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Hamburg Regional Court  
Chamber for Copyright Matters  
Sievekingplatz 1  
D-20355 Hamburg

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**DINN60007**

Berlin

12 August 2013

**ACTION**

DIN Deutsches Institut für Normung e.V. (Registered German Standards Institute), represented by its Chief Executive Officer, Dr.-Ing. Torsten Bahke, together with its director, Rüdiger Marquardt, Am DIN-Platz, Burggrafenstrasse 6, D-10787 Berlin,

- Plaintiff -

Counsel:

The Lawyers of the law firm  
BOEHMERT & BOEHMERT  
Meinekestrasse 26, D-10719 Berlin,

**versus**

1. Public.Resource.Org. Inc., represented by the President, Carl Malamud, 1005 Gravenstein Highway North, Sebastopol, California 95472, USA,
2. Mr Carl Malamud, *ibid.*,

- Defendants -

**on account of:** copyright infringement  
**Amount in dispute:** EUR 50,000.00 (provisional estimate).

We are filing an action herewith in the name of and on behalf of the plaintiff. At the date set for the oral hearing, we will request that:

*The defendants be ordered, on pain of an administrative fine of up to EUR 250,000.00, to be set by the court for each case of contravention and, in the event that this fine cannot be recovered, on pain of detention for up to six month (maximum administrative fine for each individual case EUR 250,000.00; maximum total period of detention two years), to be served, in the case of the defendant named under 1., on its President – individually in each case, to cease and desist from making publicly accessible at locations and times of their choosing, and in particular via law.resource.org, technical standards for retrieval by internet users, namely*

- DIN EN 14781 (**Exhibit K1**); and/or
- DIN EN 14782 (**Exhibit K2**); and/or
- DIN EN 1400-1, German-language version (**Exhibit K3**); and/or
- DIN EN 1400-1, English-language version (**Exhibit K4**); and/or
- DIN EN 1400-2, German-language version (**Exhibit K5**); and/or
- DIN EN 1400-2, English-language version (**Exhibit K6**).

In the event that the statutory prerequisites exist for this, we already request that  
*a judgement by default*  
be made.

**GROUND:**

The plaintiff is the national standards organisation of Germany. The defendants use their internet pages to make publicly accessible to anyone many of the plaintiff's standards that are protected by copyright, without the plaintiff having allowed the defendant to do this. This copyright infringement by the defendants is asserted in this action.

**I.**

1. A standard is a document reflecting the state of the technical art that has been developed by means of set procedures within a standards organisation. Standards control and facilitate by establishing general and recurring applications. They may refer to both products and procedures. Standardisation is of major benefit to the economy, to companies and to consumers. Scientific studies have proved that the economic benefit of standardisation is approximately EUR 15 billion per annum. International standards, for example, facilitate international trade; standards also assist in rationalisation, quality assurance, protection of society and the simple use of products and services. The costs of transactions, in purchasing and tenders, for example, can be significantly reduced by the use of standards.

Neither in Germany nor in the other states of the European Union is standardisation a government task in principle. Rather, the development of the detailed technical regulations that make up a standard is a task of self-regulation by industry. Standards therefore have no statutory force in themselves. The use of standards is voluntary. Although they are only in the nature of recommendations, their high level of enforcement is based on the major benefits and the expertise collected in their compilation. Standards may become binding under the state only by means of legal measures taken by the state, for example if they are referred to in acts or decrees.

2. As a result of a contract with the Federal Republic of Germany, the plaintiff is recognised as the national standardisation organisation of Germany and as the representative of German interests in the European and international standardisation organisations. The plaintiff is a non-profit-making organisation with almost 2,000 members. The plaintiff's members are companies, associations, local authorities and other institutions from the fields of industry, commerce, trade and science, such as Siemens, Volkswagen, Daimler, Deutsche Bahn, ARD institutions, such as the Norddeutsche Rundfunk broadcasting institution, as well as the BDI (Federation of German Industries), the central association of the German construction industry, the central association of German skilled trades and the German Patent and Trademarks Agency, to name but a few.

The task of the plaintiff, as the national standardisation organisation of Germany, is to encourage, organise, direct and manage standardisation in an orderly and transparent process.

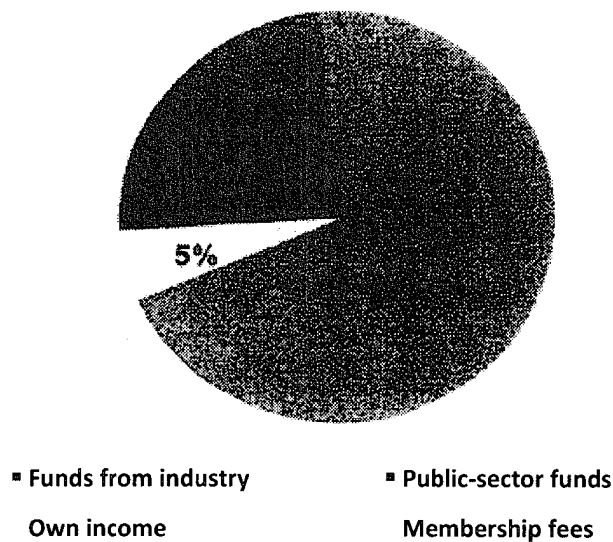
The paper format "A4", often also called "DIN A4", is probably the best known of the plaintiff's standards; this standardisation was achieved by the plaintiff for the first time in 1922 in the standard DIN 476. It was from here that this standard also achieved international status.

