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File reference No.: 5 U 76/15

In the matter of

DIN Deutsches Institut für Normung e.V.	vs.	Public.Resource.org, Inc. an Malamud, Carl

we herewith furnish grounds for our petition of September 9, 2015, and respond to the Defendants' statement of grounds of appeal as follows:

The appeal of the Defendants is unfounded and must therefore be dismissed.

It is not right for the Defendants to proceed on the assumption that there is a lack of copyright protectability with regard to the disputed standards. Furthermore, Sec. 5 para. 3 German

Copyright Act (*Urhebergesetz* – UrhG) conforms with constitutional law and European Union law, and also ensures merely in a declaratory way the already existing copyright protection of the disputed DIN-EN standards. The Defendants argue against this, above all in political terms – and this unconvincingly as well – and for the most part fail to provide legal arguments in their statement of grounds of appeal. In particular, they fail to recognize the fact that the German legislators as well as other European legislators or regulators, while recognizing the obligation to publicize (*Publizitätsgebot*), clearly proceed on the assumption of copyright protectability with regard to the presently disputed private normative works (*private Normwerke*). Finally, the statement by the Defendants with respect to the lack of granting rights in favor of the Plaintiff is likewise unconvincing. As the Regional Court of Hamburg has convincingly established, the Plaintiff can successfully invoke the "presumption of conformity" (*Vermutungswirkung*) of Sec. 10 para. 3 UrhG, against which the Defendants have no substantiated counter-argument. The remarks concerning the supposed invalidity of the assignment of rights under antitrust law are not only irrelevant, but, in accordance with Sec. 531 Code of Civil Procedure (*Zivilprozeßordnung* – ZPO), they should additionally not even be taken into account at the appeal stage.

The politically charged nature of the statement of grounds of the appeal made by the Defendants is not surprising. The Defendants are by no means the independent and nonprofit players for whom they claim to be in the statement of grounds of appeal. Rather, one of the largest donors of the Defendants is the internet concern *Google*, and the latter has, due to its internet search engine Google, a great commercial interest in having as much valuable content as possible freely available in the internet. *Google* has provided massive support to the Defendants in recent years and is therefore prominently mentioned on the website of the Defendants, "public.resource.org".

Evidence: Printout of "Public.resource.org" showing the category, "about," **Appendix K47**.

One does not need to wonder why a one-person undertaking such as that of the Defendant would call into question the entire business model of the Plaintiff and of other standards organizations,

as it has been created by the German legislators. Behind all this there are – besides the altruistic motives asserted by the Defendant – important commercial interests of the world's largest internet search engine.

In detail, we hereby respond to the statement of grounds of appeal as follows: