

?????? C-492/08

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«????????? ??????? - ?????? 2006/112/E? - ?????? ?????????????? ?????? - ??????????
????????????? - ?????? 96 ??? 98, ?????????? 2 - ?????????? III, ?????? 15 - ?????????? ??????
- ?????????? ?????????? - ?????? ? ?????? ?????????? ??? ?? ??????»

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????????????? ?????????? - ?????????? ??? ?????????? - ?????? ?????? ?????????? - ??????
????????? ??? ?????????????? ?????? - ?????????? ??? ?????? ?????? ?? ?????????? ??????????
????????? ?? ?????????? ?????????? ?????? ??? ?????? ?????????? ?????.

(?????? 112/96 ??? ??????????, ?????? 1 § 98 ??? 2 ??? ??????? I, ?????? 15

????????? ??? ?????????? ??? ?????? ??? ?? ?????? 96 ??? 98, ?????????? 2, ???
?????? 2006/112/??, ??????? ?? ?? ?????? ??????? ?????? ?????????????? ?????, ??????
????? ??? ?????????? ??????? ?????????? ?????? ?????????????? ?????? ??? ??????????
??? ??????? ?? ????????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?? ?????????? ??? ??? ?????? ?????????? ?????? ??? ??????
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ??????.

??????????, ?? ?????? 15 ??? ?????????? ??? ?? ?????? 2006/112, ??? ??????
?????????? ?? ?????? 98, ?????????? 2, ??? ?????? ???????, ??????? ?? ?????????? ???
????? ??? ?? ?????????? ??????? ?????????? ?????? ?????????????? ?????? ??? ?? ???
??? ??????? ?????????? ?????????? ?????? ?????? ?????????????? ??? ?????? ??? ??????????
????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??
????????? ?? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??
????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ???.

?????????? ??? ??????? ?????? ??? ?? ?????????? ?????????? ??????????? ????????????,
? ?????????????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ?? ??????
????? ?? ?????????? ?? ?????? ?????????????? ??????????. ????????, ?????? ?? ?? ??????????
??? ?? ?????????? ??? ?????? ?????? ?? ?? ??? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?????? ?????? ?????????? ?????????? ??? ?????? ?? ?????????????? ???
«????????? ?? ??? ?????????? ?????? ??? ?????????? ?????????? ??????????», ? ?????????? ???
??? ?????? ??? ?? ?????? ?????? ??? ?? ?????????????? ?????????? ??? ?????????? ??? ?????? ??
????????????? «????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ?????? ??? ?? ?????????? ??????????», ??? ?????? ?????? ??? ?????? 15 ???
????????? III ??? ?????? 2006/112.

(??.. ??????? 43, 45-47, 49 ??? ??????.)

?????? ??? ?????????? (????? ????)

?? 17?? ?????? 2010 (*)

«????????? ??????? ?????? – ?????? 2006/112/E? – ?????? ?????????????? ?????? – ??????????
????????? – ?????? 96 ??? 98, ?????????? 2 – ?????????? III, ?????? 15 – ?????????? ???
– ?????????? ?????????? – ?????? ? ?????? ?????????? ??? ?? ??????»

???? ?????? C?492/08,

? ? ?????????? ?????? ??? ?????? 226 ?? ??? ???????????, ? ??? ?????? ?????? 14
????????? 2008,

????????? ???????, ?????????????? ??? ??? M. Afonso, ?? ??? ?????? ??????? ???
???????????,

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????????? ??????????, ?????????????? ??? ??? G. de Bergues ??? J.- S. Pilczer,
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? ? ?????????? (????? ????),

????????? ??? ??? A. Tizzano, ?????? ???????, A. Borg Barthet, M. Illeši? (?????????), M.
Safjan ??? M. Berger, ????????,

????????? ??????????: N. Jääskinen

?????????: R. Grass

???????? ???? ??? ??????? ????????????,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ??????? ??? ?????? ?? ???????????
??? 11?? ??????????? 2010,

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1 ?? ?? ?????????? ??? ?????????? ???, ? ?????????? ?????????? ?????? ??? ?? ???????????
?? ?????????? ???, ???????????, ??????? ?????????? ?????? ?????????????? ?????? (??
????: ???) ??? ?????????? ??? ?????????? ?? ??????????, ?? ?????????? ??? ?????????? ???
??????????, ?? ?????????? ??? ?????????? ?????????????? ??? ?? ?????????, ??? ??? ?? ??????
?????????? ?????? ?? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ??????????????
??????, ? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? 96 ??? 98,
????????? 2, ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????
?? ?? ????? ?????? ????? ?????????????? ?????? (?? L 347, ?. 1).

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2 ? ?????? 2006/112 ?????????? ??? ?????? 77/388/???, ??? 17??
????? 1977, ??? ?????????? ??? ?????????? ??? ???????, ??? ?????????? ?? ???
????? ?????? ?????? - ??? ?????? ?????? ????? ?????????????? ??????: ??????????
????????? ??? (?? ????. ??? 09/001, ?. 1, ??? ????: ??? ?????), ? ??????
????????????? ??? 1? ?????????? 2007.

3 ?? ????? 96 ??? ?????? 2006/112, ??? ?????????? ?? ?????? 12, ?????????? 3,
???????? ??, ????? ?????, ????? ???????, ??? ????? ???????, ??????????:

«?? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ?? ?????? ??????
????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??? ????? ?? ??? ?????? ??? ??????????
????? ?? ??? ??? ?????? ??????????»

4 ??? ?? ????? 97, ?????????? 1, ??? ?????? 2006/112, ??? ?????????? ?? ??????
12, ?????????? 3, ?????????? ??, ????? ?????, ?????????? ???????, ??? ?????? ???????, «??
?? 1? ?????????? 2006 ??? ??? 31? ?????????? 2010 ? ?????????? ?????????? ???
????? ?? ?????? ?????????? ??? 15 %».

5 ?? ????? 98, ?????????? 1 ??? 2, ??? ?????? 2006/112, ??? ?????????? ?? ??????
12, ?????????? 3, ?????????? ??, ????? ?????, ??? ?????? ???????, ??????????:

«1. ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ?????????? ???????????.

2. ?? ?????????? ?????????? ?????????? ??? ?????? ?? ?????? ?????????? ?????? ?? ??? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

[...]»

6 ?? ?????????? III ??? ?????? 2006/112, ?? ?????? «????????? ?????????? ?????? ???
????????? ?????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??? ??? ???
????????????? ??? ?????? 98», ???????, ??? ?????? 15, ??? «? ?????????? ?????? ??? ? ??????

?????????? ??? ?????????? ??? ?????????????? ??? ?? ??? ???? ??? ?? ???????
????????????? ??? ?????????? ??? ?????????????? ?? ??? ?????????? ??? ?? ??? ??????????
??????????, ??? ????? ?? ?????????????? ??? ????? ?? ?????? 132, 135 ?? 136». ? ???????
???? ?????????? ??? ?????? 14 ?? ?????????? ?? ??? ????? ??????.

7 ?? ?????? 132, ?????????? 1, ?????????? ?, ??? ?????? 2006/112, ??? ?????????? ??
????? 13, A, ?????????? 1, ?????????? ?, ??? ?????? ??????, ?????? ?? ??? ?? ???
????????? ??? ?????????? ?????????????? ?????? ?????????????? «??? ?????? ??????????
??? ?? ?????????? ?????? ?? ?????? ?????????? ?????? ?? ??? ?????????? ?????? ???
????????, ?????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??????, ??? ??
?????? ?????????????? ??? ?????????? ?????? ?????????? ?????? ? ?????? ?????????? ???
?? ?????????? ?????? ?????? ?????????? ?? ?????????? ?????? ??????».

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8 ?? ?????? 279 ??? ?????? ?????????? ?????? (??? ????: CGI) ??????????:
«????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????????? 5,50 % ?? ,?? ??? ?????:
??. ??? ?????? ?????????? ??? ??? ?????? ?? ?????????, ?? ?????????? ??? ?????????? ???
????????????? ??? ??? ?????????? ?????????, ?????? ??? ?? ?????????, ?????????? ????
????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????,
[...]».

9 ?? ?????? ??? ?????? ??? 1? ??????? 1991 ??? ?????????? ?? ?? ???
32 ??? ?????????? ??? 1991 (????? 90-1168 ??? 29? ?????????? 1990), ???
????????? ??? ?????? ?????????? ??? ?????????? ?? ?????????, ?? ?????????? ??? ?????????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???.

? ??? ??? ?????????? ??? ?????????? ???????????

10 ?? ???????, ?? ?????? ?????????? ??? 10? ?????? 2006, ?????????? ?? ???????
????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?? ??? ?? ??????
????????? ??? ?????????, ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ?????????? ??? ?????????, ??? ?????? ??? ?????????? ?????????? ???
????? ?????? ?? ??? ?????????? ??? ?????? 12, ?????????? 3, ?????????? ??, ??? ???
??????, ?? ?????????? ?? ??? ?????????? ??? ?????????? ??? ?????????? ???.

11 ??? ??? 12 ?????? 2006 ??????? ???, ? ?????? ?????????? ?????????????? ???
????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? 14 ??? ?????????? H ??? ??? ?????? ???.

12 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ??? 15 ?????????? 2006
?????? ???, ?????? ??? ?? ??? ?????? ??? ?????? ?????????? ???, ?? ?? ??? ??
????? ?? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
??? ?????? ??? ?????? ?????? ??? ?????? ???.

13 ?? ?? ?? 13 ?????????? 2007 ??????, ? ?????? ?????????? ?????????? ?? ??
?? ?? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ???
?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

14 ?????????? ??? ? ?????????? ??? ?????????? ?????????? ??? ?????? ???
?????????, ? ?????????? ?????????? ?? ?????? ??? ?????? ??????.

??? ??? ????????

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15 ? ?????????? ???????, ?? ??????????, ???, ?????? ? ?????????? ??? ?????? ??? ??????
??????????, ?????????? ?? ?????????? ??? ?????? ?????????????? ?????, ?????? ??
????????? ?????????????? ??? 1?? ?????????? 2007, ??????? ??? ?????? ??? ?????????? ???
????? ???????, ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??
????????? ?????????? ??? ?????? 2006/112.

16 ?????????? ??? ?????? ??? 18?? ?????????? 2001, C-83/99, ?????????? ???
????????? (?????? 2001, ?. I-445, ?????? 19 ?? 20), ? ?????????? ?????????? ??? ??
????????? ??? ?????? 98, ?????????? 2, ??? ??? ?????????? III ??? ?????? 2006/112,
????????? ??????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ???, ?????? ?? ?????????? ?????????? ???
????????? ?? ?? ?????? ?????? ??? ?????????? ????. ??????????, ?? ?????????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? f, ??? CGI, ???
????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? III ??? ??????
2006/112 ??? ??? ?????? ??? ?????????? ?? ?????????? ?? ??? «????????? ?????? ??? [??]
????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?? ??????
????????? ??? ?????????? ??? ?????????? ??? ?? ??? ?????????? ?????? ??? ??? ??????????
?????????» ??? ?????????? ??? ?????? 15 ??? ?????????? ???.

17 ??????, ? ??????? ?????? ??? ? ??????? ??? ? ??????? ??? ? ?????? 15 ?????????? ?? ???
??????????, ???, ???, ???, ?? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ???
?????????? ??????? ???, ???????, ?? ?????????? ?????????? ?? ?????????? ?? ?????? ?????????? ???
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18 ??? ?????? ??? ?????? ??????????, ? ?????? ?????????? ??? ? ?????????? ??? ? ??????????, ???
????? ?????? ?? ?????????? ?????????? ?????????? ?????? ??? ?????????? ??? ? ?????????? ???
????????? ???, ??? ?????? ?? ?????????? ?????? «????????? ??? ??????
????????? ?? ?????? ?????????? ?????????? ??????». ?????? ? ?????? 2006/112 ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ??????????
????? ??? ?????????? ??? ?????? ?? ?????? ?????? ?????????? ?????? ?????? ??????????
????????? ?????????? ??? ?????? ?? ?????? ?????? ?????????? ?????? ??? ??????????
????? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????????? ?????? ??? ??????????
????????? ??? ?????? ?????? ??? ?????????? ?????? ? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? 15 ??? ?????????? ??? ???? ?????? ?????? ?????? ?????????? ???
????????? ?? ?????????? ???????, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ???
????, ??? ???? ?????????? ??? ??? ??? ???? ?????? ?????????? ??? ?????? ???