3. Beyond Germany, at the European level, standardisation work is the responsibility of the body known as the CEN, the Comité Européen de Normalisation (European Committee for Standardization), whose headquarters is in Brussels. The CEN draws up what are known as “European standards”, abbreviated to “EN”. According to the internal regulations of the CEN, the individual national standardisation organisations – such as the plaintiff in Germany – are obliged to incorporate European standards into national standards. The national German version of a European standard, which is taken over unchanged by the plaintiff, then has the abbreviation “DIN EN” (plaintiff’s abbreviation plus the term “European standard”). “DIN EN” standards are available in both an official German-language version and an official English-language version.

In addition to the national German and European standardisation work, standardisation also takes place at an international level, for example at the “International Organisation for Standardisation” (“ISO”) which has its headquarters in Geneva. If the plaintiff takes over an international ISO standard, this will be referred to by the abbreviation “DIN ISO”, for instance.

4. As a private, non-profit association, the plaintiff is funded by a combination of sources. By far the largest part of the plaintiff’s funding comes from its own revenues; 70% the plaintiff’s funding comes from its own revenues. These revenues are acquired by means of services provided and products. In addition, 13% of the finance comes from industry project funds, a further 11% from public-sector funds and only 6% is derived from membership fees. The plaintiff’s revenue structure for 2012 is inserted in graph form below:

### DIN Group revenue structure 2012



The plaintiff therefore relies on income earned from products and services for its standardisation work. The plaintiff raises this income in particular via its subsidiary, Beuth Verlag GmbH, Berlin, by means of the reproduction and distribution of its “DIN standards”, but also by means of the licensing of these standards for use by third parties.

However, this requires the plaintiff’s DIN standards to be copyright-protected. This has been acknowledged for a long time. The copyright protection of DIN standards when referenced by the legislator in the form of a citation has been guaranteed since 2003 by § 5, para. 3 of the German Copyright Act (UrhG). According to this Act, private standards acquire their copyright protection,

*“if acts, decrees, ordinances or official announcements refer to them without including their full text.” (§ 5, para. 3, p. 1 UrhG).*

In other words: a simple, official reference to private standards in acts, decrees, ordinances or official announcements is not sufficient for a private standard to be copyright-free. Only if they are incorporated, by way of exception, into such official standards, does the copyright protection for private standards lapse, although this is a very rare case in practice.

The background to this ruling was the fact that the German legislator regarded the funding basis for the work of private standardisation organisations in Germany and internationally as being jeopardised if the UrhG were to comprehensively exclude private standards from copyright protection. The legislator creating § 5, para. 3, UrhG, acknowledged a justified interest by the private standardisation organisations (“deserving committees”) in funding their work by means of reproduction and distribution, and other use of the standards they have compiled, or by means of the sale of rights to the use of the standards they have compiled. Otherwise, in the view of the legislator, the substantial restriction would have led to the self-funding by standardisation organisations being jeopardised to the extent that they would have had to be provided with “large government subsidies” (RegE UrhG Informationsgesellschaft (Government draft bill, UrhG, Information Society), BT DS (Parliamentary document) 15/38, page 16, retrievable at [fromm-nordemann.de](http://fromm-nordemann.de)). § 5, para. 3, UrhG is thus a fundamental decision by the legislator to provide copyright protection of standards in order that standardisation organisations, such as the plaintiff, can fund themselves from their income from the use of the standards and are not obliged to claim large government subsidies.

5. The plaintiff acquires the exclusive rights of use of all forms of exploitation for the standards it has developed, by means of written undertakings from the authors involved in the creation of the standards. According to these written undertakings, the plaintiff acquires the right of exploitation of

the results of the standardisation work in both tangible and intangible form; in particular, the plaintiff acquires the right of reproduction, distribution and making publicly accessible.

In the case of European standards ("DIN EN"), implemented by the plaintiff as DIN standards in Germany, known as "DIN EN" standards, the plaintiff acquires the exclusive rights for all forms of exploitation from the CEN. As has been briefly mentioned above, the CEN does not distribute its European standards across Europe itself. Distribution of the standards is rather the responsibility of the individual national standardisation organisations, which are also members of the CEN. In Germany, as has already been stated, this is the plaintiff. Thus, with respect to "DIN EN" standards, the plaintiff acquires the exclusive rights of exploitation for Germany from the CEN. The granting of these rights derives both from the statutes of the CEN and also from the "CEN Exploitation Agreement on copyright and trademark", the latest version of which was signed on 3 April 2013 between the CEN and the European standardisation organisations, including the plaintiff. Point 3.1 of this agreement states:

*"In accordance with the terms and conditions set forth under this Agreement, CEN hereby grants each Member and its successor throughout the Territory, free of charge, the irrevocable and exclusive right of exploitation of the CEN Publications."*

"Member" includes the plaintiff; its "territory" is Germany.

