

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

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

??? 22?? ?????????? 2018 (*)

«????????????? ?????????? – ?????????? ?????????? ??? ?????????? – ?????????? –
????????? ?????????? – ??? ?????????? – ??? ?????????? – ??? ?????????? – ??? ?????? –
????????? ??? ?????? ??????»

???? ??????? C?679/17,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? hof van beroep te Antwerpen (?????? ???????, ??????) ?? ??????? ??? 21??
????????? 2017, ? ????? ?????? ??? ?????????? ??? 4 ?????????? 2017, ??? ??????
?? ?????

Vlaams Gewest, ?????????????? ??? ?? Vlaamse regering ??? ?? Vlaamse Minister van
Begroting, Financiën en Energie,

Vlaams Gewest, ?????????????? ??? ?? Vlaamse regering ??? ?? Vlaamse Minister van
Omgeving, Natuur en Landbouw,

????

Johannes Huijbrechts,

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

????????? ??? ??? R. Silva de Lapuerta, ?????????? ??? ??????????, ?????????????? ???
????? ???????, J.-C. Bonichot (?????????), A. Arabadjiev, C. G. Fernlund ??? S. Rodin,
???????,

?????? ??????????: M. Campos Sánchez-Bordona

?????????: A. Calot Escobar

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

?????????? ?????? ??? ?????????????? ??? ????????:

- ? J. Huijbrechts, ?????????????? ??? ??? A. Visschers ??? P. Heeren, advocaten,
- ? ??????? ????????, ?????????????? ??? ??? P. Cottin ??? J.?C. Halleux ????? ???
??? ??? C. Pochet, ?????????????? ??? ??? G. Van Calster, advocaat,
- ? ?????????? ????????, ?????????????? ??? ??? A. Armenia ??? ??? W. Roels,
?????? ??? ??????? ??? ???, ??? ?????? ??? ?????? ????????????, ?? ?????????? ???
?????? ??? ?????? ????????

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

????????

1 ?????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 63 ????.

2 ? ?????? ?? ??????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? Vlaamse Gewest (?????????? ?? ????????, ??????), ??????????????? ?? ?? Vlaamse regering (?????????? ?? ????????, ??????), ??? ?? Vlaamse Minister van Begroting, Financiën en Energie (?????????? ?? ????????, ???????????????, ??????????? ?? ?? ???????????, ??????) ??? ?? Vlaamse Minister van Omgeving, Natuur en Landbouw (?????????? ?? ????????, ???????????????, ??????? ?? ????????, ???????????, ??????), ??? ?? Johannes Huijbrechts ??????? ?? ?? ??????????? ?? ?? ?????? ?? ??????????? ?? ?? ??????? ?? ??????????? ?? ?? ??????? ?? ??????????? ?? ?? ??????? ?? ???????.

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

3 ?? ?????? 15 ??? Vlaams wetboek der successierechten (????????????? ??????
????????????? ????????????, ??? ????: ?????? ?????????? ??????????) ?????? ??? ? ?????
????????????? ?????????? ????? ??? ?????????? ?????? ??? ??? ??????????
????????? ??? ????????, ?????????? ??? ?? ??????????, ??? ??? ?????????? ???.

5 ?? ????? 13bis ?? Bosdecreet (????? ??? ?????) ?? 13?? ??????? 1990, ??? ???.
???? ?? ????? ?? ??????????? ?????????????? ?? ??????? ???, ?????????? ?? ???:

«?? ?????? ?????????????? ?? ???? ?????????? ?? ???? ?? ???? ?????????????? ?? ???? ??' ?????????? ??
?????? 2.7.6.0.3 ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ??' ?????????? ??
?????????. ? ?? ??? ?????????????? ?? ???? ?????????? ?? ???? ?? 30 ??, ??' ??????????
1/30 ??????, ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ??????????.

? ?????????????? ?????????? ?????????????? ??? ??? ?????????? ?????????????? ??? ??? ?????? ??
?????????? ??? ???? ?? ?????????? ??? ?????????? ??? 30 ??? ??? ?????????? ??? ??? ?????? ??

1) ?????????????? ?????????? ??????? ?? ?????????????????? ?? ?????????? ??? ??????????
???? ?? ??????????, ???????? ??? ?? ?????? 3 ??? ?????????? ??????