19 ????? ?????? ?? ??????? ???????????, ? ?????????? ?????? ??? ? ?????????? ???
?????????? ??? ?????????? ??? ?????? ??? ?????????????? ?????? ??? ?????? ?????? ??
????????????? «????? ?????????? ?????????? ??? ?????????? ?????? ??????????». ???????????,
?? ?????????? ??? ?????????? ?????? ?????? ??? ???? ?????? ??? ?????? ?????????? ??
????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ??
????????? ??????????. ?? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??
????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?? ?????? ???' ??????
?? ??? ??? ?????????? ??? ?????? ??? ??????????. ??? ??? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ???? ?????? ??? ?????? ?????? ??? ?????????? ??
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ??
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ??
????????? ??????.

20 ??? ?????? ??? ???????, ? ???????? ??? ?????????? ? ???????? ?????????? ?? ????????
????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ???? ?????? ??? ??
????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???, ?? ??????
????? ?????????? ??? ?????? ???, ?? ??? ?????? ? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???.
? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??????, ??? ?????????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ????. ???????, ? ???, ?? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ??
????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??
????????? ?????? ??? ?????????? ??? ??????????.

21 ? ?????????? ??????, ???????, ?? ?????? ??? ?????????????????? ??? ??????
????????? ??? ?????? ??? ?????? ? ???????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ????.
?? ??? ??????????, ?????? ??? ? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??
????????????? ?? ?? ?????? ??? ?????????? ??? ?????? 2006/112 ??? ?????????? ???
????????? ??? ?????????? ??? ??????????.

22 ? ??????? ?????????? ?????????? ??? ?? ?????? 279, ??????? ???, ??? ??????
????????? ??? ?????? ??? ?????? ?? ?? ??? 96 ??? 98 ??? ?????? 2006/112, ??????
?? ?????? ??? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????? 15 ??? ?????????? III ??? ?? ??? ??????.

23 ??? ?????? ??? ?????? ??????????, ? ??????? ?????????? ?????????? ??? ??
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????
????????? ??? ???? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ???
????????? ??? ?????? ??? 26?? ??? 2005, C-498/03, Kingscrest Associates ???
Montecello (?????? 2005, ?. I-4427), ??? ?????? ??? ?????????? ??? «????????? ???
????????? ??? ?????? ?????????? ??????», ??? ?????? 13, A, ?????????? 1, ??????
??, ??? ?????? ??????, ??? ?????? 132, ?????????? 1, ?????? ??, ??? ?????? 2006/112.
????? ?? ?????????? ??? ?????? ??????, ? ??? «?????????» ?????? ?????????? ?????? ???,
????? ?? ?????? ?? ?????????? ?????? ?????? ??? ?????? ?????????? ?????? ??????????
?????????. ??????, ?????? ???? ??????, ??? ?????? ??? ?????? ??? ?????? 2006/112, ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ??????????
????????? ??? ?????????? ??????????, ?? ?????????? ?????? ??? ?????? ?????? ?????????? ??
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???

????????????? ? ?????????? ????.

24 ? ??????? ?????????? ?????????? ??? ???? 279, ??????? f, ??? CGI ?????? ??
????????? ??? ??????, ??? ???? ?????????? ??? ??????????????, ?? ??????? ?????? ??? ??
????????? ??? ?????? ????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ???
????????? ?????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ?????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ??? ??
????????? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????????? ???
????? ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???
????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

25 ??????, ?? ?????????? ??? ?????? ?? ???? ?????? ??? ?????? ?????? ???????????, ?? ??????
????? ?? ?????????? ??? ?????????? ??????????, ?????????? ?? ?????? ??? ?? ?? ??? ??
????????? ?????????? ?????????? ??? ?????? 279, ??????? f, ??? CGI. ??????, ?????? ??
????????? ??? ?????????? ???' ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ?????????? ??????, ?????????? ?????????? ?????? ?? ?????? ?????? ??? ??
????? ?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

