

Copyright

with an accent

on music rights

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International Copyright Law

Case

German band sells CD's, first published in Germany, in Tallin.
Somebody in Tallin makes illegal copies and distribute them.

Questions

- ? Which court is responsible ?
- ? Which law has to be used ?

Possible relevant aspects

- Nationality of the band members
- Where the work (song) was first published
- Where the infringement of copyright has taken place
- State for which territory the protection is applied

Validity of Copyright Act of Estonia

§ 3 Copyright Act of Estonia

- The author is citizen or permanent resident of the Republic of Estonia
- The work is first published in the territory of the Republic of Estonia
- The work first was made available in a foreign state and the author is no citizen and has no residence in Estonia
+ guarantee of the similar protection for Estonian authors and works first published in Estonia

German Band

No citizens and no residents

The work first published in Germany

But

The same protection in Germany?

International Private Law

Validity of the German Copyright Act

§120 German Copyright Act:

„(1) German nationals shall enjoy copyright protection with respect to all of their works, whether or not they have been published and regardless of the place of publication. In the case of a work created by joint authors (Art. 8), it shall be sufficient if one of the joint authors is a German national.“

International Private Law

Estonia

- § 23 Private International Law Act

Germany

- State of protection
- State of first publication

International Privat Law

Estonia

§ 23 Private International Law Act of Estonia:

„Intellectual property and the creation, content, extinguishment and protection thereof shall be governed by the law of the state for the territory of which protection of the property is applied for“.

International Private Law

Germany

1. State of protection

Here: Estonia

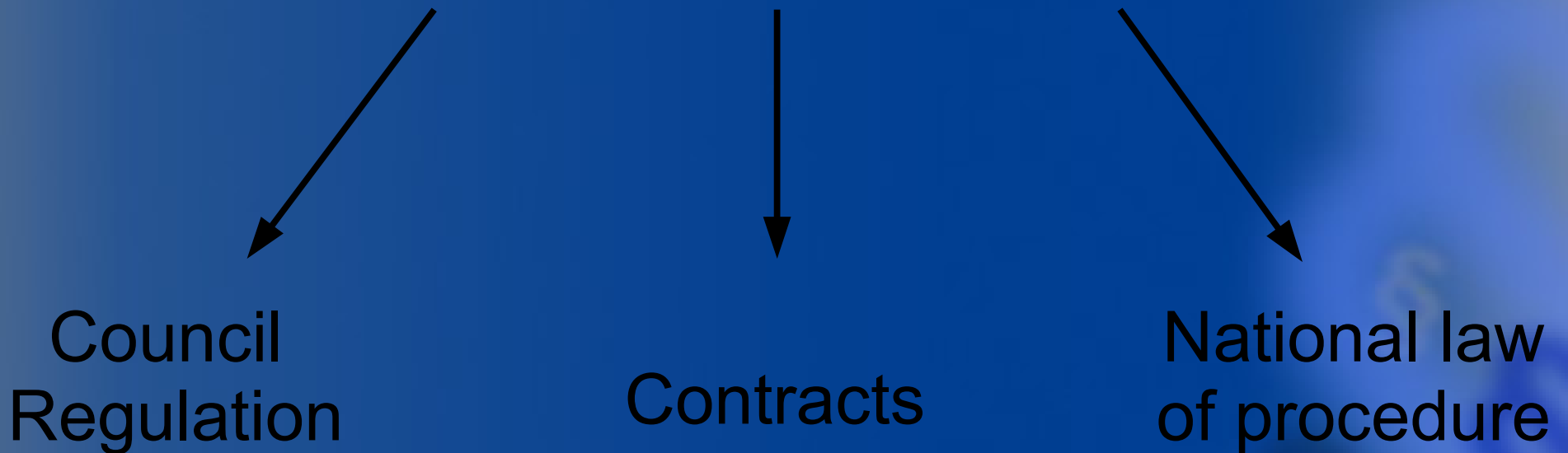
2. State of first publication

Here: Germany

International Private Law

Problem: How to know, which law applies?

Responsible Court



International Private Law

Council Regulation

What is the Council Regulation?