2) ?????????????? ?????????? ??????? ?? ?????????????????? ?? ?????????? ??? ??????????????
??? ?????? 2.7.6.0.3, ?????? ??????, ??? ?????????? ?????? ?????? ??????????

6 ?? ?????? 41, ??????? ??????, ??? ?? ??? ????? ????? ????? ?????????? ??? ?
????????? ?????????? ?????????? «?? ??????? ??? ?? ?????? ?????????? ??? ??????»
??? ??????????, ?????????? ??? ?????????? ??? ?????? 7 ??? ?????? ???, «?? ??????????
??? ?? ??? ????? ?????????? ??????».

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

7 ?? ??????? ??? 24?? ??? 2012, ? T. M. L. M. Oyen, ? ?????? ??? ?????????? ???????,
????????????? ??? J. Huijbrechts, ??????? ??? ?????, ?????????? ??? ?? ?????????? ???
?????? ??? ?????? «Klein Zundertse Heide» ??? Klein Zundert (????? ???). ? ???????
????, ?????? 156 ???????, ?????????????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ???????????, ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??????????? ???.

8 ??? ??????? ? T. M. L. M. ?yen, ??? 1 ??????? 2013, ? J. Huijbrechts ?????????? ???
????????? ??? ??? ??? ?????????????? ??? ? ?????????? ??? ?????? ??? ??
?????? ???.

9 ? J. Huijbrechts ?????? ??? ?? ??????? ??????? ?? ?????????? ??? ?????? ??????????
?? ?? ?? ??? ?????????????? ???????, ??????? ??? ?????? 55quater ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? «?????????» ???
?? ?????? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?? ?????? ?????????? ???
?????????.

10 ? ?????? ??? ?????????????? ?? ??? ?????????? ??? ?? ?? ??? ?????? ?????????? ???
?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???????.

11 ? J. Huijbrechts ?????? ??????? ??? rechtbank van eerste aanleg van Antwerpen
(????????????? ???????????, ??????) ??????? ??? ?????? ?????????? ???
????????? ??? ??????? ??? ?????????? ??? 55quater ??? ?????? ??????????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???, ?????? ??? ??????????
?? ??????.

12 ?? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???, ??? ??????????, ????, ???
?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??
??? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? 55quater ??? ?????? ?????????? ?????????? ???, ???????, ??? ? J.
Huijbrechts ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??
??? ??????. ?? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???, ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

13 ?? ??????? ??????? ?????? ??? ?????? ??? ??????????? ??? ?????????????? ???
?????? ??? hof van beroep te Antwerpen (????????? ???????, ??????), ?? ?????? ??????????
?? ??????????? ?? ??????????? ??? ?? ?????????? ??? ??????????? ?? ?????????? ??????????????
?????????:

«1) ?? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 63
???? ??? ?????????? ??? [??? ??????] ?????????? ?????? ??????, ? ?????? ?????????? ???
????????? ??? ?????????? ?????????? ?????? ?????????? ?????????? ??????, ?????? ?????????? ??? ??? ??? ???
????????? ?????? ??? ?????? 55 [??? ?????? ?????????? ?????????? ??????], ??? [??? ??????] ???
??? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??????????
????????? ?????????????? ?????????????? ??? ?????? ?????? ?????????? ?????? 55 [???
????? ?????????? ??????????];

2) ?? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 55
quater [??? ?????? ?????????? ??????????] ?????????? ??? ?????? ?????? ?????????? ?????? ???
????????? ?????? ??? ?????? ?? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??? ??? ???
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????????? ?????? ??????;»

???

14 ?? ?? ?????????? ???, ?? ?????? ?????? ?? ?????????? ??? ??????, ?? ??????
????????? ???, ???' ??????, ?? ?? ?????? 63 ??? ?????? ??? ?????????? ??? ?????? ??? ??????
??? ?????????? ?? ?????? ?????????? ???, ??? ? ?????? ??? ?????? ???, ??? ??????
????????? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????????? ?????? ??????????
????????? ???, ??? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???
???? ?????? ??? ?????????? ??? ?? ?????? ??????, ??? ?????? ?????????? ??? ?????????? ???
???? ?????? ??? ?????????? ??? ?????? ?????? ??????.

15 ??? ?? ??? 63, ?????????? 1, ???, ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ?????? ?????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?????.

16 ??? ??? ?????? ?????????? ?????????? ??? ? ?????????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? (????????? ??? 17??
????????? 2008, Jäger, C-256/06, EU:C:2008:20, ??? 25, ??? ??? 27?? ?????????? 2009,
Persche, C-318/07, EU:C:2009:33, ??? 27).

