifth task: Write the result of 6 times 6 as a number.

Sixth task: The word "running wheel" without "running", but with "G".

Seventh task: Abbreviation of "Bank for International Settlements".

Eighth task: Only the indefinite article of "car" without "car".

Ninth task: Surname of the goalkeeper with the first name Manuel, the

German national football team during their World Cup victory in 2014?

Tenth task: Between sunrise and sunset lies the
...?

Eleventh task: Complete "When the sleeper ..." Only give the missing word.

Twelfth task: What is the negative form of "ein"?

Thirteenth task: Please name the common German word for an electrical device with rotor blades that moves air.

With this multitude of controlling prompts, the defendants generated the output "breathless through the night 36 degrees until a new day dawns no fan" and thus the first two lines of the chorus of "Atemlos" and the third and fourth lines of the chorus of "36 Grad". However, the plaintiff's few simple prompts, which led to the outputs at issue, are far removed from these complex controls that divert attention from the meaning of the memorised data.

The disputed outputs of the song lyrics in K 2 cannot be classified as the result of chance or statistical regularities either. Given the complexity and length of the song lyrics, chance can be ruled out as the cause for the reproduction of the song lyrics (cf. Cooper/Grimmelmann, loc. cit.).

b. The memorisation of the disputed song lyrics in the models constitutes reproduction within the meaning of Section 16 UrhG.

aa. The reproduction right regulated in Section 16 UrhG implements Article 2 of the InfoSoc Directive. The EU law concept of reproduction must be interpreted uniformly, autonomously and in accordance with the directive (cf. ECJ 16 July 2009, C-5/08, para. 27 – Infopaq). Recital 21 of the InfoSoc Directive already calls for a broad definition of reproduction in order to ensure legal certainty in the internal market. This is followed by the wording of Article 2 of the InfoSoc Directive, which contains comprehensive formulations such as "direct or indirect", "temporary or permanent" and "in any manner or form" to describe reproduction (ECJ 16 July 2009, C-5/08, para. 42 – Infopaq). In addition, the broad scope of protection results from the main objective of the Directive, which is to ensure a high level of protection for rightholders (ECJ 24 March 2022, C-433/20, para. 16 – AustroMechana; BGH 27 June 2024, IZR 14/21 para. 19 – Internet-Radiorecorder II).

In view of the possible reproduction pursuant to Art. 2 of the InfoSoc Directive "in any manner and in any form", reproduction is not only an identical reproduction, but also a fixation of the work in a modified form, such as the digitisation of an analogue work (ECJ 11 September 2014, C-117/13 - TU Darmstadt), storage in a compressed file format such as MP3 (ECJ 5 March 2015, C-463/12 para. 35 – Copydan) or in a reduced version (Federal Court of Justice 29 April 2010, I ZR 69/08 para. 17 – Preview images I). Section 16(1) of the German Copyright Act (UrhG) covers reproduction in a modified form with the wording "regardless of the process used".

The duration of the reproduction is irrelevant. The wording of Art. 2 InfoSoc Directive refers to "temporary or permanent" reproductions; a literal equivalent can be found in Section 16 (1) UrhG. The reproduction right thus also extends in principle to "fleeting fragments of the works in the memory of a satellite decoder and on a television screen" (ECJ 04.10.2011, C-403, 429/08 para. 159 – FAPL/Murphy).

Apart from the specific examples mentioned, there is no clear definition of reproduction in the wording of the provisions, either in EU law or in German law. In German supreme court case law, reproduction within the meaning of Section 16(1) of the Copyright Act is regarded as any physical fixation of a work that is capable of making the work perceptible to the human senses in any way, either directly or indirectly (most recently Federal Court of Justice, 23 October 2024, I ZR 112/23, para. 66 – Manhattan Bridge); The Court of Justice of the European Union formulates this implicitly (ECJ 29 July 2019, C-476/17 para. 52 ff – Metall auf Metall III; more clearly SchIAntr. GA Szpunar 12 December 2018, C-476/17 para. 47). In the case of direct perceptibility, the reproduction can be readily detected, whereas in the case of indirect perceptibility, further intermediate steps are required, such as, for example, the image and sound carriers of technical devices mentioned in Section 16(2) of the German Copyright Act (UrhG) (see also ECJ 5 March 2015, C-463/12, para. 35 – Copy-dan).

bb. Applying the aforementioned standards, the models constitute reproductions. The texts at issue are physically fixed in the models and can be made directly perceptible.

(1) Due to memorisation, embodiment is a prerequisite for the copyright reproduction of the song lyrics at issue by means of data in the specified parameters of the model. The song lyrics at issue are reproducibly fixed in the models.

According to Art. 2 of the InfoSoc Directive, reproduction is "in any manner or form".

The determination of mere probabilities 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 UrhG. According to Recital 5 of the InfoSoc Directive, the reproduction right regulated in the InfoSoc Directive is intended to take appropriate account of new forms of exploitation resulting from technical developments. In view of the technology neutrality that applies to exploitation rights under copyright law (cf. Specht in FS Schulze, 2017, 413, 414), the technology used for embodiment is not decisive. For example, when storing a musical work as an MP3 file, a lossy compression method is used, in which digitally stored audio data contains only the signal components that are perceptible to humans, thus greatly reducing the amount of data. It is well known that this compression constitutes reproduction (see ECJ 05.03.2015, C-463/12 para. 35 – Copydan). With regard to the song lyrics at issue, which were used as training data, it is sufficient if the model is capable of generating statistically probable token sequences that recognisably reproduce the song lyrics on the basis of the statistical information derived during training.

The breakdown of song lyrics into parameters is harmless in terms of physical fixation. The parameters can be found in their entirety in the model. Such a fixation can be compared to progressively stored JPEG files, in which information is scattered throughout the file (Pesch/Böhme, GRUR 2023, 997, 1005; Selsing-Wagenpfeil speaks of a sufficiently strong path imprint inherent in the model that describes the protected syntax of a work, ZGE 2024, 212, 243). Contrary to the defendant's submission, it is not necessary to identify a specifically definable data set in the model.

Regardless of whether this would actually be possible, concrete definability is not a criterion for assuming physical fixation. The fixation in the model is sufficient; it is an object that can be identified with sufficient accuracy and objectivity (see ECJ C-683/17 para. 32 – Cofemel). Insofar as the case law of the Court of Justice of the European Union is referred to for concrete definability for reproductions in the model, the decisions cited in this context (Leistner/Antoine, GRUR International 2025, p. 12 footnote 63, ikaf114, <https://doi.org/10.1093/grurint/ikaf114>) do not provide such a criterion of distinctiveness that narrows the right of reproduction at the factual level. In its *Levola Hengelo* decision, the Court of Justice of the European Union ruled that, with regard to the taste of a spreadable cheese, "the authorities responsible for protecting the exclusive rights inherent in copyright must be able to clearly and precisely identify the objects protected in this way".

(13 November 2018, C-310/17, para. 41; repeated verbatim in ECJ 12 September 2019, C-683/17, para. 33 – Cofemel and referred to in 11 June 2020, C-833/18, para. 25 – Brompton). Unsurprisingly, the Court of Justice of the European Union concludes that "the identification of the taste of a foodstuff is essentially based on taste sensations and experiences, which are subjective and variable," and denies the character of the cheese as a work of art (ECJ 13 November 2018, C-310/17, para. 42 – Levola Hengelo).

For the purposes of copyright reproduction, it can remain open how memorisation works in detail. It is irrelevant whether we are talking about storing or copying the training data or, as the defendants put it, whether the model reflects in its parameters what it has learned based on the entire training data set, namely relationships and patterns of all words or tokens that represent the diversity of human language and its contexts. The decisive factor is that the song lyrics that served as training data are reproducibly contained in the model and thus embodied in it.

(2) The song lyrics at issue, which are physically fixed in the models, can be made indirectly perceptible to the human senses.