Furthermore, Point 3.2. states:

*"The assignment provides for the right of each Member to use, reproduce, to distribute, to sub-distribute, to translate, to rent, to lend, to derive revenue from duplication and loan, to communicate to the public in total or in part, in summary or with comments, to license the exploitation and to authorise all sub-licences on these Publications, by any means and by any form."*



In accordance with the ruling cited above, "DIN EN" standards also bear the following © endorsements:

*"© No part of this standard may be reproduced without the prior permission of DIN Deutsches Institut für Normung e.V., Berlin*

*Beuth Verlag GmbH, D-10772 Berlin, has the exclusive right of sale for German standards (DIN-Normen (standards))."*

Correspondingly, German-language "DIN EN" standards state the following [in German]:

*"© DIN Deutsches Institut für Normung e.V. – Any form of reproduction, even of extracts hereof, is only permitted with the permission of DIN Deutsches Institut für Normung e.V., Berlin.*

*For sale solely by Beuth Verlag GmbH, D-10772 Berlin."*

The first page of the implemented European standard states:

*"© [year]. CEN – All rights of exploitation in any form and by any means reserved worldwide for CEN national members."*

The first page of the European standard taken over in German-language "DIN EN" standards states [in German]:

*"© [year]. CEN – All rights of exploitation in any form and by means of any process whatsoever are reserved worldwide for the national members of CEN."*

6. Consequently, the plaintiff is the sole holder for Germany of the right to make “DIN EN” standards publicly accessible on the internet. There are large numbers of these “DIN EN” standards, the following being of relevance to this action:

- DIN EN 14781 “Rennräder – sicherheitstechnische Anforderungen und Prüfverfahren” (“Racing bicycles – Safety requirements and test methods”), here in the English-language version; this is – as has been stated – a European standard, EN 14781, that the plaintiff has implemented as DIN EN 14781 as a national German standard. We attach a copy of this standard DIN EN 14781 as **Exhibit K7**.
- DIN EN 14782 “Selbsttragende Dachdeckungs- und Wandbekleidungselemente für die Innen- und Aussenanwendung aus Metallblech – Produktspezifikation und Anforderungen” (“Self-supporting metal sheet for roofing, external cladding and internal lining – Product specification and requirements”), here, in the English-language version; this is – as has been stated – a European standard, EN 14782, that the plaintiff has implemented as DIN EN 14782 as a national German standard. We attach a copy of this standard DIN EN 14782 as **Exhibit K8**.
- DIN EN 1400-1 “Artikel für Säuglinge und Kleinkinder – Schnuller für Säuglinge und Kleinkinder –  
Teil 1: Allgemeine sicherheitstechnische Anforderungen und Produktinformationen” (“Child use and care articles – soothers for babies and young children – Part 1: General safety requirements and product information”), here, in the English-language version; this is – as has been stated – a European standard, EN 1400-1, that the plaintiff has implemented as DIN EN 1400-1 as a national German standard. We attach a copy of this standard DIN EN 1400-1 in the German-

language version as **Exhibit K9**, and of the English-language version as **Exhibit K10**.

- DIN EN 1400-2 "Artikel für Säuglinge und Kleinkinder – Schnuller für Säuglinge und Kleinkinder –

Teil 2: Mechanische Anforderungen und Prüfungen" ("Child use and care articles – soothers for babies and young children – Part 2: Mechanical requirements and tests"), here, in the English-language version; this is – as has been stated – a European standard, EN 1400-2, that the plaintiff has implemented as DIN EN 1400-2 as a national German standard. We attach a copy of this standard DIN EN 1400-2 in the German-language version as **Exhibit K11**, and of the English-language version as **Exhibit K12**.

All the standards listed above (**Exhibits K7 to K12**) bear the normal "©" endorsements of "DIN EN" standards in favour of the plaintiff; consequently the English-language "DIN EN" standards (**Exhibits K7, K8, K10, K12**) bear the following "©" endorsement on the first page:

*"© No part of this standard may be reproduced without the prior permission of DIN Deutsches Institut für Normung e.V., Berlin*

*Beuth Verlag GmbH, D-10772 Berlin, has the exclusive right of sale for German standards (DIN-Normen (standards))."*

Correspondingly, the first page of the German-language "DIN EN" standards (**Exhibits K9, K11**) state [in German]:

*"© DIN Deutsches Institut für Normung e.V. – Any form of reproduction, even of extracts hereof, is only permitted with the permission of DIN Deutsches Institut für Normung e.V., Berlin.*

*For sale solely by Beuth Verlag GmbH, D-10772 Berlin."*

The first page of the English-language versions of the implemented European standards **(Exhibits K7, K8, K9, K10, K12)** states:

*"© [year]. CEN – All rights of exploitation in any form and by any means reserved worldwide for CEN national members."*

The first page of German-language "DIN EN" standards **(Exhibits K9, K11)** taken over from the European standard states [in German]:

*"© [year]. CEN – All rights of exploitation in any form and by means of any process whatsoever are reserved worldwide for the national members of CEN."*

The first page of German-language "DIN EN" standards taken over from the European standard states [in German]:

*"© [year]. CEN – All rights of exploitation in any form and by means of any process whatsoever are reserved worldwide for the national members of CEN."¹*

On the basis of the "©" endorsement listed above, the plaintiff has been authorised, by way of precaution, by its subsidiary, Beuth Verlag GmbH, to seek injunctive relief with respect to the disputed standards in its own name in these proceedings.

The "DIN EN" standards listed above are without exception what are referred to as "non-binding national standards" in accordance with Article 3, para. 2, sub-paragraph 2, of EU Directive 2001/95/EC issued by the European Parliament and Council on 2 December 2001 relating to general

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<sup>1</sup> Translator: This paragraph and the one above seem to be a repetition of the previous two (without the reference to the Exhibits) but have been included for the sake of completeness of the translation.