17 ?? ??????????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

18 ???????, ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ???
63, ?????????? 1, ???.

19 ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????.

??????????????, ???' ?????, ??? ?? ????? 63, ??????????? 1, ??? (?????????? ?? 17?? ?????????? 2008, Jäger, C-256/06, EU:C:2008:20, ??? 35, ??? ?? 18?? ?????????? 2014, Q, C?133/13, EU:C:2014:2460, ??? 20).

21 ?????? ??????? ?????????? ?? ??????? ?????????? ???????, ??????, ??? ??????????????
????????????? ? ?????? ?????????? ?????? ??? ?????? 65, ?????????? 1, ??????? ?,
???? ??, ???????, ??? ??????? ?????????? ?????????? ?? ?????? ?????????????? ??? ??,
????????? 3 ??? ?????? ????. A?? ?? ?????????? ?????????? ???, ?????????? ??? ??
????????? ??????, ??? ? ?????? ??? ?????? ???, ? ?????, ??? ??? ?????????? ???
????? ????????????, ?????????? ?????? ??? ?????????? ?????????? ??? ?????????? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ??????, ?? ?????? ?????? ?? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ??????????, ?????? ? ?????????? ?????????? ?? ?????? ??? ?????????? ???
??? ?????? ?????????? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? (??????? ?? 17?? ?????????? 2008, Jäger, C-256/06, EU:C:2008:20,
????? 42) ??? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????????? ??? ??????
??? ?????????? ?? ?????? ??? (????????? ??? 14?? ?????????? 2006, Centro di
Musicologia Walter Stauffer, C-386/04, EU:C:2006:568, ??? 32, ??? 17?? ?????????? 2008,
Jäger, C?256/06, EU:C:2008:20, ??? 41, ??? ??? 27?? ?????????? 2009, Persche, C?318/07,
EU:C:2009:33, ??? 41).

22 ????? ???? ?????????? ?? ? ?????????????? ?????????????? ?????? ?????????????? ??? ???? ?????
????????????? ??????????????, ?????? ?? ?????????????? ?????? ?? ?????????????? ??? ??
????????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? (????????? ??? 18??
????????? 2014, Q, C-133/13, EU:C:2014:2460, ????? 22 ??? ??? ??????????????
?????????).

23 ?? ???????????, ?????????? ?????? ??? ?? ?????? ??? ?????? 55 quater ??? ??????
?????????? ???????????, ??? ?????? 2.7.6.0.3 ??? ??????????? ?????? ???????????, ???
??? ??? ??????? ??? ??????????? ??? ? ??????????? ?????? ??? ??????????? ? ???????
???? ??????????? ??? ????? ?????????????????? ??????, ??? ?? ??????? ??????????? ??? ?????
??? ??? ??????? ?? ??????? ??? ??????????? ??? ??????????? ??? ?????? ??? ??????????? ??? ?????
??? ??????????? ??? ???????.

24 ???????, ??? ???? ?????? ??????????, ?????? ??? ?????????? ?????? ?? ?????????? ?
????????????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ??
?????? ??? ?????? ??????????.

25 ????? ??????? ?????????????? ??????, ?????????????? ?? ?????? ?????? ?????????? ???
????? ??? ???? ??????? ?? ???????, ??? ??????, ???' ????, ?? ?????????? ??? ??????
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????
????? ?????? ??? ?????? ?? ??????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ??? ??????
????? ?????, ??? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????????? ?????? ?????, ???
???, ??? ?????? ??? ?????????? ??????, ?????????? ??? ?????????? ???.

26 ???????, ? ?????????????? ?????????? ?????? ??? ? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? (??., ???' ???????, ?????????? ??? 12??
????? 2007, ????????, C?507/04, EU:C:2007:427, ????? 87, ??? ??? 26??
????????? 2012, ????????, C-192/11, ?? ????????????, EU:C:2012:44,
????? 23).

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

28 ???????, ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
??? ??????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? 55 quater ??? ?????? ?????????? ???????????, ??? ?????? 2.7.6.0.3 ???
????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? (??., ???' ???????, ?????????? ??? 14??
????????? 2006, Centro di Musicologia Walter Stauffer, C?386/04, EU:C:2006:568, ????? 40,
??? ??? 27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33, ?????? 48 ??? 50).