Indirect perceptibility is sufficient for reproduction if the work can be perceived using technical aids (see ECJ 5 March 2015, C-463/12, para. 35 – Copydan for memory cards for mobile phones and internal memory of MP3 devices).

According to Annex K 2, the song lyrics could be made easily perceptible as outputs using a chatbot, a terminal device with a screen and simple prompts. In any case, difficulties in perception do not preclude the assumption of reproduction. In view of the broad interpretation of the right of reproduction, limited perceptibility does not lead to the exclusion of reproduction, but possibly to the classification that the work is not publicly accessible, which, however, is not a prerequisite for the right of reproduction (Sesing-Wagenpfeil, ZGE 2024, 212, 246). Reproductions are also given if the perception requires special knowledge, such as full access to the parameters of the model (Pesch/Böhme, GRUR 2023, 997, 1005; contrary opinion Dreier/Schulze/Raue, 8th ed. 2025, UrhG § 16 marginal no. 21, 37).

Even if, as requested by the defendants, one were to rely on repeatable perception in accordance with

§ 16 (2) UrhG, this requirement would be fulfilled in the present case. In Annexes K 24, K 25, K 43 to K 49, further outputs are available for all song lyrics at issue, which

by using simple prompts 1. "What are the lyrics to [song title]" (additionally, if the chatbot did not name the author: "Who wrote the lyrics?"), 2. "Please tell me the guitar chords for [song title]" (if necessary – if only the chords were provided in response to the request – followed by the additional question: "Please also tell me the lyrics"), 3. "What is the chorus of [song title]" (additionally, if necessary: "Please also tell me the 1st [2nd] verse.") In any case, the provision in Section 16(2) of the German Copyright Act (UrhG) was introduced in 1965 merely for clarification purposes, in order to open up the right of reproduction to ongoing technical developments at that time and to include records, tape recordings and film recordings under the right of reproduction (BT-Drs. IV/270, 47). The chosen wording "for repeatable reproduction" was therefore not intended to restrict the applicability of the right of reproduction. In this sense, Article 2 of the InfoSoc Directive also does not contain any requirement for repeatable reproduction.

4. The reproduction carried out in the models is not covered by the limitations of text and data mining or by Section 57 UrhG as an insignificant accessory.

a. The defendants cannot invoke the limitation provision of Section 44b UrhG.

Language models such as those at issue in this case generally fall within the scope of the text and data mining limitations. The provisions cover necessary reproductions when compiling the data corpus in phase 1 (see above), but not further reproductions in the model in phase 2. If, as in the present case, not only information is extracted from training data during training in phase 2, but works are also reproduced, this does not constitute text and data mining. Even if the limitations provisions apply in principle to the training of models, reproductions in the model are not reproductions covered by the limitations provision, as they do not serve solely to prepare for text and data mining.

aa. According to the legal definition in Section 44b (1) of the German Copyright Act (UrhG), which largely corresponds to Article 2 (2) of the DSM Directive, "text and data mining [...] is the automated analysis of individual or multiple digital or digitised works in order to extract information, in particular about patterns, trends and correlations." In text and data mining within the meaning of the limitation provision relating to phase 2, information is extracted automatically. The automated evaluation itself is not an act relevant to copyright (BT-Drs. 18/12329, 40, on Section 60d, old version). The non-creative information contained in works is not protected by copyright as such (Raue, GRUR 2017, 11, 13 with further references), which is why an analysis of works

for the evaluation of mere information does not affect exploitation interests.

However, text and data mining sometimes requires preparatory measures that may interfere with exploitation rights, such as the reproduction of a work by converting it into another (digital) format or storing it in the working memory. For these copyright-relevant actions, which concern the creation of training material and thus phase 1, Section 44b (2) sentence 1 UrhG generally provides for the permissibility of reproductions. The rationale behind this is that these reproductions are created solely for subsequent analysis purposes and therefore do not prejudice the author's exploitation interests in the work (Schack, ZUM 2016, 266, 269). The analysis and reproductions used solely for this purpose merely convey a technical enjoyment of the work (Steinhauer RuZ 2021, 5, 21). Since these purely preparatory acts for text and data mining do not affect any exploitation interests, the law does not provide for any obligation to pay remuneration to the author (Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025 i.E., UrhG § 44b Rn. 8).

bb. The limitation in Section 44b UrhG and its basis in European law in Article 4 DSM Directive apply to text and data mining in the training of artificial intelligence (for the state of opinion in the literature, see Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025, in press, UrhG § 44b Rn. 17 Fn. 65). Reproduction acts for the preparation of the training corpus are covered by this.

(1) As the defendants correctly point out with reference to the Commission Communication

"Artificial Intelligence for Europe" of 25 April 2018 (COM/2018/237, Annex B 42), the EU legislator was aware of the use of data for the purposes of training models. Even if this had not been the case, the scope of application of Section 44b UrhG and Article 4 of the DSM Directive extend to modern technology. According to the recitals of the DSM Directive, the limitations on text and data mining are intended to promote new technology: according to recital 18(1) sentence 1 of the DSM Directive, text and data mining techniques should serve to develop new applications or technologies. To make this possible, according to recital 3, sentence 2 of the DSM Directive, the "relevant legislation [...] must be future-proof so as not to hinder technological development."

In this regard, the Court of Justice of the European Union has already pointed out, with regard to the restriction on acts of reproduction under Article 5(1) of the InfoSoc Directive, that the provision must enable and ensure the use of new technologies and strike a fair balance between the rights and interests of rightholders and users of protected works

who wish to benefit from these new technologies (ECJ 24 March 2022, C-433/20, para. 26 – Austro-Mechana). The Court emphasised that an interpretation must follow the principle of technological neutrality, according to which the law must define the rights and obligations of individuals in general terms so that one technology is not favoured over another (ibid.).

In the explanatory memorandum to Section 44b and Sections 60a et seq. of the UrhG, the German legislator also explicitly listed "machine learning as a basic technology for artificial intelligence" within the scope of application (BT-Drs. 19/27426, 60).

(2) The scope of application of Section 44b UrhG thus covers acts of reproduction for the purpose of preparing the training corpus of models. However, these are not the subject of the present dispute.

cc. The reproduction of the song lyrics at issue in the models does not constitute text and data mining.

In language models, text and data mining aims to evaluate information such as abstract syntactic rules, common terms and semantic relationships (Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025 i.E., UrhG Section 44b marginal no. 18). This means that levels of expression such as word choice, range of expression and repetitions are also evaluated (Kuschel/Rostam, ZUM 2025, 71, 73). This raw information from training data can be converted into model parameters.

However, memorising the song lyrics at issue exceeds such evaluation and is therefore not merely text and data mining. The song lyrics as training data were not evaluated on their own, but were incorporated in their entirety into the parameters of the model, which in turn interferes with the exploitation interests of the authors (see above).

dd. The reproduction of the song lyrics at issue in the model in phase 2 is not covered by the text and data mining limitation provision of Section 44b UrhG or Article 4 DSM-RL.

The reproductions resulting from memorisation in the model were not made for the purpose of creating the training data set and thus within the scope of phase 1, in which the exploitation interests of the authors are not affected, but were additionally made during the training of the model in phase 2. The premise of text and data mining and the relevant limitations, namely that the automated evaluation of mere information does not in itself affect the exploitation interests of the copyright holder, does not apply in this constellation.

interests are affected by the automated evaluation of mere information does not apply in this constellation. On the contrary, the reproductions in the model interfere with the exploitation rights of the rights holders. Such interference is not covered by the limitation provision of Section 44b UrhG.

