

@import url(../../../../css/generic.css); EUR-Lex - 62002J0109 - EL

Avis juridique important

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62002J0109

????????? ??? ???????????? (?????? ?????) ??? 23?? ?????????? 2003. - ?????????? ???
?????????? ??????????? ??? ?????????????? ?????????????? ??? ??????????. - ??????????
????????? ?????? - .???. ?????? ??? - ?????? ?????????? ?????????? ?????????? ??????????
??? ?? ??????? ?????? ?????? ??? ??? ????? ??????????, ?????? ?????????? ?? ?????? ??
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?? ??? ?????????? ??? ??????????,
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????????????? ??? ?????????? ??? ??????????, ?????????????? ??? ??? W.-D. Plessing ???
M. Lumma,

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????????????? ???????? ?????????? ?????? ?????????????? ?????? ??? ??? ?????????? ???
?????? ???????? ??????? ??????? ??? ????? ??????? ??? ?????? ??? ?????? ??? ??????????
?????????? ?????????? ?????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ???
?????, ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??????????, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??????
12, ?????????? 3, ??????? ??, ????? ?????, ??? ?????? ?????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????, ???
????????? ?? ??? ?????? ?????? ?????? - ??? ?????? ?????? ?????? ?????????????? ????:
?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49), ?? ??? ?????? ??? ?????????? ???
?????? 1999/49/?? ??? ???????????, ??? 25?? ??? 1999, ??? ??????????? ??? ??????
77/388 ?? ??? ??? ?????? ?????? (?? L 139, ?. 27),

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

?????????? ?? D. A. O. Edward, ??????????? ?? ????????, A. La Pergola
?? P. Jann (???????) ???????,

????????? ??????????????: J. Mischo

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

????????? ?????? ??? ?????? ?o? ?????????? ????????,

????? ?????? ?????? ??? ??????? ?? ???? ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
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1 ?? ?????????? ??? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ??? 22 ??????? 2002, ?
????????? ??? ?????????? ?????????? ??????, ?????? ??? ?????? 226 ?, ???????
????????????? ?? ?????????? ??? ? ?????????? ?????? ?????????? ??? ??????????,
????????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? (?? ????: ???) ??? ??
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????????? ??? ??????, ??? ?????????? ??? ?????????? ?????????? ??? ??? ?????????? ??? ??
????????? ?????????? ??? ?????????? ?????????? ??????????, ?????? ??? ?????????? ??? ??
????? ??? ?? ????? 12, ?????????? 3, ??????? ??, ????? ??????, ??? ????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ???
????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? - ??? ????? ?????? ???
????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49), ?? ???
????????? ??? ??????? ??? ?????? 1999/49/?/ ??? ??????????, ??? 25?? ??? 1999, ???
????????? ??? ?????? 77/388 ?? ??? ??? ?????? ?????????? (?? L 139, ?. 27, ???
????: ??? ??????).

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2 ??? ?? ????? 2, ??? 1, ??? ???? ??????, ?????????? ??? ?????? ???????????????
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????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??
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3 ?? ??? 12, ?????????? 3, ??????? ??, ??? ??? ?????? ?????? ?????????? ?? ???:

«? ?????????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ??
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????? ??????????. ??? ??? 1? ?????????? 1999 ??? 31 ?????????? 2000, ?? ??????
????? ??? ?????? ?? ?????? ?????? ??? 15 %.

[...]

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4 ? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?? «????????? ???????
?? ???????????, ??????, ?????, ???????, ?????-????, ???????, ??????, ???????, ???????????
??????, ???????????????, ?????????? ??? ?? ?????? ?????????? ?????????? ??? ???????????
?????» ?????? ??? ?? «???? ?????????????? ??????». ? ?????? ?????????? ??
????????? ?????? [?? ??????] ??????????, ?????????? ?
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5 ?? ??? 12, ?????????? 2, ??? 7, ??????? a, ??? Umsatzsteuergesetz ??? 1999
(????????? ??? 1999 ??? ?? ??? ??? ??? ?????? ???????, BGBI. I, ? 1270)
????????? ?????? ?????????? ???, ??? ??? 7 %, ??? ??? «????????? ??? ??????? ??
??????, ?? ???????, ?? ?????? ??????? ???????, ?? ??????? ??? ?? ???????, ???
?? ??? ??? ?????? ??????? ??????? ??? ?????????? ??? ?????????? ??? ??? ?????? ??????????».

6 ??? ?? ?????????? ?????????? ???, ??? ?? ?????????? ??? Bundesfinanzhof (?????????), ?
????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ??????
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7 ?? ?????? ?????????? ??? 4?? ??? 1999, ? ??????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ???, ??? ??? ??? ???, ? ?????????? ?????? ??? ??????????
????? ?????????? ?????? ?????? ??? ?????????? ???????, ?????? ?????? ??? ?????? 12,
????????? 3, ??????? ?, ??? ?????, ??? ??? ?????, ??? ?????? ??????, ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? ???????, ??? ??? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ???.