29 ???????, ? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? 63, ?????????? 1, ???.

30 ??? ?????? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ?????? ???
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? (??????? ??? 27?? ?????????? 2009, Persche, C-
318/07, EU:C:2009:33, ????? 52).

31 ???????, ? ??????? ?????? ?????????? ?????????? ??? ? ?????????? ??? ?????? ??????????
?? ??????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????????
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????, ?????, ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ?????? ?????? ???.

32 ???????, ?????? ?? ?????????? ??? ? ?????????? ??? ?????????? ?????? ???
?? ?????? ?????? ?????? ??? ?????? (??????? ??? 11?? ?????????? 2008,
????????? ??? ?????? C?524/07, ?? ????????????, EU:C:2008:717, ????? 58 ??? ???

????????????????? ?????????????).

33 ?? ???????????, ? ???????? ??? ? ?????????? ??? ?????????????? ??????????? ??
?????????? ?? ???? 55quater ??? ?????? ??????????? ??????????????, ??? ??? 2.7.6.0.3
??? ??????????? ?? ???? ???????????, ??? ?????? ?????????? ??? ??? ??? ?????? ??????????
?????????????? ?? ?????????? ??? ?????????? ??? ?????? ???.

34 ???????????, ??????????? ? ??????????? ???, ??? ?????? ??? ?? ??????????? ??? ??
???? ??????? ?? ???? ????? ?????? ?????? ??? ?? ??????????? ??? ?? ?????????? ? ??
???? ?? ?????????????????? ??? ?????????????? ?????? ?????????? ?????????????? ??? ??
????????????? ??? ?????????? ??? ?????????? ??? ???????, ? ?? ????? ?????????? ??? ??
????????? ??? ?? ???? ?????????? ??? ??????? ??? ??????????, ??????? ? ???????
?????????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????, ??? ?? ? ???????
???? ??? ??, ?????? ?????????????? ?????????????? ?????? ??????? ??? ?? ?????? ??? ??
?????????? ??? ?? ??????? ??? ?? ??? ?????? ?????? ??? ?? ????? ?????? ?????? ??? ??

35 ? ??????? ?????????? ?????????????? ?????? ??? ? ?????????????? ??? ?????????????? ?
??? ?????????? ??? ?????????? ??? ?????????? ??? ????? ?????????? ??? ????? ?????????? ???
?? ?????????? ??????????????, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????, ?? ??
????? ??????? ?????????? ??? ?????????????? ??? ?????????? ? ?????? ?????????? ?????????? ??????
??? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????????? ?
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? 30 ???, ??? ??????????
? ?????? ???.

36 ?????? ??????? ??? ? ??????? ?? ?????????????? ? ?????????????????? ??? ?????????????? ?????? ??????????????
????????? ??????? ?????????? ?????? ?????? ?????????? ?????????? ?????? ?? ??????????????
?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????? ?????? ?????????? ? ??????.
?????????, ??? ?????? ?????????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ??? ???
?????????????, ??? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?? ?????????? ???
????????? ??? ?????????????? ??? ?????? ??? ?? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ??? ??????? ??? (??????? ??? 27?? ?????????? 2009, Persche, C?318/07,
EU:C:2009:33, ??? 52).

37 ???????, ??? ????? ?????????? ?????????? ??? ? ?????? ?????????? ?????????? ??????????
????????? ?? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ???
??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????????
???. ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
??? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????
??????? ?? ?????? ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??????
????? ?? ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ???
?????, ?????????? ?? ?????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?? ??????
??? ?????? ?????????? ?????????? (?? .?????, ???' ???????, ??????? ?? 14??
????????? 2006, Centro di Musicologia Walter Stauffer, C-386/04, EU:C:2006:568, ??? 48,
??? 25?? ??????? 2007, Geurts ??? Vogten, C?464/05, EU:C:2007:631, ??? 28, ??? 17??
????????? 2008, Jäger, C?256/06, EU:C:2008:20, ?????? 54 ??? 55, ?????? ??? ??? 27??
????????? 2009, Persche, C-318/07, EU:C:2009:33, ?????? 53 ??? 55).

38 ???????, ?????? ?????????????? ???????, ??? ? ??????? ??? ?????? ???, ? ???
????????? ?????? ??? ?????????????? ?? ?????????? ?? ?????????? ?????????????? ??? ??
????????? ?? ?????? ??? ?????????????? ??????? ??? ?????????? ?? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????????? ??????? ??? ?? ?????????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ?? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???
??? ?????? ?????????? ?? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???