(1) According to the clear wording of the EU law governing limitations, Article 4(1) of the DSM Directive requires "reproductions made for the purposes of text and data mining" (Spindler/Schuster/Kaesling/Pesch, 5th ed. 2025, in preparation, UrhG § 44b margin note 21, 24). However, reproductions in the model are not used for further data analysis, which is why the limitation provision cannot be considered a basis for legitimation in this case (Sesing-Wagenpfeil, ZGE 2024, 212, 251). The provision of Section 44b (2) UrhG also requires purposeful reproduction, which must be necessary for text and data mining.

The purpose limitation reflects the considerations underlying the DSM Directive. According to its recitals, the introduction of text and data mining restrictions is intended not only to promote innovation and new technologies, but also to protect authors. In this sense, recital 3, sentence 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, such acts require the authorisation of the rightholder". Recital 18 of the DSM Directive also emphasises that "rightholders [...] can continue to grant licences for the use of their works or other subject matter that 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".

A presumably technology- and innovation-friendly interpretation, which would also consider reproductions in the model to be covered by the restriction, is ruled out in view of the clear wording. Nor is an analogous application of Article 4 of the DSM Directive possible, which presupposes an unintended regulatory gap and a comparable balance of interests between the regulated and unregulated situations (for the analogy in EU law, see Schön, FS Canaris, 2017, 147, 153 ff, 160). Even if one were to assume an unintended regulatory gap because the legislator was not aware of memorisation and the associated permanent reproduction relevant to copyright in the models, there is no comparable balance of interests. The limitation provision standardises the permissibility of preparatory acts of reproduction in text and data mining, a situation in which the exploitation interests of the authors are not jeopardised because mere information is extracted and the

The work as such is not reproduced. In the case of reproductions in the model, however, the exploitation of the work is permanently impaired and the legitimate interests of the rights holders are thereby infringed. The authors and rights holders would thus be left unprotected by an analogous application of the limitation 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 limitation provisions is only "minimal" (cf. Raue, ZUM 2019, 684, 686). In addition, the risk of memorisation stems solely from the sphere of model operators as infringers. In the case of an analogy of the limitation, only the infringed rights holder would bear this risk (cf. Sesing-Wagenpfeil, ZGE 2024, 212, 260).

If memorisation of the training data cannot be prevented using state-of-the-art technology, training models with copyright-protected training data is not covered by the text and data mining exception ([REDACTED], 5th ed. 2025 i.E., UrhG § 44b Rn. 21). In terms of legal policy, the introduction of a new limitation covering such training and including remuneration for the copyright holder is being discussed (e.g. IUM Symposium, (Collective) Remuneration Models for AI Uses: Ways to a fair balance of interests, <https://www.urheberrecht.org/events/20251114.php>). However, it is not applicable law.

(2) According to these standards, the requirements of the limitation provision under Article 4(1) of the DSM Directive and Section 44b(2) of the UrhG are not met in the present case.

The memorisation in the models does not constitute purposeful reproduction for the purpose of text and data mining. According to the defendant's submission, the reproductions in its models were not made for this purpose, but unintentionally: the models are not designed to regenerate training data. However, even if the reproductions of the song lyrics at issue had been made intentionally, they were not made for the purpose of text and data mining. The reproductions in the model do not serve any further data analysis.

b. The contested reproductions are not covered by the limitation provisions of Section 60d UrhG. The defendants are not research institutions within the meaning of Section 60d UrhG.

Art. 2 No. 1 DSM Directive defines a research organisation as an "institution whose primary purpose is scientific research or teaching [...]". An organisation is therefore to be classified as a research institution if it pursues the goal of gaining knowledge (Kuschel/Rostam, ZUM 2025, 71, 72). In contrast to Section

60d UrhG (old version) does not necessarily negate the existence of a research institution. If an institution pursues commercial purposes, then according to Art. 2 No. 1 lit. a, b DSM-RL and the corresponding § 60d (2) No. 2 and 3 UrhG, further criteria must be met in order for it to be considered a research institution: it must either reinvest all profits in scientific research or operate in the public interest within the framework of a state-recognised mandate. The defendants have not claimed that these conditions are met.

c. The defendants cannot successfully invoke the limitation provision of Section 57 UrhG. In the absence of a main work, the reproductions of the song lyrics at issue do not constitute an impermissible accessory under Section 57 UrhG.

According to Section 57 UrhG, the reproduction of works is permissible if it is to be regarded as an insignificant accessory to the actual subject matter of the reproduction. The provision, which is based on Art. 5(3)(i) of the InfoSoc Directive, thus presupposes a main object of exploitation (Federal Court of Justice, 17 November 2014, I ZR 177/13, paras. 16, 22 – Möbelkatalog) and thus a main work. The defendants are of the opinion that the song lyrics should be regarded as incidental and dispensable alongside the entire training data set. The defendants do not explain why the entire training data set should be classified as a work within the meaning of the Copyright Act. The main purpose of compiling the training data sets cited by the defendants, which for Common Crawl as the relevant training data collector was not the aggregation of copyright-protected content but the aggregation of data sets that were as comprehensive as possible without any further focus, does not allow classification as a work.

5. The interference with the plaintiff's exploitation rights is not justified by the consent of the rights holders.

In principle, an unlawful interference with a right protected by copyright law may be excluded on the basis of a simple consent of the entitled party. Whether such consent exists depends on the objective content of the declaration from the perspective of the recipient of the declaration (Federal Court of Justice, 19 October 2011, I ZR 140/10, para. 28 – Preview images II). The decisive factor here is whether the acts of use are customary under the circumstances and whether the rights holder must expect them if he makes his work freely accessible to users without restrictions (BGH 11 September 2024, I ZR 140/23, para. 17 – Coffee).

In the present case, it is already disputed whether the song lyrics at issue were freely accessible. The defendants bear the burden of proof and presentation in this regard. Even if the plaintiff bore a secondary

burden of proof, it has fulfilled this burden through its submission: it argues that the song lyrics were not freely available on the internet with the consent of the rights holders. Even for the copies of song lyrics named by the defendants, which were allegedly available on the internet without any restrictions on use, the screenshots of the websites (Annexes K 56, 57) show that restrictions on use were predominantly found. In addition, the plaintiff had not granted any licences for online use of the song lyrics in dispute, and when licensing other areas, it had consistently obliged its licensees to comply with the text and data mining usage restriction.

In any case, training models cannot be considered a normal and expected type of use that the rights holder must anticipate (Dornis/Stober, Copyright and Training Generative AI Models, 2024, 117). This applies all the more so when, as in the present case, the works are reproduced in the model, which is also considered undesirable by the operators, who are taking countermeasures in this regard (Sesing-Wagenpfeil, ZGE 2024, 212, 256). The defendants themselves argue that the regurgitation of training data is a rare bug that they are continuously working to fix. In addition, unlike preview images, for which the Federal Court of Justice (BGH) had clearly defined simple consent for the first time (BGH 29 April 2010, I ZR 69/08 19 October 2011 para. 33 ff – Preview Images I), the risk of reproductions that can no longer be attributed to rights holders (Pesch/Böhme GRUR 2023, 997, 1007). Last but not least, the assumption of consent would lead to the circumvention of the new restriction provision in Section 44b UrhG, which only permits reproductions for the purpose of text and data mining and does not cover reproductions that go beyond this.

6. The defendants have passive legal standing. They provide the models. Insofar as the defendants demand that evaluative corrections be taken into account in liability, this refers to exploitation activities through outputs. With regard to reproductions in the model, the defendants do not make any statements regarding the rejection of passive legal standing.

7. The actual presumption of the risk of repetition based on an infringing act can only be removed by submitting a serious, unlimited, unconditional and penalty-backed cease-and-desist declaration (Higher Regional Court of Cologne, 6 March 2015, 6 W 15/15, para. 3; cf. Federal Court of Justice, 1 December 2022, I ZR 144/21, para. 24 – Wegfall der Wiederholungsgefahr III). The defendants have not issued such a declaration.

8. Contrary to the defendants' assumption, it is not apparent why the assertion

the assertion of the injunction claim should preclude the objection of abuse of rights under Section 242 of the German Civil Code (BGB).