Product safety ("Product Safety Directive"). We attach the Product Safety Directive as **Exhibit K13**. The Product Safety Directive assumes that a product is safe if it meets the non-binding national standards that implement a European standard referred to by the Commission in accordance with Article 4 of the Product Safety Directive in the Official Journal of the European Community (Article 3, para. 2, 2<sup>nd</sup> sub-paragraph, Product Safety Directive). Article 4, para. 2 of the Product Safety Directive stipulates that the Commission must publish a reference to the relevant European standards in the Official Journal of the European Community. This reference was last published in the Official Journal of the European Union dated 28 February 2012, C59, pages 4 ff. We attach an extract from this Official Journal as **Exhibit K14**. As can be seen from page 4 of the aforementioned Official Journal of the EU dated 28 February 2012 (C59), the references published there to standards include, in particular, references to the standards mentioned above, i.e. to standards "EN 14781" (Official Journal C59, page 7), "EN 1400-1" (Official Journal C59, page 5) and "EN 1400-2 (Official Journal C59, page 5).

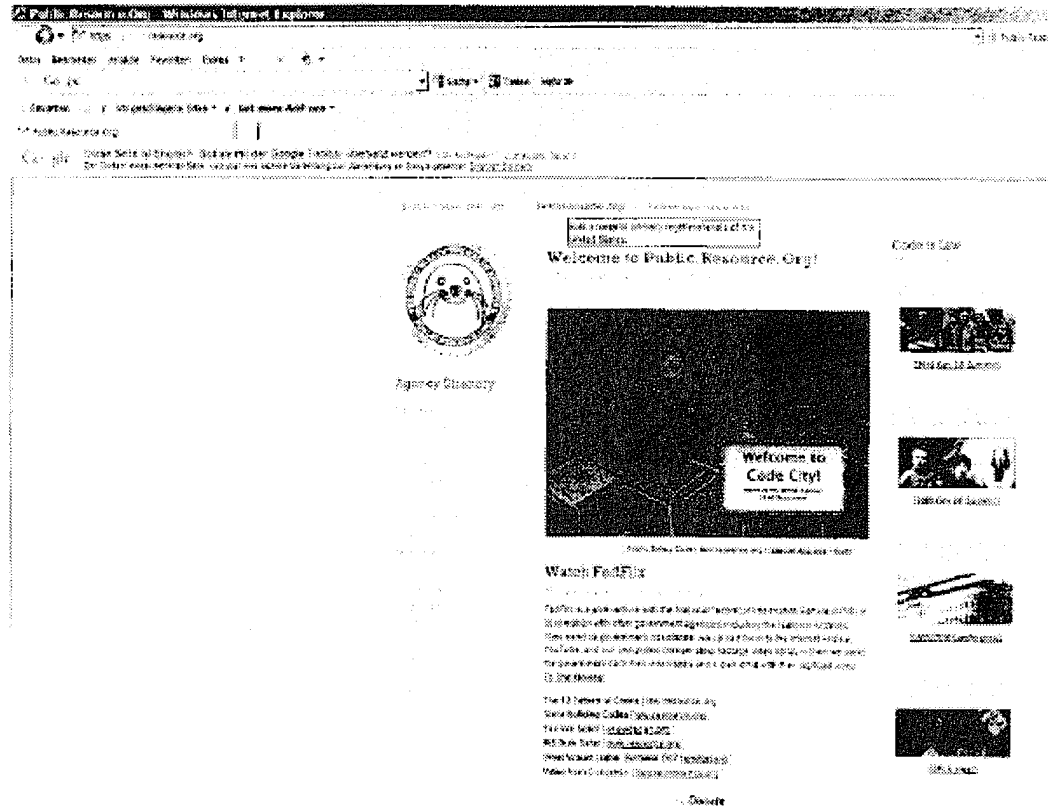
Thus, the text of the Product Safety Directive solely refers to these standards but does not reproduce their full text. The same applies to the German Act relating to Product Safety, with which the Product Safety Directive has been implemented.

However, contrary to the statement by the defendants, DIN standard "DIN EN 14782" (**Exhibit K8**) is not to be found among the standards to which reference had been made in the Official Journal of the EU dated 28 February 2012 (C59; **Exhibit K14**). Nor is this standard otherwise referenced or mentioned in any other way by the Product Safety Directive or the German Act relating to Product Safety. Nor is it referred to in any other act, decree, etc. In this respect, it is not apparent either

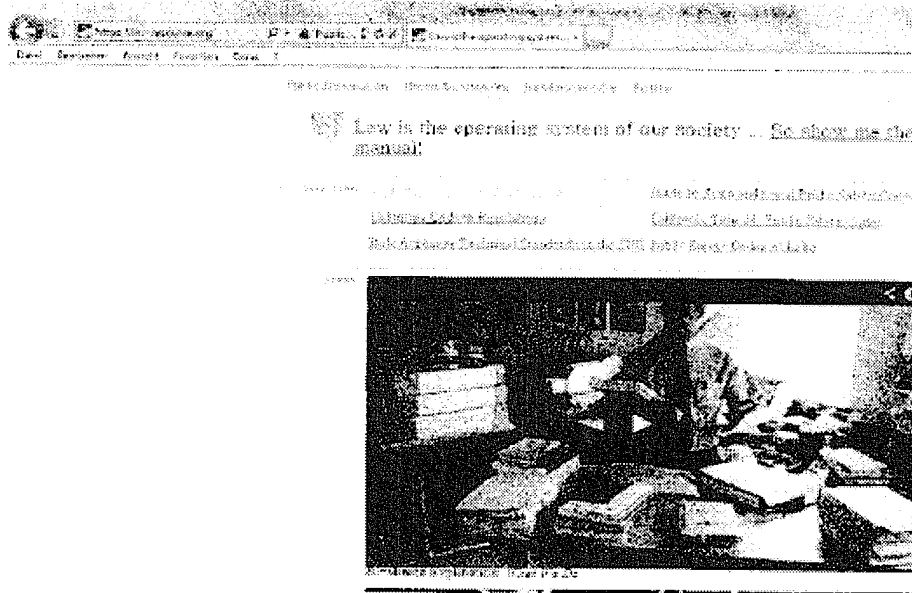
how the standard "DIN EN 14782" could be regarded as an official work as defined by § 5, para. 1, UrhG.