26 ??? ?????? ?? ??????? ??????????, ? ?????? ?????????? ?????????? ??? ??
????????? ??? ??????? ?????????? ??? ??????? ??? ?????????? ?????????? ?????? ??????????
?? ??? ??????? ??? ?????? ??? ?? ?????????? ??????????, ??? ?????? ??? ?? ?? ??????????
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??
????????? ??? ?? ??????????, ? ?????????? ?????????? ??? ?????? ??? ?????? ??????????????
????? ?? ?? ?????? 47, ????, ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
????? ?? ?????????? ??? ?????? ??? ?????? 7 ?????????? 2000 (?? C 364, ?. 1), ???
????????? ??? 12 ?????????? 2007 ??? ?????????? (?? C 303, ?. 1).

27 ? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????????
?? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ?? ?????? ??????????
????????????????? ?? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??
????????? ???, ??? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ??????????
????????????? ???, ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???.

28 ??? ????, ??????????, ??? ?? ?????????? ??????????, ? ?????? ??????????
????????????? ??? ?? ??? ?????? ??? ?? ?????????? ?????? ??????????, ?????? ?? ???'
????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ?? ?????? ?? ?????? ??
????????? ????. ??????, ??? ?????? ??? ?????????? ?????? ??????, ? ?????????? ???
????????? ??????????, ?????????? ??? ?????? ?????????? ?????? ?? ?????? ?? ??????????
?? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ???
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???.

29 ? ?????? ?????????? ?????????? ???, ?????????? ?? ?????????????? ??? ??
«????? ?????????? ?????????? ??? ?????????? ??????????», ? ?????????? ??? ?????? ???
?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ????. ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???? ?????? ????? ???? ?????????????? ?????? ? ?? ??????, ?????? ?? ? ???? ?????? ??? ?????? ???
????????? ???, ?? ?????????? ??? ?????????????? ??????.

30 ??? ???? ??? ?????? ??????, ?????? ?? ?????????? ? ?????? ?????????? ??? ?????????? ???
????????????????? ?? ?????????? ?????????????? ??? ?? ?????????????? ??? ?????????? ???
????????? ???, ?? ?????????? ??? ?????????????? ??? ??????. ?????????? ?? ?????????? ???
????????? ???, ?? ?????????? ??? ?????????? ?????? ???????????, ? ?????????? ?????????? ???
????? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????????? ?????? ?? ?????? ?????? ?????????? ??????.

????????? ??? ????????????

31 ?????????????? ?????????????? ??? ? ?????? ?????? ?????? ?? ???? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ???
????????? ???, ?????????????? ??? ?????????? ?????? ?????????? ???, ??? ?? ??????
????????? ?? ??? ?? ?????? ?????? (????????? ??? 5?? ?????????? 2006, C-275/04,
????????? ???, ?????? 2006, ?, I-9883, ??? 35, ??? ?? 11?? ?????????? 2008, C-
174/07, ?????? ??? ??????, ??? 31).

32 ?? ??????????, ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??
96 ??? 98, ?????????? 2, ??? ?????? 2006/112 ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 12, ?????????? 3,
????????? ??, ??? ?????? ??????. ??????, ? ?????? ?????? ?? ?????? ??? ?????????? ???
??? ??? ?????? ??????????, ??? ?????????? ?????? ??????, ?????????? ?????? ?????????? ???
????????????? ?????? ??? ?????? ?????????? ?????? ??????, ??? ?????????? ?????? ?????????? ???
??? ?????? ??????, ??? ?????????? ?????? ?? ??????.

33 ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ?? ?????? ?????????? ?? ??? ??
?? ?????????? ??? ?????? ?? ??????????, ?? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??????, ??? ?????????? ??? ?????? 279, ?????? f, ??? CGI, ??????????
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ???, ??? ??? ?????? ??? ?????? 15 ??? ?????????? III ??? ?????? 2006/112,
???? ?? ??? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????? ??? ?????? 98,
????????? 2, ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??? ??
?????????.