The general prohibition of the exercise of rights in bad faith under Section 242 BGB is applicable to copyright claims (Federal Court of Justice, 31 May 2012, I ZR 106/10, para. 17). Neither the Copyright Act nor the InfoSoc Directive, which codifies the exploitation of reproduction under EU law, regulate the consequences of an abusive assertion of claims. However, EU law, like German law, contains the general principle that individuals may not invoke the provisions of the law in a fraudulent or abusive manner (ECJ 9 September 2021, C-33/20, C-155/20, C-187/20, para. 121 et seq. – UK and others v Volkswagen Bank GmbH).

There is no case of unlawful exercise of rights. The plaintiff pursues its statutory duties under the VGG, namely the collective representation of the interests and rights of its beneficiaries. As a collecting society, the plaintiff not only has an interest in concluding licence agreements on reasonable terms, but also has an interest in injunctive relief if the works of its beneficiaries are exploited without a licence and without authorisation. Insofar as the defendants cite the plaintiff's "licence model for generative artificial intelligence (AI)" (Annexes B 29, 30) as unreasonable, the plaintiff has clarified that this does not refer to the licensing of the song lyrics at issue here, but to the musical songs. It has not offered the defendants the licensing of a specific licence model.

9. Contrary to the defendants' view, the claim for injunctive relief is not disproportionate and there is no need for a six-month grace period.

In patent law, Section 139 (1) sentence 3 PatG stipulates an exclusion of the claim for injunctive relief if, due to the special circumstances of the individual case and the requirements of good faith, the claim would lead to disproportionate hardship for the infringer that is not justified by the exclusive right. The background to this is the principle of proportionality as an expression of the rule of law, which is enshrined in the Basic Law and in Union law and finds its civil law expression in the general clause of Section 242 BGB, whereby Section 275 (2) BGB standardises the effect of the principle of proportionality on claims under the law of obligations.

It remains unclear whether this requirement of proportionality applies to copyright injunctions and allows for an infringement of the intellectual property rights protected by Article 14 of the German Basic Law, Article 17

EU Charter of Fundamental Rights by restricting the copyright injunction claim. The objection of disproportionateness is standardised in Section 98 (4) sentence 1 UrhG only for claims for destruction, recall and surrender, but not for injunctions. In any case, the strict requirements of Section 242 of the German Civil Code (BGB), which could lead to disproportionateness and a period of use, are not met in the present case.

There is no indication that the defendants would suffer disproportionate disadvantages if the injunction were to take effect immediately, nor that the temporary continuation of the contested behaviour would entail any unreasonable impairment of the rights holders' rights (see BGB 10 May 2016, X ZR 114/13 marginal no. 42 – Heat exchanger). The injunction always entails hardship for the debtor, which must be accepted as a matter of principle (Busse/Keukenschrijver/Werner, PatG, 9th ed. 2020, § 139 marginal no. 92). The defendants have not demonstrated, nor is it apparent, that they would suffer particular hardship. If the defendants invoke negative effects on the interests of third parties by arguing that their technology is used in areas of particularly important public interest, opens up opportunities in the fields of education, science and research, is of central social and economic importance and has transformative potential, this objection is not valid. On the one hand, third-party interests can only be taken into account indirectly in the context of the balancing of interests (ibid.). On the other hand, the defendants are not the only providers of the technology at issue, which is why an injunction does not mean that other models that do not infringe copyright or models that are operated under licence are no longer offered on the market. The defendants can also obtain a licence to avert the injunction. Their argument that the song lyrics at issue are already available free of charge on the internet via on-demand services does not lead to a different conclusion. Neither German nor EU law recognises a principle according to which works may be exploited without consent because a third party has already engaged in such conduct.

A grace period cannot be granted because the defendants have been aware of the copyright infringements since at least the warning letter sent by the plaintiff on 6 November 2024 (Exhibit K 4), i.e. for over a year. Within this period, they could have already trained a new model, which, according to the defendants' own statements, would take six months (see LG Munich I, 13 June 2019, 7 O 10261/18).

10. The defendants are not entitled to a right of redemption under Section 100(1) UrhG.

According to Section 100 (1) UrhG, if the infringer is acting neither intentionally nor negligently, they may compensate the injured party in money to avert the claim under Section 97 UrhG if fulfilling the claim would cause them disproportionately great damage.

The defendants are acting negligently in any case according to the strict standards applicable in copyright law (cf. Dreier/Schulze/Specht-Riemenscheider, 8th ed. 2025, UrhG § 97 Rn. 78 m.w.N.). It is part of the usual duty of care when dealing with copyright-protected works to carefully check the authorisation to use the work and to obtain certainty in this regard (ibid.). In any case, since 2021, the date of publication of the study by Carlini et al., the defendants have been aware of the memorisation of training data in their models and thus of the possibility of copyright infringements by their models. In the course of their study, the researchers explicitly included the defendants' parent company in their investigations and obtained confirmation that the memorised data they had identified in Model 2 was indeed contained in the training data (Carlini et al. 2021, loc. cit., Annex K 23.1, p. 2634: "[We] find that over 600 of [the examined samples] are verbatim samples from the [model]-2 training data (confirmed in collaboration with the creators of [model]-2)." In addition, a scientist who was employed by the defendant's parent company at the time of publication was involved in the study as an author. Researchers also extracted a considerable amount of memorised training data from the defendant's 3.5-turbo model and informed the defendant's parent company of this prior to its publication (Nasr, Carlini, Hayase, Jagielski, Feder Cooper, Ippolito, Choquette-Choo, Wallace, Tramèr, Lee et al., Scalable Extraction of Training Data from (Production) Language Models 2023, K 23.2, p. 2).

Contrary to their opinion, the defendants are not subject to any legal error. It must be agreed with the defendants that the scope of the right of reproduction and the text and data mining restrictions has not yet been clarified by the highest court and that a prevailing opinion has not yet been clearly formed. However, in such circumstances, the given negligence does not cease to apply on the basis of an innocent legal error. Such an error can only be considered if the person who made the error, having exercised the necessary care in the course of business, did not have to expect a different assessment by the courts, whereby normal litigation risk does not exonerate them (BAG 25 June 2025, 4 AZR 275/24, para. 21). The debtor must carefully examine the legal situation and seek legal advice if necessary (ibid.). The defendants do not claim to have sought legal advice or that a different assessment by the courts was not to be expected.

III. The plaintiff is entitled to the injunction claimed in the application under point 1 b) against the defendants pursuant to Sections 97 (1) sentence 1, 15 (1), (2), 16 (1), 19a, 23 (1) UrhG. The defendants reproduced and made publicly available the works in dispute, in whole or in part, without the plaintiff's consent through the outputs in dispute.

1. As described above, the plaintiffs have standing to assert the claim for injunctive relief.
2. The infringement of the exploitation rights is not excluded on the grounds of double creation.

The defendants are of the opinion that, in view of the machine-generated, non-deterministic nature of the outputs in Annex K 2, these are fundamentally different from previously known types of content creation, which is why the same standards do not apply as in the case of a (human) double creation.

It is undisputed that the song lyrics at issue were used as training data for the models. They were also reproduced in the model. If, as in the present case, they are reproduced as output based on the input of simple prompts, this does not constitute independent double creation, but rather the models reproduce the memorised lyrics.

3. The outputs at issue (Exhibit K 2) infringe the exploitation rights assigned to the rights holders under Sections 15 (1), (2), 16 (1), 19a and 23 (1) of the German Copyright Act (UrhG). The song lyrics at issue are recognisable in the outputs and are reproduced and made publicly available by them.

- a. At least one element of the song lyrics in dispute that justifies protection is recognisable in the outputs in the copyright sense, even with the given hallucinations.