Art. 2 Council
Regulation



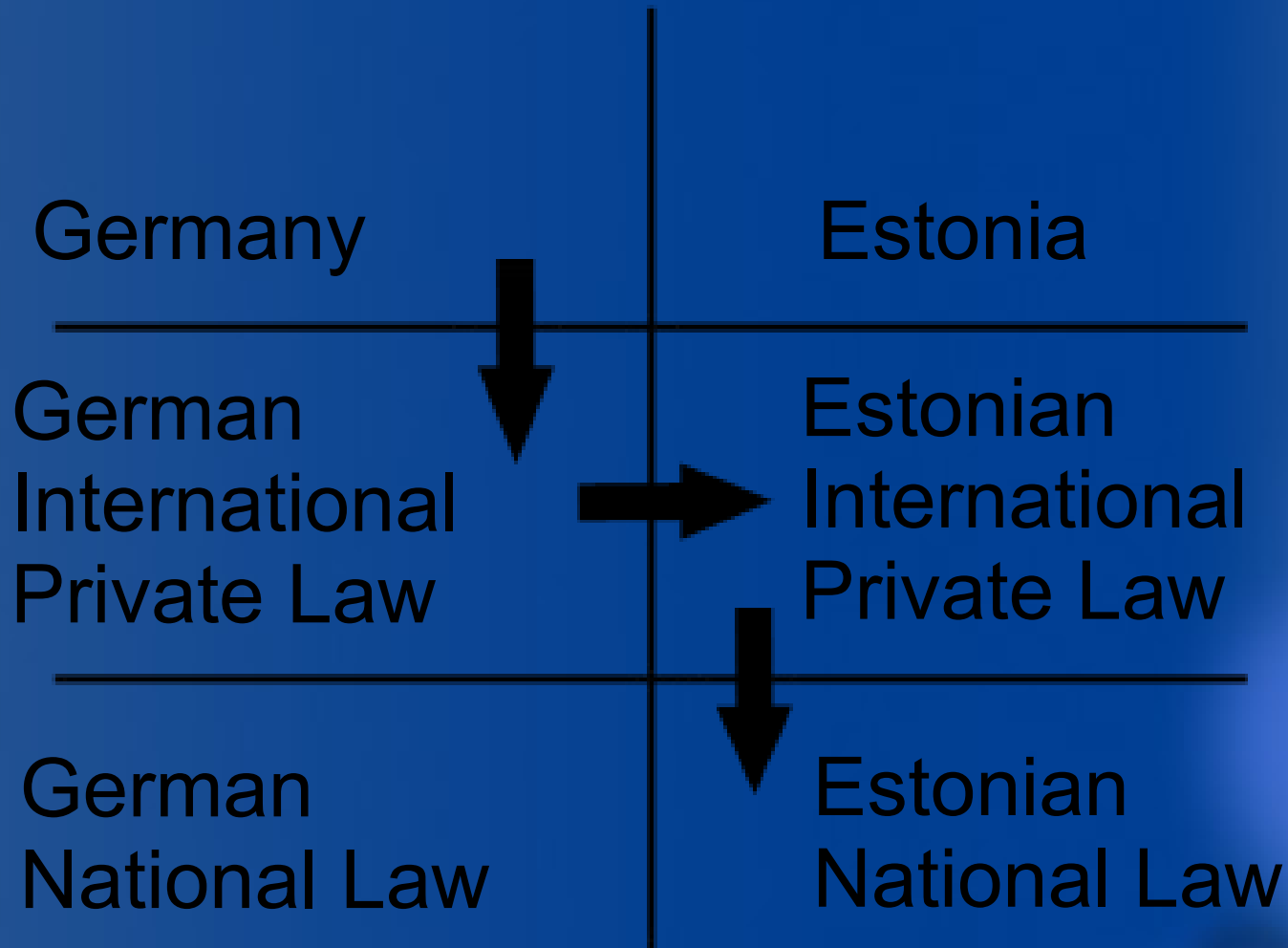
Defendants domicile

Art. 5 Nr. 3 Council
Regulation



Place of harmful
event

International Private Law



What is protected?

Music

Collection of sounds, which can be observed by hearing.

→ Doesn't matter *how* produced

- Melody
- Notes
- Lyrics
- Rythm?
- Books about music?
- Record
- Music Video
- Improvisation

Quality and originality

General principle

The work should be *inventive*

Problem

Small margin of the used melodies in the modern music industry



Low burden of proof

Reason

Conflict between the plaintiff and defendant

Ownership of rights

Initially the author owns all rights

Exceptions: Employment?