34 ?????? ?????? ??? ?????? 2006/112 ??? ?????? «????????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ???
????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????» ??? ??????????
?? ?? ??? ?????? 15 ??? ?????????? III, ?????? ?? ?????????? ? ?????? ??? ??
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? 2006/112 (??., ???'
????????? ??? ?????? ?????????? ??? ?????? ??????, ?????????????? ???, ?????? 17, ??? ??? 18??
????????? 2010, C-3/09, Erotic Center, ? ?????? ??? ?????? ?????????? ??? ??????,
????? 14).

35 ??????, ??? ?? ?????? 98 ??? ?????? 2006/112 ?????????? ??? ?? ?????? ??? ??????
?? ?????????? ?? ?????????? ??? ?? ?????? ??? ?????????? ?????? ??? ?????????? ???
?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ???, ???
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????? ?? ??????????? ?????????? (??., ?????? ????, ?????????????????? ??????????
????????? ??? ??????????, ??????? 18 ??? 19 ????? ??? ??? ?????????????? ??????????, ???
Erotic Center, ??? 15).

36 ??????????? ??? ????? ??? ?????? ??? ?????????? ? ?????????? ?? ??????????
????????? ??? ?? ???? «????????[?] ??? ?? ?????????????? ?????? ????
????????? ?? ?????????? ?????????» ????? ??? ?????? 13, A, ?????????? 1, ?????????
??, ??? ?????? ??????, ??? ?????????? ??? ?????? 132, ?????????? 1, ?????????? ??, ???
?????? 2006/112, ????? ?????? ?????? ??????, ??? ?? ?????? ?? ?????????? ??????
?????? ??? ?????????? ?????? ?????????????? ?????? (??.. ?????????? ??? 7??
????????? 1999, C-216/97, Gregg, ?????? 1999, ?. I-4947, ????? 17, ??? 3?? ??????
2003, C-144/00, Hoffmann, ?????? 2003, ?. I-2921, ????? 24, ????? ??? ??????????
Kingscrest Associates ??? Montecello, ?????? 35 ??? 47).

37 ??????????, ??? ?? ???? «????????» ?????? ??? ?????? ??????????????
????????? ?????????? ?????????? ??????????, ?????????? ??? ?????????? ????
?????? ?????? ?????? ?????? (??.. ?????????????? ?????? Gregg, ????? 18, ???
Hoffmann, ??? 24). ??????, ?????? ? ?????? ??? ?????? ?????? ?????? ???
????? ?? ?????????? ???? ???? ??? ?????? ???? ??? ?????? ?????????? ???? ??????????
????????? ???? ??? ?????? ???? ??? ?????? ??????, ??? ?????????? ?? ???? ???
????????? ???? ??? ?????? ?????? ?????? (??.. ?????????????? ?????? Kingscrest
Associates ??? Montecello, ??? 46).

38 ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ???
?? ?????????? ??? ?????????? ??? 15 ??? ?????????? III ??? ?????? 2006/112.
?????????, ??? ?????????? ? ?????? ?????????? ?????? ??? ?????? 84 ??? ??????
??, ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?? ???
???? ?????? ???? ???? ??? ?????? ??? ?????? III ?????? ?? ??? ?????????? ??? ?? ???.

39 ??????, ??? ?????? ??? ?????????? ??? ??????, ?? ??????????, ?? ?????????? ???
????????? ??? ??????????, ?? ?????????? ??? ?????????? ?????????? ??? ?? ???
??? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ?????? 15 ??? ?????????? III ??? ?????? 2006/112 ??? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??????????.

40 ???????, ?????????? ?? ?????????? ??? ?????????? ???, ?????? ??? ??
????????? ??? ?????????? ??? ?? ???? ??? ?? ?? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ??
?????????.

41 ??? ?? ?????????? ?????????? ??? ?? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?????????? ?????? ?? ?????????? ?????? ??? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????????? ? ?????? 2006/112 (??., ???' ???? ??? ??????,
????????? ??? 10?? ?????????? 2002, C-141/00, Kügler, ?????? 2002, ?. I-6833, ??????
54 ??? 57, Kingscrest Associates ??? Montecello, ???????????, ?????? 51 ??? 52, ???
??? ??? 9?? ?????????? 2006, C-415/04, Stichting Kinderopvang Enschede, ?????? 2006, ?. I-
1385, ??? 23).