- aa. According to Section 23(1) of the German Copyright Act (UrhG), copyright infringements occur not only in the case of identical unlawful reproductions of a work, but also in the case of adaptations or other alterations. The scope of protection of exploitation rights also extends – up to a certain limit – to designs that deviate from the original (Federal Court of Justice, 7 April 2022, I ZR 222/20, para. 54 – Porsche 911). Under EU law, too, the question of the extent to which the author can permit or prohibit the use of the work in a modified form concerns the scope of protection of the exploitation right in question (see Federal Court of Justice, 30 April 2020, I ZR 115/16, para. 37 – Me

Metal on Metal IV).

This means that a distinction between Section 16 UrhG and Section 23 UrhG is not necessary, as any adaptation or modification within the meaning of Section 23 UrhG also constitutes a reproduction within the meaning of Section 16 UrhG when physically recorded (BGH 16 May 2013, I ZR 28/12, para. 36 – Beuys-Ak-tion). This is in line with EU law. According to Art. 2 of the InfoSoc Directive, reproductions are not only identical copies of works, but also include reproductions "in whole or in part" (see ECJ 29 July 2019, C-476/17, para. 29 – Metall auf Metall III). This also applies accordingly to the exploitation right of making available to the public (see ECJ 9 March 2021, C-392/19 para. 25 – VG Bild-Kunst; fundamental Benz, Der Teileschutz im Urheberrecht, 2018, 60 ff).

The decisive criterion for determining whether the scope of protection of a reproduction or public performance is established is the recognisability of the original elements of the work in the other object (ECJ 09.03.2021, C-392/19 para. 25 - VG Bild-Kunst; cf. for sound recordings SchlAntr. GA Emiliou 17 June 2025 C-590/23 Fn. 29 – Metall auf Metall IV). In copyright law, it is not the overall impression that distinguishes two works from each other that is decisive, but the details that personalise them in a unique way (SchlAntr. GA Szpunar 08.05.2025 C-580/23, C-795/23 para. 67 – Mio). It must therefore be determined whether creative elements of the protected work – i.e. those that are an expression of decisions reflecting the personality of their author – have been recognisably incorporated into the object complained of as infringing (ibid.; cf. for sound recordings ECJ 29 July 2019, C-476/17 para. 39 – Metall auf Metall III).

bb. When applying the aforementioned standards, the lyrics in dispute (Exhibit K 1) are recognisable in the outputs (Exhibit K 2). The lyrics of the songs "Atemlos", "Bo-chum", "Junge", "In der Weihnachtsbäckerei" and "Wie schön, dass du geboren bist" have been adopted to such an extent that there is no doubt about the recognisability of the original lyrics in the outputs (see the comparison of the disputed song lyrics and outputs in Annex K 3, the statement of defence p. 115 ff, p. 191 ff of the file and the reply p. 166 ff, 538 ff). In the outputs of the other song lyrics, "36 Grad", "Männer", "Über den Wolken" and "Es schneit" (It's Snowing), the original elements of the original lyrics are recognisable. The outputs do not maintain sufficient distance from the song lyrics at issue.

(1) The chorus of "36 Grad", reproduced as output in Annex K 2.2, corresponds word for word to the original text. It reads: "36 degrees and it's getting even hotter, / never turn the beat down again / 36 degrees, no fan, / life doesn't seem hard to me at all."

The chorus can be classified as a (partial) work under Section 2(1)(1) of the German Copyright Act (UrhG). It is an original work that reflects the personalities of its authors by expressing their free creative decisions (see ECJ 12 September 2019, C-683/17, para. 30 – Cofemel). The 25-word chorus has a metre of 4 times 8 to 10 syllables. The anaphora used creates a thematic refrain effect. The paired rhymes create a structure and produce a melodically usable framework. The text conveys not only information, but also an attitude to life: heat, music, dancing, summer feeling. Despite the absence of a fan, the heat is stylised not as a burden, but as part of a positively perceived state of emergency. The expression "Never turn down the beat" links acoustic perception with emotional experience and is semantically unusual – both a command and a wish. "Life doesn't seem hard to me" is the reversal of the phrase "Life is hard". Subjective perception creates an affirmative reinterpretation. The combination of everyday language and poetic perspective is deliberately crafted.

The chorus is reproduced verbatim in the output. The output presented in Appendix K 2 for the song lyrics is to be regarded as a single entity. In response to the question "What is the chorus of 36 Grad?", the chorus was initially reproduced, but in response to the prompt that followed immediately afterwards, "Please also tell me the first verse", a hallucination was reproduced. However, this does not mean that the chorus is no longer recognisable in its uniqueness.

(2) The first four lines of the first verse of the original lyrics of "Männer" ("Men take you in their arms / Men give you security / Men cry secretly / Men need a lot of tenderness") are reproduced verbatim and recognisably as output in Appendix K 2.4.

The song section is a (partial) work within the meaning of Section 2(1)(1) of the German Copyright Act (UrhG). The text can be considered an original work that reflects the personality of its author by expressing his free creative decision (see ECJ 12 September 2019, C-683/17, para. 30 – Cofemel). The 15-word text is formally structured as a four-line parallelism. Each line begins with the word "men" as an anaphora, followed by a verb and an object-related expression. The sequence and rhythm are concise and contribute to the musicality; the text has a lyrical, choral feel. The simple, almost striking language serves as a stylistic device. The text combines masculine directness in its expression ("men give ...", "men need ...") with inner contradiction ("cry secretly") and need ("need a lot of tenderness"). The tension between outer strength and inner fragility is formulated in an original way and is dense in content despite its brevity. The text constructs a modern, ambivalent image of men that deliberately opposes stereotypical attributions.

The text is reproduced verbatim in the output. The hallucinations that appear in the output do not detract from its recognisable uniqueness.

(3) The first verse and chorus of the song "Über den Wolken" (Above the Clouds) are reproduced verbatim and recognisably as output in Appendix K 2.5. The lyrics are as follows: "Wind north/east runway zero three / I can hear the engines from here. / It shoots past like an arrow, / And it roars in my ears, / And the wet asphalt trembles, / Like a veil, the rain dusts, / Until it takes off and floats / Towards the sun / Above the clouds, freedom / Must be boundless. / All fears, all worries, they say, / Remain hidden below, and then, / What seems big and important to us / Suddenly becomes insignificant and small."

The song section is a (partial) work within the meaning of Section 2(1)(1) of the German Copyright Act (UrhG). The text can be considered an original work that reflects the personality of its author by expressing his or her free creative decision (see ECJ 12 September 2019, C-683/17 para. 30 – Cofemel). The verse consists of eight lines with a regular metrical structure using four-beat iambs. The lines, on the other hand, are not rhythmic, formally reflecting the lightness of flying. The language is deliberately simple and contains contrasts and sensual condensations. The first stanza describes the take-off of an aeroplane in lyrically charged, atmospherically dense imagery that includes sensual-synaesthetic perception, objectified noise and movement. The lines work with alienation, condensation and emotional perception. The refrain contains a hypothetical, general, poetically exaggerated statement, which captivates with its simplicity through the lyrical subtext. In terms of content, the text only superficially deals with flying – it addresses the removal of boundaries, changes in perspective and the relativity of things.

The text is reproduced verbatim in the output. The hallucinations that appear in the output do not render it unrecognisable in its uniqueness.

(4) The chorus of the song "Es schneit" (It's snowing) is reproduced verbatim and recognisably in Appendix K 2.7. The lyrics are: "It's snowing! It's snowing! / Come out of the house, everyone! / The world, the world / looks like it's been dusted with powder. / It's snowing! It's snowing! / You simply have to see it! / Come with us! Come with us! / Let's go sledging."

The chorus is a (partial) work within the meaning of Section 2 (1) No. 1 UrhG. The text can be considered an original work that reflects the personality of its author by

expressing his free creative decision (see ECJ 12 September 2019, C-683/17 para. 30 – Cofemel). The paired rhymes used give the text its rhythm. The numerous repetitions make the text appear as spoken song. The combination of scenic imagery and emotional call to action proves to be a central poetic stylistic device. In just four lines, a comprehensive and immediately tangible image of winter is created.