- **Germany:** NO legal obligation to assign rights to the employer, no assignment of moral rights
- **Estonia:** Author shall transfer economic rights to the employer, § 32 I Copyright Act of Estonia
- **USA:** „Works made for hire“, § 201 (b), employer is the owner

Licensing

Def: Contractual transfer of
all or some copyrights

- Material reproduction rights
 - Reproduction
 - Distribution
- Immaterial reproduction rights
 - Public Performances
 - Derivative use
 - ➔ Cover, adaption, free use

Licensing: Material reproduction

- **Reproduction:** Making one or several temporary or permanent copies of the work or of a part thereof [...] in any form or by any means, § 13 I 1 Copyright Act of Estonia.
- Substantial and Material copying
- **Examples:** Photocopying a book, using a cartoon character on a T-Shirt, incorporation a portion of another's song into a new song

Licencing: Material reproduction

- **Distribution:** Right to make a work available to the public by sale, rental, lease or lending.
- Prevention of unauthorized distribution of copies
- Control of the first distribution
- **Limit:** First sale doctrine

Licensing: Immaterial reproduction

- **Public performances:** Public means an unspecified set of persons outside the family and immediate circle of acquaintances, § 8 Copyright Act of Estonia.
- **Examples:**
 - To rent a video and to watch it at home with friends
 - To use CD/DVD during the school lessons
 - To rent a music video/CD and show it in a park



Licensing: Immaterial reproduction

- **Derivative work:** A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation or any other form in which a work may be recast, transformed, or adapted.
- **Examples:**
 - Transformation of a novel into a motion picture (movie)
 - Second version of a computer programm