7. The defendant named in 1. makes the "DIN EN" standards listed above (**Exhibits K7 to K12**) publicly accessible to German internet users for download on its website "law.resource.org".

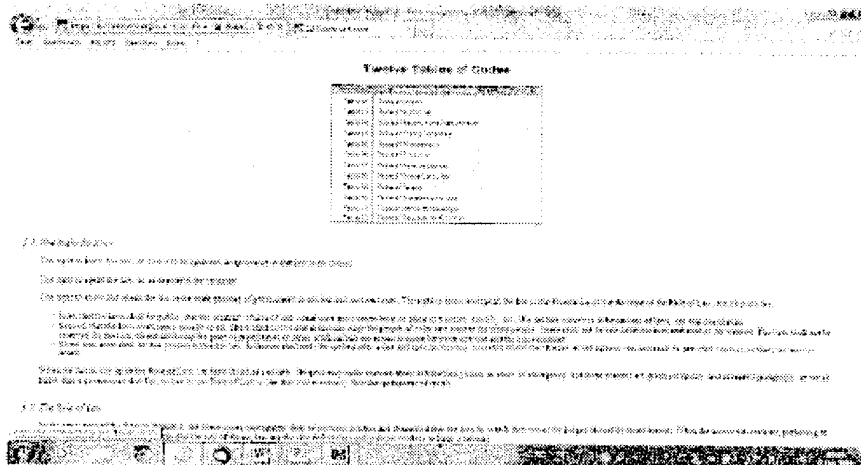
The defendant named in 1. is a US "non-profit corporation" that has evidently committed itself to the objective of wanting to make government information accessible; at any rate, on its start page it advertises with the slogan "Making Government Information More Accessible". We are inserting the screenshot below in this context:



Clicking on the link "law.resource.org" at the top centre of the start page, takes you to "law.resource.org"; from here, clicking on "12 Tables of Public Safety Codes"



takes you to a new page “Twelve Tables of Codes”.





[illegible]

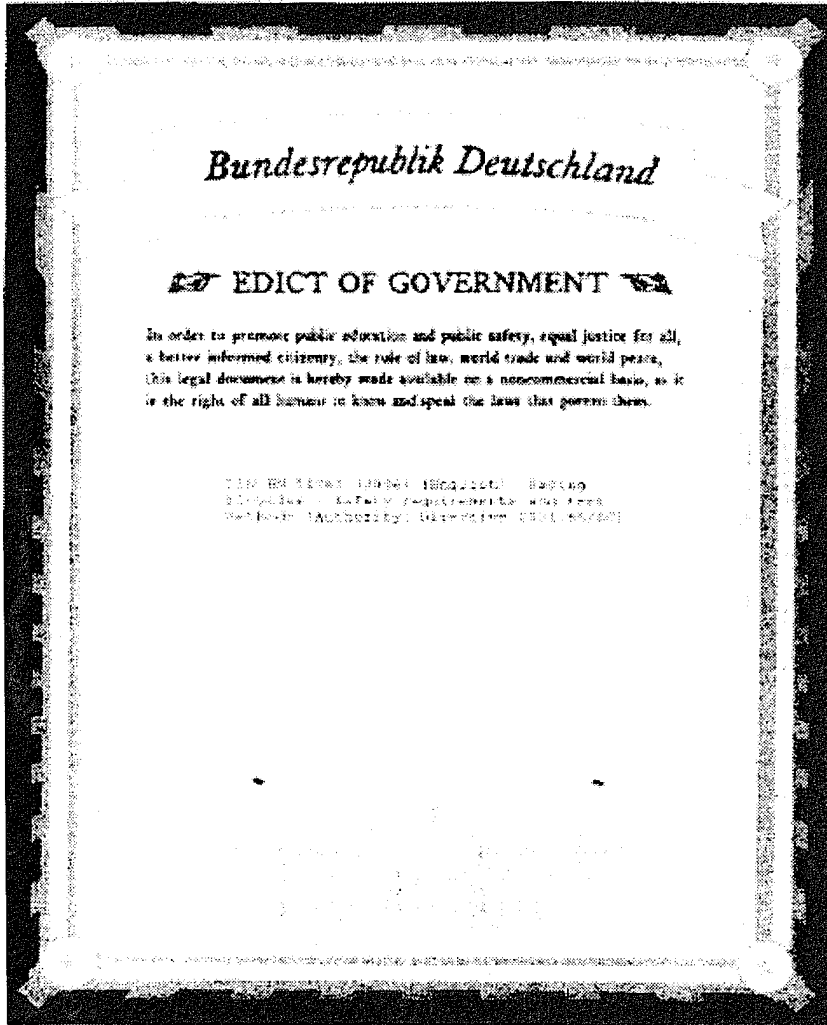


At the end of this list, the defendant named in 1. also takes express responsibility for creating the public accessibility (“Published by Public Resource.org”).