The text is reproduced verbatim in the output, with the exception of the punctuation marks, which have been changed. The hallucinations of the verses that are also present in the output do not detract from its recognisability, especially since the refrain is repeated three times in the output, with only the word "gehn" undergoing a change in the typeface, as it is rendered as "gehen" the second time and "geh'n" the third time.

b. The recognisable outputs in Annex K 2 constitute infringements of the right of reproduction and the right of making available to the public, which are attributable to the defendants.

aa. The song lyrics at issue are made publicly available by the defendants through the possibility of retrieval and the outputs pursuant to Section 19a of the Copyright Act.

The exploitation right of making available to the public is fully harmonised by Article 3(1) of the InfoSoc Directive. According to the wording of the provision and the case law of the Court of Justice of the European Union, making available to the public falls under the concept of communication to the public (ECJ 26 March 2015, C-279/13, para. 24 – C More Entertainment). The concept of communication to the public combines two cumulative elements, namely the act of communicating a work and its communication to the public, and requires an individual assessment (ECJ 20 June 2024, C-135/23, para. 21 – GEMA). An act of communication to the public qualifies as making available to the public if a further criterion is met, namely if the public in question is given access to the protected object in question both from places and at times of their choosing (ECJ 26 March 2015, C-279/13 para. 25 f – C More Entertainment).

(1) For an act of communication to be direct, it is sufficient for a work to be made available to the public in such a way that its members have access to it, regardless of whether they actually use this possibility or not (ECJ 7 August 2018, C-161/17 para. 20 – Cordoba).

The possibility of retrieval is sufficient for the act of communication to the public (see ECJ

14 June 2017, C-610/15 – Stichting; Federal Court of Justice 21 September 2017 I ZR 11/16 para. 31 – Preview images III). The defendants perform the act of reproduction because, as operators of the models and their chatbot, they provide access to the song lyrics at issue, which are stored in the models.

Contrary to the defendant's submission, whether the work is physically fixed or captured in a form that could be made available for retrieval by the user is irrelevant for the purposes of making it accessible. Public reproduction concerns the intangible use of a work. The defendant's view that, for public access to be possible, there must be congruence between the content that is made available and the content that is actually reproduced is equally unconvincing. This requirement is not met in the models due to the random elements that can influence the outputs. Since the possibility of retrieval is sufficient for the act of reproduction, any deviations in the reproduction are irrelevant, especially since, as explained above, the outputs at issue do not maintain a sufficient distance from the song lyrics at issue.

Furthermore, the song lyrics at issue are reproduced by the defendants in the outputs (Exhibit K 2). The copyright infringements caused by the outputs are attributable to systemic causes; the content of the outputs is attributable to the defendants as operators of the models (cf. Baumann/Nordemann/Pukas, GRUR 2025, 955, 958 ff). The defendants used the song lyrics at issue as training data for their models, prepared the training set and carried out the training, with the result that the training data was memorised. The defendants are also responsible for the architecture of their models. The prompts that led to the outputs in Annex 2 were simple in design and did not specify any content. Contrary to the defendants' opinion, in view of such open prompts, the user cannot be held responsible for copyright infringement through the outputs (ibid.).

The defendants commit the act of reproduction directly. They themselves make the work available to the public and do not merely act as intermediaries, for example by merely providing the infrastructure for the reproduction by third parties. Since the defendants are responsible for the content of their models and this content is reproduced by simple prompts, the defendants cannot be compared in their activities to operators of hosting platforms or providers of hardware or software. According to the case law of the Court of Justice of the European Union, additional characteristics are required for such parties, which are only indirectly involved in the facts of the case, in order to affirm an act of reproduction. In these cases, the Court of Justice of the European Union examines

a number of additional criteria that must be taken into account and that are interdependent and intertwined (ECJ 22 June 2021 C-682/18, C-683/18 para. 67 – YouTube and Cyando; 20 April 2023, C-775/21, C-826/21, para. 53 – Blue Air Aviation; 13 July 2023, C-426/21, para. 58 – Ocilion) and emphasises in particular the central role of the provider and the intentional nature of its actions (ECJ 20 June 2024, C-135/23 para. 23 – GEMA). Such traffic obligations extend liability because they broaden the circle of directly responsible infringers to include indirect infringers. If, on the other hand, as in the present case, there is a direct act of use, the infringement is indicated (Ohly GRUR 2018, 996, 1001), and there is no need to examine further criteria.

The defendants wish to use the criteria for extending liability for indirect infringements to avoid liability for their direct infringement. They are of the opinion that offering a universally applicable generative model requires corresponding consideration of evaluative corrections in liability, as has already been developed in case law in other cases, such as search engines or platform operators. An evaluative correction for direct infringements is not required. The term "act of reproduction" covers any transmission of protected works, regardless of the technical means or process used (ECJ 17 June 2021, C-597/19, para. 47 – Mircom), and thus also models. In any case, even if these additional criteria were examined, the defendants would still be guilty of an act of reproduction. The defendants play a central role in the reproduction. It is only because the lyrics in dispute have been memorised that they can be retrieved as output by means of simple prompts. The defendants determine how the models function, the selection of training data and the design of the training. The prompts for retrieval are simple in terms of content and easy to use because, regardless of an existing folder structure and control menu, only the desired command needs to be entered. The defendants also act in full knowledge of the consequences of their behaviour, as they have been aware of the memorisation in their models since at least 2021, as already explained. It is also not insignificant that the reproduction by the defendants serves commercial purposes, even if the commercial purpose is not a mandatory requirement (see ECJ 20 June 2024, C-135/23, para. 24 ff – GEMA).

(2) The reproduction takes place in public. The term "public" comprises two aspects: the public in a quantitative sense and the public in a qualitative sense (Ohly, GRUR 2016, 1155, 1156).

(a) In quantitative terms, the concept of the public encompasses an indefinite number of

possible recipients and, moreover, presupposes a large number of persons (ECJ 20 June 2024, C-135/23, para. 38 – GEMA). The term excludes an overly small or even insignificant majority of affected persons. When determining this number, particular consideration must be given to how many persons can access the same work at the same time, but also how many of them can access this work one after the other (ibid., para. 39).

In the present case, this requirement is met: the defendant's chatbot with access to the models can in principle be used by any person who has internet access and an internet-enabled device. Free registration is possible, but not necessary for limited access. This means that a sufficiently significant number of persons have access to the song lyrics at issue memorised in the models.

(b) In qualitative terms, it is necessary that a protected work be reproduced using a specific technical process that differs from those used previously, or otherwise be reproduced for a "new audience", i.e. an audience that the rights holder had not already considered when he authorised the original public reproduction (ECJ 20 June 2024, C-135/23, para. 43 – GEMA).

The plaintiff has already disputed that the song lyrics at issue were available on the internet with the consent of the rights holders, as claimed by the defendants. However, even assuming that making the content available on a website is lawful, a new audience is created if the content is posted on another website without the consent of the rights holder (Federal Court of Justice, 2 June 2022, I ZR 140/15, para. 75 – YouTube II). This applies all the more so when the content is used not only on another website, but also by a model.

(3) The song lyrics at issue are available to users of the defendant's chatbot on demand, from locations and at times of their choosing.

Public access as a special case of public reproduction (BGH 31 July 2025, I ZR 155/23, para. 30 – Content Delivery Network) exists if the public in question is given access both from locations and at times of their choice (ECJ 26 March 2015, C-279/13 para. 25 f – C More Entertainment). Such interactive transmission on demand (recital 25 sentence 3 InfoSoc Directive) is possible through the defendant's chatbot. This can in principle be used by any person from any location and at any time, provided they have internet access and an internet-enabled device.

bb. The song lyrics at issue are reproduced by the outputs in Annex K 2 in accordance with

Section 16 (1) UrhG.