?????? ?? ?????????????? ????? ?? ?????????????????? ??? ?????????????? ?????? (??., ??' ????? ?? ??????, ?????????? ?? 10?? ?????? 2005, Laboratoires Fournier, C-39/04, EU:C:2005:161, ????? 25, ??? 14?? ?????????? 2006, Centro di Musicologia Walter Stauffer, C-386/04, EU:C:2006:568, ????? 48, ??? ?? 27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33, ????? 60).

39 ????? ?????? ??? ?????????????? ??? ?? ??????? ?????????? ?????????? ??? ?? ???????
??? ??????, ?? ??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????, ??? ?????????? ??????
??? ??????? 30 ????, ??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????????????? ????????
?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????, ??? ?? ??????
????????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?? ?????????? ?????? in
abstracto ??? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????????, ??? ??
????????? ??? ?????????? ?????, ?? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ???
????????? ?????? ?????? ??? ?????? ??????.

40 ???????, ??? ?????????? ??? ?? ?????? ?????? ??? ????? ?????????????? ?? ???
?????? ?????????? ?????????????? ??? ?????? ?????? ?? ?? ??????? ????? ?? ???,
?????????? ??? ?????????? ?????????????? ???, ?????, ??? ?????? ?????????? ??????????????
????????? ??? ?????? ??? ?????????? ? ??????? ???????, ??????? ?????? ?????? ?? ??????????
????? ?? ?????? ?? ?????????? ?? ?????? ?????? ?????????????? ?? ??????? ?? ??????, ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ??? ???????, ?? ???????,
??? ?????? ??????? ?????????? ?? ?????? ??? ?????? ?????????? ?? ??????? ?? ?????????? ???
?? ??????? ??? ?? ?????????? ??? ?????????? ?????????????? ?????????????? ?? ?????????? ?? ???????
???? (??..?????? ?????, ???????, ??????? ?? 27?? ?????????? 2009, Persche, C-318/07,
EU:C:2009:33, ??? 68).

41 ?? ???? ????????????, ?????? ???. ????????????. ????. ?????? ?????????? ???????????. ???.
????????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. (?)?. ?????? ???.
????? ???. ?????? ???. 27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33, ???. 69
???. ???. ?????????? ???. ??????????).

42 ????? ?????? ?? ??????? ????? ???? ?????? ? ?????????? ??????????? ?? ??? ????? ?????? ??????????????
????, ????, ?? ? ??????? ????? ?????? ?????? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ??????
?????, ?? ??????? ?? ??????????????? ??? ?????? ?????? ? ?????????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ??? ??????? ??? ??????? ??? ??????? ??? ?????? ?????, ??? ?????? ???, ?? ???
??????????, ????? ?????? ??? ??????? ?????? ?? ??????? ?? ?????????? ?? ?????????? ????????????
?????????????? ??, ????? ?????? ??? ??????? ?????? ?????????? ??????????? ?? ?????????? ?? ?????? ??????
????? ?? ??????? ???????, ?????????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??????????
(????????? ??? 18?? ?????????? 2007, A, C-101/05, EU:C:2007:804, ????? 63, ??? ??? 27??
?????????? 2009, Persche, C-318/07, EU:C:2009:33, ????? 70).

43 ?????????????? ?????? ??? ??????????????, ? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?? ????? 63 ??? ????? ?? ?????????? ??? ??? ?????? ???
????????? ?? ??????? ??????? ??????, ??? ? ??????? ????? ?????? ???, ? ?????? ??????
????????? ?????????? ??? ?? ??? ??? ?????????????? ??? ????? ?????????? ??????
??? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ??? ???
??? ?????????? ??? ?? ?????? ??????, ??? ??? ?????????? ?? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ??????.

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

44 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ?????? ??????
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ?????????? ?????? ??? ?? ??? ?????????, ??? ??????????.

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

? ? ???? 63 ??? ?????????? ?? ?????? ???????, ??? ? ?????? ????
????? ????, ? ?????? ?????? ?????????? ?????????? ??? ?? ??? ???? ???
????????????? ??? ?????? ?????????? ???????, ??? ??? ?????????? ??? ??????????
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ????
??????, ??? ?????? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????????????? ???
????? ??? ?????? ??? ?????? ??????.

(?????????)

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