- Clicking on DIN EN 14781 enables retrieval of the plaintiff's corresponding DIN EN standard in accordance with **Exhibit K1**;

- Clicking on DIN EN 14782 enables retrieval of the plaintiff's corresponding DIN EN standard in accordance with **Exhibit K2**;
- Clicking on DIN EN 1400-1 enables retrieval of the plaintiff's corresponding DIN EN standard in accordance with **Exhibit K3** (German-language version); English-language version **Exhibit K4**;
- Clicking on DIN EN 1400-2 enables retrieval of the plaintiff's corresponding DIN EN standard in accordance with **Exhibit K5** (German-language version); English-language version **Exhibit K6**;

As can be seen from **Exhibits K1 to K6**, the plaintiff always precedes the public reproduction of the DIN EN standards with a cover sheet, as follows (using DIN EN 14781 by way of example):



However, contrary to what is suggested by this cover "Bundesrepublik Deutschland – Edict of Government" with its illustration of the German parliament building (Reichstag), the defendant named in 1. has no consent from the Federal Republic of Germany or other government organs in

Germany to making the standards listed above publicly accessible. Nor has the plaintiff, the legal holder of the rights, granted consent to this creation of public accessibility, never mind the CEN. The creation of public accessibility is thus unlawful.

8. The defendant named in 2., as president of the defendant named in 1., caused this creation of public accessibility. On the website of the defendant named in 1., as its president, he also assumes comprehensive responsibility for the activities of the defendant named in 1.

## II.

§ 97, para. 1, p. 1, UrhG entitles the plaintiff to require the defendants to cease and desist from making the standards in **Exhibits K1 to K6** publicly accessible.

1. German copyright law is also applicable with respect to the disputed creation of public accessibility in accordance with **Exhibits K1 to K6**. Under Article 1, para. 1 of the Rome II Regulation, in the case of an infringement of intellectual property rights, i.e. including copyright, the law of that state should be applied under which protection is claimed (known as the “country of protection” principle). The plaintiff is claiming protection in Germany.

German courts are internationally competent to rule on the case if the plaintiff has conclusively demonstrated that a damaging event, as defined in Article 5, No. 3 of the Brussels I Regulation, has occurred within Germany (GRUR [German Association for the Protection of Intellectual Property] 2012, 1069, sub-section 17 – *Hi Hotel; Nordemann-Schiffel* in Fromm/Nordemann, Urheberrecht [Copyright Law], 10<sup>th</sup> ed. 2008, from §§ 120 ff., UrhG, marginal no. 96). An

infringement of the law of this type in Germany has taken place, as can be seen in Point 4, below.

2. The standards in accordance with **Exhibits K7 to K12**, which are the subject of this dispute, are copyright-protected as works under § 2, UrhG. These are written works as defined in § 2, para. 1, No. 1, UrhG and of representations of a scientific or technical nature in accordance with § 2, para. 1, No. 7, UrhG. The prerequisite under § 2, para. 2, UrhG is that an original intellectual creation is involved. Copyright protection for the linguistic section of standards (§ 2, para. 1, No. 1, UrhG) may derive in particular from the nature of the “compilation, selection, classification and organisation of the subject matter”. Furthermore, rules and regulations are characterised, according to the jurisdiction of the BGH (German Federal Supreme Court), by the fact that they not only reproduce technical specifications as such but describe them comprehensibly and in detail; thus, here, too, expression and clarity of the linguistic form may carry weight in terms of copyright law, and thus original skill in formulation (BGH GRUR 2002, 958, 959 – *Technische Lieferbedingungen [Technical terms of delivery]*). As regards technical representations as defined by § 2, para. 1, No. 7, UrhG, the BGH has emphasised several times with respect to standards that no high demands may be made of technical drawings in standards (e.g. BGH GRUR 2002, 958, 959 – *Technische Lieferbedingungen [Technical terms of delivery]* with additional citations). To this extent, standards differ fundamentally from simple lists, in which the information contained – in terms of copyright law – are in the public domain and the original creative act can consist solely in the selection and organisation of the subject matter (BGH GRUR 2002, 958, 959 – *Technische Lieferbedingungen [Technical terms of delivery]*).

Consequently, the standards that are the subject of this dispute (**Exhibits K7 to K12**) can certainly be copyright-protected:

- DIN EN 14781 (**Exhibit K7**): this standard, “Racing bicycles – Safety requirements and test methods” (English-language version) presents very comprehensive subject matter in an easily understood, clearly organised form. All the safety requirements and test methods for racing bicycles are presented in a total of 79 pages (including annexes). It begins with a foreword (“Foreword”), followed by an introduction (“Introduction”). The actual standard is then divided into six long chapters: 1. Scope, 2. Normative References, 3. Terms and Definitions, 4. Requirements and Test Methods, 5. Manufacturer’s Instructions, and 6. Marking. Chapter 4., in particular, “Requirements and Test Methods”, is then heavily subdivided and contains the description of the Brake Test and Strength Test - Special Requirements (4.1.), Sharp Edges (4.2.), Security and Strength of Safety-Related Fasteners (4.3.), Crack Detection Methods (4.4.), Protrusions (4.5.), Brakes (4.6.), Steering (4.7.), Frames (4.8.), Front Fork (4.9.), Wheels and Wheel/Tyre Assemblies (4.10.), Rims, Tyres and Tubes (4.11.), Pedals and Pedal/Crank Drive Systems (4.12.), Saddles and Seat-Pillars (4.13.), Drive-Chain (4.14.), Chain-Guard (4.15.), Spoke Protector (4.16.), Lighting Systems and Reflectors (4.17.), Warning Device (4.18.) and Handling and Operation of Fully-Assembled Bicycles (4.19.). Some of these sections are further subdivided into yet more levels; for instance, Point 4.6. “Brakes” has another eight additional sub-sections, Section 4.9. “Front Fork” has seven further sub-sections, and Point 4.12. “Pedals and Pedal/Crank Drive Systems” also has seven further sub-sections. In this sense, the Standard DIN 14781 (**Exhibit K7**) also constitutes “comprehensive subject matter in an easy to understand, clearly organised form” in accordance with the jurisdiction of the BGH (see only BGH GRUR 2002, 958, 960 – *Technische Lieferbedingungen [Technical Terms of Delivery]*). In addition, there are also the numerous technical illustrations, for example on pages 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 27, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 48, 49, 51, 52, 53, 54, 55, 57, 58, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73 and 79, that meet the not high requirements for copyright protection under § 2, para. 1, No. 7, UrhG.
  
- DIN EN 14782 (**Exhibit K8**): this standard covers “Self-supporting metal sheet for roofing, external cladding and internal lining – Product specification and requirements”; the English-language version is involved. Once again, for this standard, a very comprehensive subject matter is presented in an easy to understand form that is clearly organised. After a foreword (“Foreword”), the standard is explained in a form that is easy to understand and clearly organised over about 40 pages in written and image form, with the following main divisions: 1. Scope, 2. Normative References, 3. Terms and Definitions, 4. Requirements, 5. Testing, Assessment and Sampling Methods, 6. Evaluation of Conformity, 7. Designation, 8. Product



Marketing; various chapter headings present numerous additional subdivisions below, for example 4. Requirements plus 4.1. Materials, 4.2. Nominal Thickness, 4.3. Mechanical Resistance, 4.4. Water Permeability, 4.5. Vapour and Air Permeability, 4.6. Dimensional Change, 4.7. Dimensional Tolerances, 4.8. Durability, 4.9. External Fire Performance, 4.10. Reaction to Fire, 4.11. Release of Regulated Dangerous Substances. The same applies to Chapters 5. and 6., which, indeed, have two additional organisational levels. This standard also has detailed Annexes ("Annex"): Annex A "Multilayer coated steel sheet", Annex B "(Normative) Determination of resistance to concentrated forces, Annex C "(Normative) Mounting and fixing conditions of the test specimen for reaction to fire testing" and Annex ZA "(Informative) Clauses of this European Standard addressing the provisions of the EU Construction Products Directive", each of which, in turn, has further sub-sections. Technical drawings are to be found on pages 5, 21, 22 and 26.

- DIN EN 1400-1, German-language version (**Exhibit K9**): this standard covers "Child use and care articles – soothers for babies and young children – Part 1: General safety requirements and product information". The German-language version is involved. In a total of 21 pages, it once more presents comprehensive subject matter in an easy to understand and clearly organised form. The standard has a "Foreword" and "Introduction" and is then divided into a total of seven main chapters (Scope, Normative references, Terms and definitions, Description of a soother, Requirements and test methods, Materials, Designs, Sales packaging, Product information, General, Sales information, Instructions for use); Chapters 5 and 7 have further subdivisions (5.1. Materials, 5.2. Design, 7.1. General, 7.2. Sales information, 7.3. Instructions for use). Moreover, an "Annex A" is also included, which is divided into five sub-sections (one for products similar to soothers with no other function, one for products similar to soothers with another secondary function, one for products similar to soothers with another primary function, products for special applications, medical devices). Technical drawings are to be found on pages 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17.
- DIN EN 1400-1, English-language version (**Exhibit K10**): this is the English-language version of the standard described above, "DIN EN 1400-1" for which copyright protection hence also exists.

- DIN EN 1400-2, German-language version (**Exhibit K11**): this standard deals with “Child use and care articles – soothers for babies and young children – Part 2 Mechanical requirements and tests”. This standard consists of a total of 26 pages and also presents comprehensive subject matter in an easy to understand, clearly organised form, which is, in itself, sufficient to allow copyright protection as a written document according to the jurisdiction of the BGH in accordance with § 2, para. 2, No. 1, UrhG (BGH GRUR 2002, 958, 960 – *Technische Lieferbedingungen [Technical terms of delivery]*). After a “Foreword” and an “Introduction”, the standard has 6 main chapters in total (Scope, Normative references, Terms and definitions, Description of a soother, Functional characteristics of the soother, Tests). Chapter 5., Functional characteristics of the soother, is further subdivided into 5.1 Impact strength, 5.2 Puncture resistance, 5.3 Tensile strength, 5.4 Holding strength of the knob, peg and/or cover, 5.5 Bite resistance, 5.6 Resistance to torsional stress, 5.7 Strength and durability. The standard also has an “Annex A: Some examples of suitable holding devices” and an “Annex B: Soothers – assessment of conformity to the standard – sampling plan and acceptance level for newly manufactured samples”; the latter is, in turn, subdivided into further sub-sections: B1 General, B2 Sampling, B3 Acceptance level, B4 Test methods and sequences, B5 Threshold value. The standard also has technical drawings on pages 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23.

- DIN EN 1400-2, English-language version (**Exhibit K12**): this is the English-language version of the standard described above, so that this English-language version hence also enjoys copyright protection.