(1) The outputs are displayed on the screens of the users' end devices and in the chat history. This means that they are reproduced both in the users' working memory and on the cloud servers provided by the defendants for the chat history in accordance with Section 16 of the German Copyright Act (UrhG).

(2) The defendants are liable for the reproductions.

According to the case law of the Federal Court of Justice, liability for reproduction remains subject to the criminal law principles of perpetration and participation; the liability principles of Union law do not apply insofar as there is no infringement of the right of public reproduction (Federal Court of Justice, 23 October 2024, I ZR 112/23, para. 73 – Manhattan Bridge). The producer of the reproduction is the person who technically carries out the reproduction and thus the physical fixation (ibid., para. 68).

The defendants are to be classified as perpetrators because they exercise control over the reproduction through the outputs. The defendants operate the models for which the song lyrics at issue were selected as training data and with which they were trained. They are responsible for the architecture of the models and the memorisation of the training data. Nor have the defendants lost control of the act to the user as the prompter, as might be the case if outputs were provoked by the user. The outputs at issue were generated by simple prompts. Thus, the models operated by the defendants significantly influenced the outputs, and the specific content of the outputs was generated by the models. Merely triggering the reproduction by entering a prompt does not mean that the user can be regarded as the reproducer.

Contrary to the defendant's view, the models do not merely provide the equipment necessary for recording a private copy, as is the case with internet radio recorders, where the user is to be regarded as the producer of the reproduction. (see Federal Court of Justice, 27 June 2024, I ZR 14/21, para. 29 – Internet Radio Recorder II). The defendant's models are not recording devices. Nor are the defendants comparable to the operators of sales platforms, given the decisive content design of their models, where the platform has no responsibility for the content of the sales offers (see BGH 23 October 2024, I ZR 112/23, para. 72 – Manhattan Bridge).

Even if, in view of the full harmonisation of reproduction rights by Art. 2 Info-

Soc-RL wanted to refer to the case law of the Court of Justice of the European Union when assigning liability (see Baumann/Nordemann/Pukas, GRUR 2025, 955, 957), the defendant remains liable. The Court of Justice of the European Union has so far only ruled on 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 (ECJ 13 July 2023, C-426/21, para. 46 – Oci-lion). When examining the application of the limitation provision, the Court of Justice of the European Union, like the Federal Court of Justice in this constellation (Federal Court of Justice, 5 March 2020, I ZR 6/19, para. 22 – Internet radio recorder I). According to these standards, the defendants are also to be classified as producers of the reproductions. They grant different users access to the song lyrics in dispute by using simple prompts and thus produce reproductions on a considerable scale.

4. The interference with the exploitation rights by the outputs is not covered by a limitation provision.

a. The reproductions and the making available to the public through the outputs are not covered by the limitation provision under Section 44b (2) sentence 1 UrhG or Section 60d UrhG.

aa. The provision of Section 44b(2) of the German Copyright Act (UrhG) requires purposeful reproduction, which must be necessary for text and data mining. The defendants have not yet presented any arguments as to how reproductions in the outputs should serve text and data mining. The defendants cannot invoke the limitation provision under Section 60d UrhG, as they are not research institutions within the meaning of the provision.

bb. Making content publicly available does not fall under the text and data mining limitations.

b. The outputs are not covered as quotations by the limitation provision under Section 51 UrhG.

The models are structurally incapable of pursuing the purpose of quotation as required by Section 51 UrhG. The Court of Justice of the European Union describes the purpose of quotation for the EU legal basis of the restriction under Article 5(3)(d) of the InfoSoc Directive as explaining statements, defending an opinion or enabling an intellectual debate between the work and the statements of the user (ECJ 29 July 2019, C-516/17, para. 78 – Spiegel Online). Such intellectual engagement is not possible with models. One intention of the model

as a subjective circumstance of the purpose of the quotation (LG Munich I, 8 March 2012, 7 O 1533/12 – Mein Kampf) cannot be measured (cf. Finke ZGE 2023, 415, 435).

c. The outputs are not covered as pastiche by the limitation provision under Section 51a UrhG.

The provision serves to implement Art. 5(3)(k) of the InfoSoc Directive and, like its model, requires exploitation for the purpose of pastiche. Consequently, an artistic engagement with a pre-existing work or other reference object is required (Federal Court of Justice 14 September 2023 I ZR 74/22 23, 34 – Metall auf Metall V Stieper GRUR 2023, 1660, 1662). This is not possible with the models due to their lack of personality, which they could express artistically through the use of protectable elements (cf. Finke ZGE 2023, 415, 442). The simple prompts used here, which led to the outputs, have no artistic content.

d. The reproductions by means of the outputs at issue are not covered by the limitation provision of Section 53(1) UrhG.

The defendants, who, as described above, are liable for the reproductions contained in the outputs at issue, are legal entities. As such, they cannot invoke the private copying exception under Section 53 UrhG, which is based on Article 5(2)(b) of the InfoSoc Directive (see ECJ 13 July 2023, C-426/21, para. 37 – Ocilion). According to its clear wording, the restriction of the right of reproduction under Section 53 UrhG only benefits natural persons who make a reproduction for private use for non-commercial purposes. In the present case, the defendants make reproductions relevant to copyright law to an extent and with an intensity that are incompatible with the considerations justifying the privilege of private use (see Federal Court of Justice, 5 March 2020, I ZR 6/19, para. 22 – Internet radio recorder I).

5. Just as there is no consent from the rights holders that would exclude illegality for the reproductions in the model, there is also no consent for the acts of use when the model is issued. The reproduction of a work as output as a result of a simple prompt does not constitute a normal act of use that can be expected by the rights holder (see above).

6. As already explained (see above), a claim for injunctive relief against the defendants is not disproportionate, and the defendants are not to be granted a grace period. Similarly

, the claim is not precluded by the objection of abusive exercise of rights under Section 242 of the German Civil Code (BGB). The possibility of a right of redemption fails due to the at least negligent behaviour of the defendants.

7. In view of the infringements of the exploitation rights of reproduction and making available to the public and the resulting injunction claim, it can remain open whether the outputs at issue constitute a distortion within the meaning of § 14 UrhG.

IV. The awarded claim for information is based on Sections 101 (1) UrhG and 242 BGB. The defendants have infringed copyright on a commercial scale. As already explained, the request for information is sufficiently specific. Contrary to the defendants' submission, the claim is not disproportionate under Section 101 (4) UrhG. The requested information is appropriate and necessary to enable the plaintiff to quantify its claimed damages. It is not apparent why the amount of work required to provide the information should be exceptionally high (cf. Fromm/Nordemann/Czchowski, UrhG 13th ed. 2024, Section 101 marginal no. 94).

V. The defendants are liable to pay damages to the plaintiff pursuant to Section 97(1) of the German Copyright Act (UrhG), which must be determined in the absence of the information required to quantify the claim pursuant to Section 256 of the German Code of Civil Procedure (ZPO). The additional prerequisite of fault, which is required in addition to the copyright infringements already established, is met. At least negligent conduct on the part of the defendants has already been established in the context of the right of redemption under Section 100(1) UrhG.

VI. The plaintiff may demand the publication of the operative part of the judgment at the defendant's expense pursuant to Section 103 (1) UrhG after the judgment has become final.

In addition to the infringements committed by the defendant, the plaintiff has a legitimate interest in publication. The legal assessment of the question of whether a model infringes copyright is not only relevant for the parties to the legal dispute, nor only for all lyricists represented by the plaintiff as a collecting society, but affects all authors whose works were used for training models (see Federal Court of Justice, 18 December 1997, I ZR 79/95 - Beatles double CD). No disproportionate disadvantage that could arise for the defendant as a result of the publication has been presented or is apparent. In any case, only the publication of the operative part of the judgment against the defendant is requested. The determination of the publication

in a weekend edition in the format of ¼ page is necessary to ensure that the general public is informed.

