

Germany

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*Protectability of a format
"L'école des fans"*
Federal Supreme Court
June 26, 2003
IZR 176/01

Facts: The plaintiff, the rightholder of the French broadcasting programme "*L'école des fans*" which has been broadcasted since 1997, asserted an infringement of its rights through the German broadcasting programme "*Kinderquatsch mit Michael*" (Children's Nonsense with Michael). Both programmes are addressed to children aged four and six, and they are presented by a showmaster who leads a few children of that age to a stage where they are presented to the audience and interviewed in a manner appropriate for children. Subsequently, the children sing simple songs, which they learned before the programme, accompanied by instruments. During a child's performance the camera shows also the child's parents who are in the audience. Popular stars appear between the children's performances. At the end of each show the children receive presents.

Held: A mere TV show format which consists of basic ideas for an event before the audience and offers a unitary concept of individual particularity is not susceptible of being protected by copyright. Copyright is not granted for results of an individual activity of the mind, but only for works in the sense of Art. 2 of the (German) Copyright Act. A work, protected by copyright can only be the result of the creative conception of a particular subject or material, not a mere direction for the shaping of similar different subjects or materials, which are independent of its content, even if this would result in a particular achievement or performance. Copyright protects a work against unauthorised exploitation as such and in a non-modified manner or use, but not against a mere use as a model for the portrayal of other subjects or materials. The format of "*L'école des fans*" did not contain a minimum of the individual elements of the programme it is modelled on the directions for the presentation of the show, but it constitutes a mere framework for the production of similar programmes with new content as part of a series.

MUSIC

*"Noise of a rock concert"—whether
actionable nuisance*
Federal Supreme Court
September 26, 2003
V ZR 41/03

Facts: The plaintiffs are owners of a house in a general residential area. The neighbouring property is a sports field. The town offered the property to a sports club for its activities. Annually the sports club organises a summer party for which a tent is built, at a distance of some 60 metres from the plaintiff's house. In the tent there are musical events, including a rock concert which is organised on a Friday and which lasts long after midnight.

The plaintiff sued their neighbour, the town, for trespass to their property. They asked for an order that during the summer parties no noise should transgress the border of their property in excess of 70 dB during the day and 55 dB from 10pm onwards. The plaintiff took these figures from the Directive on Noise During Leisure Time which was issued by the Joint Board of the German States on Protection Against Intromission.

The District Court and the Court of Appeal rendered their judgments in favour of the plaintiffs. The town appealed to the Federal Supreme Court.

Held: In the case of events which are of special importance to a town and which happen only once annually, neighbours may have to accept, even after 10pm a noise nuisance which exceeds the marginal values of the Directive on Noise During Leisure Time. The marginal values which are established in the Directive on Noise During Leisure Time are merely indicative of the noise which may be acceptable, but they should not be applied rigidly.

If there is an event which takes place only once annually, and if the event has a special importance, the neighbours may have to accept irritations in excess of the marginal values, however, taking into account of the general protection from disorder by night, such excess values may only be acceptable until midnight. This means that the neighbours may have to accept noise which the Directive considers acceptable during daytime, i.e. 70 dB, as well as from 10pm until midnight. But after midnight the marginal value of 55 dB has to be maintained.