3. The standards listed above (**Exhibits K7 to K12**) are not exempt from copyright protection under § 5, UrhG either. Although the Product Safety Directive and the German Act relating to Product Safety refer to the standards, there is only one reference to these standards in the Official Journal of the European Union (**Exhibit K14**). The wording of the standards listed above is not reproduced either by the Product Safety Directive or by the German Act relating to Product Safety or in the associated publications in the Official Journal of the European Union. Copyright protection for the standards is thus provided in accordance with § 5, para. 3, p. 1, UrhG.

4. The creation of public accessibility via law.resource.org in accordance with **Exhibits K1 to K6** infringes the exclusive rights of the plaintiff in accordance with § 19a, UrhG.

The standards made publicly accessible on law.resource.org in accordance with **Exhibits K1 to K6** are identical to the plaintiff's original "DIN EN" standards in **Exhibits K7 to K12** (if one ignores the cover inserted by the plaintiff "Federal Republic of Germany – Edict of Government"). The standards made publicly accessible on law.resource.org in accordance with **Exhibits K1 to K6** even bear the © endorsements in favour of the plaintiff.

These © endorsements also trigger an assumption that the plaintiff holds the exclusive rights. According to § 10, para. 3, UrhG, "©" endorsements justify an assumption of the holding of rights if they are combined with a legal entity (Frankfurt/Main Regional Court MMR 2010, 465, 466; *Schulze in Dreier/Schulze, Urheberrecht [Copyright Law]*, 4<sup>th</sup> ed. 2013, § 10, UrhG, Marginal nos. 13, 62; *Loewenheim in Schricker/Loewenheim, Urheberrecht [Copyright Law]*, 4<sup>th</sup> ed. 2010, § 10, UrhG, Marginal No. 19; *Loewenheim in Loewenheim, Handbuch des Urheberrechts [Handbook of Copyright Law]*, 2<sup>nd</sup> ed. 2009, § 14, marginal no. 9; even prior to § 10, UrhG coming into force for an actual assumption: Berlin Regional Court ZUM 2005, 1842, 1843). Moreover we would also refer to the exclusive rights acquired by the plaintiff from the CEN in accordance with the "CEN Exploitation Agreement on copyright and trademark".

5. The risk of repetition for the injunctive relief is assumed simply on the basis of the previous infringement (**Exhibits K1 to K6**). There is nothing to suggest that this is not the case.

With respect to the infringement of § 19a, UrhG, it is of no relevance either that the defendants' servers are not located in Germany (most likely in the USA). Infringement in Germany takes place if the creation of public accessibility on the internet is (also) aimed at the German public

(European Court of Justice (EuGH), GRUR 2012, 1245, sub-section 39 – *Football Dataco/Sportsradar*; BGH GRUR 2007, 871, 872 – *Wagenfeld-Leuchte*). Making the standards that are the subject of this dispute publicly accessible in accordance with **Exhibits K1 to K6** is unequivocally also aimed at German internet users. The standards are “DIN EN” standards, valid in Germany; they are accessible under “Bundesrepublik Deutschland” [*Federal Republic of Germany*] and some of them can even be retrieved in the German-language version.

6. The defendant named in 2. is liable as perpetrator. The liability of the defendant named in 1. derives from § 31 of the German Civil Code (BGB); the infringement by the defendant named in 2. is attributed to the defendant named in 1. as his organ. The defendant named in 1. has also expressly assumed responsibility for the creation of public accessibility (“Published by Public Resource Org”).

### III.

With respect to the required service of the action in the USA, we request an English translation of the action and that we be informed of the costs for this. With respect to the German-language **Exhibits K3 and K5, and K9 and K11**, we assume that no translation will be required because these are the German-language versions of **Exhibits K4 and K6**, and of **K10 and K12**. The official English-language versions of the Product Safety Directive (**Exhibit K13**) and the Official Journal of the European Union (**Exhibit K14**) are attached as **Exhibit K15** and **Exhibit K16** respectively.

As far as we are currently aware, formal service on a party in the USA is undertaken by a private company (PFI). At our most recent enquiry, this company charges USD 95.00 for its services per certificate of service to be produced. The fee must be paid in advance by the applicant and a corresponding deposit slip submitted. We request that we be requested to effect this payment quickly, and, in particular, that we be informed of the bank details available to the Court for PFI and that the Court

states how proof of the payment made to PFI should be submitted to the Court.

Two certified and two uncertified copies, together with a crossed cheque as advance payment on court fees in the sum of EUR 1,638.00.

BOEHMERT & BOEHMERT

[signature]

Prof. Dr. Jan Bernd Nordemann, LL.M.  
Solicitor

Enclosures:

2 certified and 2 plain copies  
Exhibits K1 to K16  
Crossed cheque

[signature]

[stamp]

Certified True Copy

**Certified**

[seal]

Hamburg Regional Court  
65 \* Hamburg \*

[signature]

Lindner  
Court Employee  
Clerk of the Court's Office

This is to certify that to the best of my knowledge and belief the foregoing is a true, faithful and unabridged translation of the German document [attested copy] before me, the undersigned public translator and court interpreter, fully conversant with the German language and duly sworn to render true German and English translations.

Witness my hand and seal at Hamburg,  
Federal Republic of Germany,  
this 11<sup>th</sup> day of October 2013.

*Ulrike Typke*

Ulrike Typke  
Address:  
Schaeperstueck 5  
22549 Hamburg  
F. R. G.