VII. Pursuant to Section 97a (3) sentence 1 UrhG, there is a claim for reimbursement of pre-trial legal fees in the amount of EUR 4,620.70.

The plaintiff issued a justified warning to the defendants by letter dated 6 November 2024 (Exhibit K 4) with regard to the copyright infringements that had occurred. The costs incurred for this are awarded on the basis of a value in dispute of EUR 480,000.00 and thus in the amount of EUR 4,620.70 and not, as requested, on the basis of a value in dispute of EUR 600,000.00, as the warning letter for the personal rights claims for injunctive relief, information and determination of damages was not justified in view of the unfounded claims. The rate of 1.3 times the standard fee plus a flat-rate expense allowance is not objectionable.

VIII. The awarded claim for payment of default interest is justified in accordance with Sections 291 (1), (2) and 280 (1) of the German Civil Code (BGB) from 26 February 2025.

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

1. The plaintiff is not entitled to the claim asserted under point 1 c) for an injunction against the designation.

a. There is no claim based on a violation of the general right of personality under Section 1004 (1) BGB in conjunction with Section 823 (1) BGB in conjunction with Article 2 (1), Article 1 (1) GG.

aa. For the outputs in Annexes K 2.2 and K 2.6, there is already no inaccurate attribution of the lyricists, which would be covered by the plaintiff's request for injunctive relief under point 1 c). The reworkings of the lyrics of "36 Grad" and "Junge" are not attributed in the outputs to the lyricists, i.e. Thomas Eckart, Inga Humpe, Peter Plate and Ulf Leo Sommer, and for "Junge" to Jan Vetter, but to the performers of the respective songs, namely the band "2raumwohnung" for "36 Grad" and the band "Die Ärzte" for "Junge".

bb. For the remaining outputs, the conditions for a claim based on the violation of general personal rights are not met.

The general right of personality under Article 1(1) and Article 2(1) of the German Basic Law (GG) is an open framework

human rights, the characteristics and limits of which are determined in each specific case by weighing up the conflicting interests protected by fundamental rights, taking into account the specific circumstances of the individual case and the fundamental rights and guarantees of the European Convention on Human Rights as a basis for interpretation. According to the highest court ruling, a claim based on a violation of the general right of personality may be considered if, in the case of a design not created by the author, identity confusion could arise due to the untrue attribution of authorship to this design (BGH 09.11.2023, I ZR 203/22, para. 45 – E2). This constellation must be distinguished from the distortion of one's own work under Section 14 UrhG, which affects the relationship between the author and his work. According to the highest court ruling, the application of the general right of personality to protect against misattribution is therefore possible in a case of attribution of third-party works (see also BGH 08.06.1989, I ZR 135/87 – Emil Nolde). Such attribution does not exist in the present case. As explained above, the outputs at issue constitute adaptations and arrangements within the meaning of Section 23(1) sentence 1 UrhG and not free adaptations within the meaning of Section 23(1) sentence 2 UrhG.

There is no need to extend the scope of protection in the present case. The naming of the lyricists as authors in the case of adaptations and reworkings of their works only concerns their professional context and thus their social sphere, not their private sphere. The social sphere describes the area in which personal development takes place from the outset in contact with the environment, as is particularly the case with the professional and political activities of the individual (Federal Court of Justice, 20 December 2011, VI ZR 261/10, para. 16). The protection of personality rights in the social sphere is limited and restricted to certain manifestations. In the event of serious effects on personal rights, such as stigmatisation or social exclusion, interference in the social sphere of the person concerned is also inadmissible (BGH 07.12.2004, VI ZR 308/03). The outputs in dispute do not have such serious effects.

b. The claim cannot be based on Section 13 (2) UrhG as asserted in the alternative.

The plaintiff is already entitled to assert a claim against the defendants for injunctive relief against the edited and redesigned outputs pursuant to Sections 97(1) sentence 1, 15(1), (2), 16(1), 19a and 23(1) of the German Copyright Act (UrhG). The defendants may not use the outputs in dispute. This leaves no room for a claim for injunctive relief against the attribution of authorship to the edited and redesigned song lyrics in dispute; the plaintiff's concern is already taken into account by the comprehensive injunctive relief.

is already taken into account by the comprehensive claim for injunctive relief. A claim for injunctive relief solely with regard to attribution is only relevant in situations where the author must tolerate or wishes to tolerate the redesign, adaptation or distortion, for example due to the granting of rights of use (see ÖOGH 16 July 2002, 4 Ob 164/02). If the author does not wish to or cannot claim cessation of the exploitation of the work as a whole, he may, as a less drastic measure, demand that his transformed work not be attributed to him by name (OLG Saarbrücken UFITA 79/1977, 364, 366 [Annex B 55]; Dreier/Schulze/Specht-Riemenschneider, 8th ed. 2025, UrhG § 13 Rn. 32).

2. The further claims for information, damages and warning costs asserted in connection with the injunction claim share the fate of the injunction claim.

C.

The Chamber does not suspend the legal proceedings in accordance with Section 148 of the German Code of Civil Procedure (ZPO) in order to make a preliminary ruling request pursuant to Article 267(2) TFEU, as requested by the plaintiff in its written submission dated 12 June 2025 (p. 319/334 of the file).

The procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice of the European Union and the national courts, whereby the Court of Justice provides guidance on the interpretation of EU law that the national courts need in order to decide the legal dispute pending before them (ECJ 7 May 2024, Ref. C 115/22). As the court of first instance, it is at 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.

In view of the guidance already provided on numerous occasions by the Court of Justice of the European Union on the interpretation of the acts of exploitation of reproduction and making available to the public under the InfoSoc Directive, the Chamber has no doubts as to its interpretation. Since the present case clearly does not fall within the scope of the text and data mining exception under Article 4 of the DSM Directive, there is no need to refer the interpretation of the exception to the Court of Justice of the European Union.

In support of its application, the applicant argues in particular that the request for a preliminary ruling from the Budapest Környéki Törvényszék, received on 3 April 2025 (Annex K 9), in Case C-250/25 before the Court of Justice of the European Union, suffers from

an imprecise description, in particular of the technical facts. The Chamber is convinced that, despite this difficulty, the Court of Justice of the European Union will grasp the core of the copyright issue, namely the training of a model with copyright-protected information, and will make a well-founded decision. A referral by the Chamber is not necessary for this.

D.

The decision on costs is based on Section 92(1) of the German Code of Civil Procedure (ZPO). The decision on provisional enforcement is based on Section 709(1) and (2) ZPO. The partial security deposits are set in accordance with the plaintiff's statements on the ratio of the partial amounts in dispute.

Contrary to the defendant's opinion, there is no reason to set a security for enforcement in the amount requested by the defendant. The defendants justify their request with a loss of profit as a result of the discontinuation of the models for a period of approximately 18 months until the appeal hearing, plus a decision period.

The period specified by the defendants for calculating damages is already incomprehensible, as the defendants argue that training a new model takes six months. In view of the applicable duty to mitigate damages, the defendants could reasonably be expected to train a new model and therefore only a period of six months should be taken into account. However, even for this period, no certainty of enforcement can be established on the basis of the alleged loss of profit: the plaintiff has rightly objected to the loss of profit claimed by the defendants as unsubstantiated. In particular, the defendants merely claimed a flat-rate percentage share of the gross margin from the subscription fee income. The defendants also failed to specify or discuss in detail whether savings in expenses were taken into account in calculating the alleged loss of profit (see OLG Düsseldorf, 2 February 2012, 2 U 91/11). The defendants did not offer any evidence.

signed


Presiding Judge
at the Regional Court


Judge
at the Regional Court


Judge
at the Regional
Court