42 ?????????? ??? ????? ?????? ?????? ?????? ?? ??? ?????? ?????? ?????? ??????????????
?????????? ?????????? ?? ???????????, ??????????? ?? ?????????? ?????? ?????? ?????
?? ?????????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ??? ???
??????? 15 ??? ?????????? III ??? ?????? 2006/112.

43 ???????, ?????????????? ??? ?????????? ?????? ??? ?? ?????????? ??? ?? ??? ?????? ??????
15 ??? ??? ?????? ?? ?????????? ??? ?????? ??? ?? ?????????? ?????? ?????? ??????
?? ??? ?? ??? ??? ?????? ?????????? ?????????? ?????? ?????? ?????????????? ??
????? ??? ?????????? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ?? ?????? ??????????
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????????? ?????? ??????????

44 ????????????, ? ??????? ??? ?????? ?????? ??? ??????? ??? ?????? ?? ?????????? ?? ??????????
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ?????????? ???
?????? ?? ??? ??? ?????? ?????? ?? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?? ??????????
?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????? ??? ?? ??? ?????? 15 ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??????????.

45 ???????, ??? ??? ?????? ??? ?????????? ??? ?????? 15 ??? ?????????? III ???
??????? 2006/112, ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??? ??
????????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ???
????????????? ??? ?????????? ??? ?????????? ?????, ?????? ?? ?????????? ?????, ?????? ?????,
?? ?????? ??? ?????????? ?? ?????? ?????, ?????????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????????? ?????? ?????????? ???.

46 ?? ??????????, ?????????????? ???, ?????????? ??? ?????? ?????? ?????? ??? ?? ???
????????? ??? ?????? ?????????? ?????????? ?????, ? ?????????????? ?????????? ??? ??
????????? ??? ??? ?????????? ??? ?????? ???, ??? ?????????? ??? ?????? 279, ?????????? f,
??? CGI ??? ?????? ?????? ?? ?????????? ?? ?????? ?????????? ??????????.

47 ???????, ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?? ?? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??????????
????????? ??? ?????? ?? ?????????? «????????? ?? ??? ?????????? ?????? ??? ??
????????? ??????», ? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ???, ?? ??????????
??? ?? ?????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????????? «?????????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??????», ??? ??? ?????? ??? ?????? 15 ??? ?????????? III ???
????? 2006/112.

48 ??? ??? ??????? ???, ? ??????? ??? ?????? ?????? ?????? ??????.

49 ???????, ?????????????? ???, ?????????? ?????? ?????????? ?????????? ?????????? ???
???? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??
??????????, ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ??? ??
????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ??
??????, ? ??????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??
????? 96 ??? 98, ?????????? 2, ??? ?????? 2006/112.

??? ??? ?????????? ???

50 ??? ?? ??? 69, ?????????? 2, ??? ?????????? ?????????? ???, ? ??????? ??????
????????????? ??? ?????????? ???, ?????? ?????? ?????? ?????? ??? ??????????

? ???????. ???? ? ? ??????? ???? ?? ?????????????? ? ??????? ?????????????? ???
????????? ??? ? ???? ? ?????????? ???????, ?????? ?? ?????????????? ??? ?????????? ???.

??? ??? ?????? ??????, ?? ?????????? (????? ????) ??????????:

1) ? ?????????? ?????? ?????????? ?????? ?????????????? ?????? ???
????????? ??? ???? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??, ?? ?????????? ?? ?????????? ?????????? ??? ?? ?????????? ??, ??
?? ?????? ?????????? ?? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????? ??
????????????? ??, ?? ?????? ?????????? ?????? ??? ?????????? ??? ?????? ??
?? ?? ????? 96 ?? 98, ?????????? 2, ?? ?????? 2006/112/?? ?? ??????????, ??
28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ?????? ?????????????? ???.

2) ? ?????????? ?? ?????? ?????????? ??? ?????????? ?????? ?????????? ???.

(?????????)

* ?????? ??????????: ? ??????.