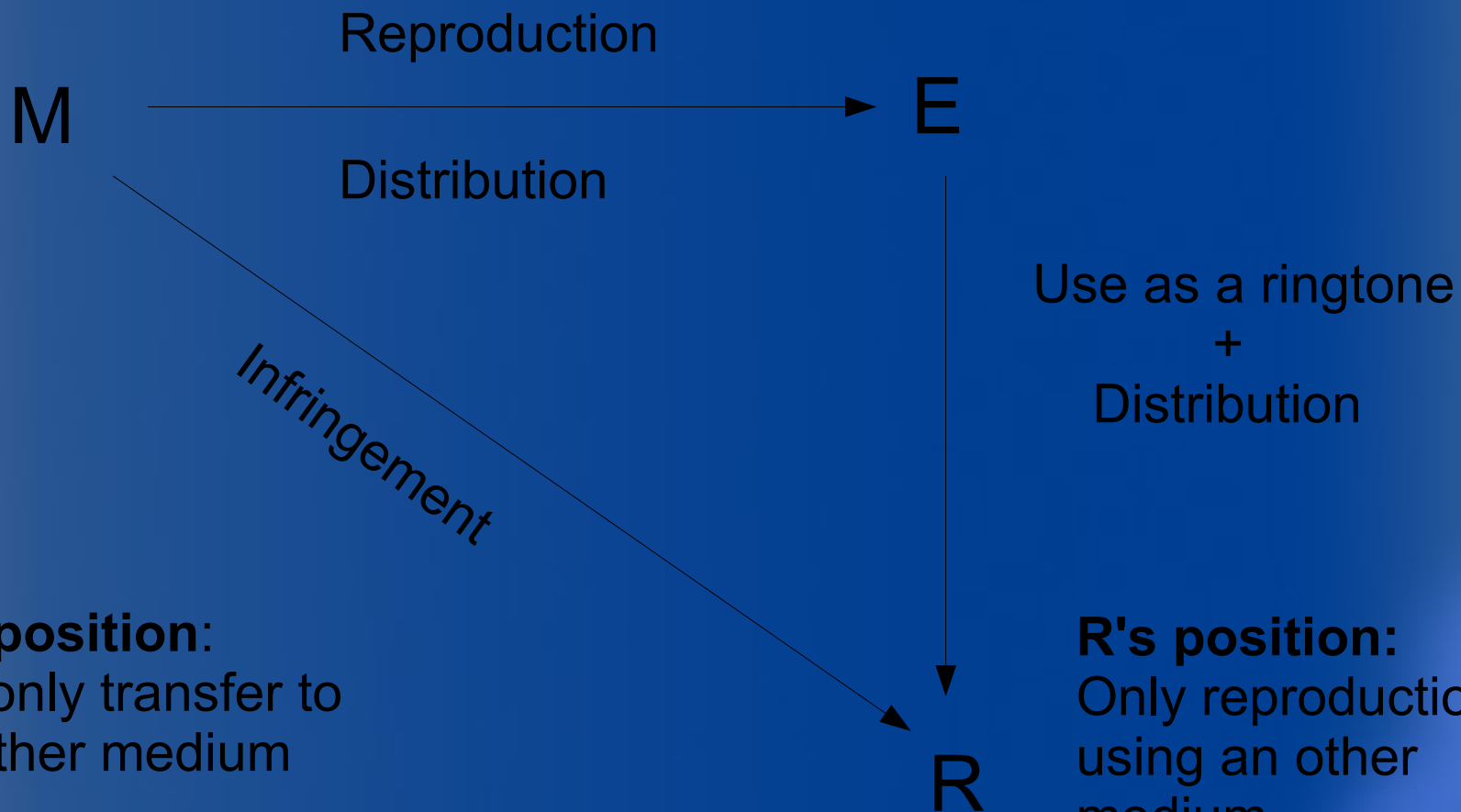
Licencing: Immaterial reproduction

- **Cover:** The entire original work still can be recognized and remains unmodified substantial parts
- **Adaption:** More than a cover; the new piece of music should be *inventive*
- **Free use:** The original work is *dwarfed* by the new created work
 - Melody can't be borrowed!
 - Transfer from one art category to an other possible

Case: The musician M and the Exploitation Company E have entered into an agreement which gives E the right to reproduce and to distribute one of M's songs. After that, the recording company R entered into an agreement with E, according to which R is allowed to reproduce and to distribute M's song as a ringtone for mobile phones. Afterwards R abridges the original song of 4 minutes to a length of 20 seconds, the melody of the refrain is played twice and is performed with a synthesizer. In this form R offers M's song as a ringtone for download.

Is R allowed to use M's song in this form?

This case follows the case of the District Court of Hamburg from 4.4.2001



M's position:

Not only transfer to an other medium

Arg:

- abridgement
- change of general impression
- not enough, that the e song can be recognized

R's position:

Only reproduction by using an other medium

Arg:

- same notes
- same rythm
- song can be recognized

I. Protected Work?: Music + lyrics (+)

II. Intervention in a protected right?

1. Reproduction + Distribution

P: Use as a ringtone = mechanical rights?

a) Mechanical right

Arg: Only transfer to an other medium

Same melody; same rhythm; song can be recognized

b) New form of use

Arg: Not only transfer to an other medium

Is shorter; destruction of the general impression; only refrain played

c) Result: NO intervention in mechanical rights

2. Adaptation

Abridgement; other instrument, change of the impression

3. Moral rights

Right to the integrity of the work, § 12 I 3 (+)

4. Result: Intervention (+)

III. Illegality of the Intervention

Licence? : Only for reproduction + distribution

NO licence for adaption!!!

Result: Illegality (+)

IV. Result: Infringement of copyright (+)

This result **only** if we follow the court! Other result possible

Aspects of copyright

Case

Music-lover M wants to make a copy of the CD he has got from his friend

a) to hear it in his car radio

b) to upload the song on youtube.

Can he do it without infringement of copyright?

Fair use, fair deal, limitations and exceptions to copyright

- Free use in favor of public interest
 - No consent for commentary, criticism, news reporting, research, teaching, library archiving, scholarship
- **Terms:**
 - Fair use: USA
 - Fair deal: UK
 - Free use: Germany; Estonia

—————▶ ***The same purpose***

Fair use, fair deal, limitations and exceptions to copyright

- Private use

No consent generally required, if

- the copy is not distributed to public
- the copy is not used commercial
- there are only some copies (in Germany not more than 7, but controversial)
- it is not obvious, that the copied work is illegally made available to the public

Faire use, fair deal, limitations and exceptions to copyright

Comparison of some aspects

	Germany	Estonia
Copying of entire books	-	?
Copying of music notes	Only handwritten or by using a tapewriter	-
Copying of public speeches, public performances, life performances	-	+ But paying remuneration

Back to the case

- I. Protected object? (+): CD = music + lyrics+ record
- II. Intervention in a protected right? (+): reproduction (copying) of the CD
- III. Illegality? (+): M doesn't have received any rights from the band
- IV. Limitation of copyright?
 1. Private use?
 - a) No distributed to public? (+): only M's car
 - b) No commercial use? (+)
 - c) Less than 7 copies? (+)
 - d) Legal copied work? (+): CD of a friend
 2. Result to private use: (+)
- V. Result of a case: NO infringement of copyright

Practical advices – Creative Commons

- *What is Creative Commons?*
 - *Which kind of licences does it offer?*
1. Attribution (CC-BY)
 2. Attribution Share Alike (CC-BY-SA)
 3. Attribution No Derivatives (CC-BY-ND)
 4. Attribution Non-Commercial (CC-BY-NC)
 5. Attribution Non-Commercial Share Alike (CC-BY-NC-SA)
 6. Attribution Non-Commercial No Derivatives (CC-BY-NC-ND)