8 ?????????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ???, ?????????? ???
????????? ?????? ??? ?????????? ??? ?????????, ?? ?????? ??? 24?? ?????????? 2000,

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

9 ?? ??????? ?? 5?? ??????? 2000, ? ?????????????? ??????????? ??? ?????????? ??????????
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10 ??????????, ?????????? ?? ?? ??? ??????? ?? ??????????????, ?????????? ?? ???????
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11 ? ?????????? ??????? ??? ? ?????????? ??? ??????? ?????? ?????? ???????????????. ??? ???? ???
????? ???, ? ???? ??? ?????????? ?????????????? ??? ?????????? ?? ?????????? ?? ??????????
???????????, ?? ???? ??? ???, ?????????? ?????????????? ? ?????????? ??? ??????? ??
??????????? ?????? ????. ? ???? ??? ?????????? ?????? ??? ?????? ?? ?????????? ??
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12 ???????, ? ????. ??? ?????????????????????? ????????. ??? ????????. ??? ????????. ??? ????????.
???????. ??? ?????????????? ????????. ??? ????????. ??? ??????. ?? ?? ??? ?????? ?????????? ??????????
?????????, ????????. ??? ?????????? ?????????? ??? ????????. ??? ?????? ?????????????? ?????????? ??? ? ??????
????? ?????????????? ?? ??? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ? ??? ?????? ????????,
????? ?????? ?? «????????? ??? ?????????? ?? [...] ?????????? ??????» ?? ?????? ??????????
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13 ? ??????? ???. ?????????? ?????????? ????. ????. ????? ????????. ????. ????. ???. ?????????? ????????.
???????, ????. ???. ?????????? ??'. ????. ?????? ??????. ??????????.

14 ? ?????????? ?????????? ?????? ??? ?????????? ??? ?????????? ?? ??????????. ????????????,
??????, ??? ?? ??????? ??? ?? ??????? ?????? ??????? ??????? ??? ?????? ??? ??????? ???
????????????? ? ??? ?????? ??????? ??? ??????????? ??? ?????? ??? ?????? ??????????. ??? ??????????
?????? ??? ?????????? ???, ? ?????? «Werke [...] von [...] aus?benden K?nstlern» ???
?????? ?????? ??? «?????????? ???», ?????? ??? ??????? ??? ?? ??? ?????? ???
?????? ?? ?????????? ??? ??????? ??? ?????????? ?????????? ??? ?????????? ?? ?????????? ???
??? ?????? ??????????. ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ???
????????????? ? ??? ?????? ??????? ??? ?????????? ???' ?????? ??? ?????? ?????? ??????
????????? ??? ???, ?????????? ??? ?? ?????? ??? ?????????? ?????????? ?????????? ?? ???
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15 ?? ???? ???????????, ?? ?? ???? ?????????? ?? ???? ????? ??????. ?? ??????? ??????
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????? ?? ???? ?????? ????. ??? ???? ??????????? ?????? ????. ?? ???? ?????????? ?? ?? ???
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16 ? ?????????? ?????????? ???????????, ???????, ??? ? ?? ??? ????? ?????? ???????????
?????? ??? ?????????? ??? ????? ?????? ?????????? ??? ??????????? ??? ??? ????? ???????,
???? ?????????? ? ????????, ??? ????? ?????? ?????????? ??? ?????? ??? ?????? ???
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????????? ??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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17 ??????, ??? ???????????????, ?????? ??? ?????????? ?????? ?????? ?????? ? ???????
?????????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????????? ?????? ?????? ???????????
??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ???????????.
???????????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??????, ?? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
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18 ???????, ? ???????? ???????? ?????????? ?????????? ??? ? ???????? ?????????? ??? ???
«nemini licet venire contra factum proprium». ???????????, ??? 13 ?????????? 1997, ???????
?????? [COM (97) 559 ??????] ??? ?????? ?????? ?????? ??? ??? ?? ?????????? ???????????
??? ?????????? ??? ?????????? ?????????? ??? ??? ?????? ??? ?????????? ?????????? ???
????????????? ? ??? ?????? ?????? ??? ? ?????? ?????? ?????? ?????? ??? ??? ??????????????
?' ??? ??????????. ???????, ? ???????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ???
????, ?????? ? ??? ?????? ??? ? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ??????????
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19 ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???????????, ???????????
????????? ??? ?? ??? 12, ?????????? 3, ????????, ??? ?????? ??????, ??? ?????? ???????
?????? ??? ?????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????????? ??? ?????????? ??
????????? ??? ?? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??
????. ???????, ? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ???.

20 ??????, ???????? ??? ?????????? ???, ?? ?????? ??? ?????? ?????? ?? ?????????? ??? ???
??? ?????????? ?????????? ????. ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ???????????, ?
????? ??? ??? ?????????? ????. ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ? ?????????? ???????, ?????? ?????????? ??? ?? ??? ?? ??, ?????? ?? ??
???? ?????????? ? ?? ?? ?????? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??????????
(?. ?????? ??? 11? ?????? 2001, C-267/99, Adam, ?????? 2001, ?. ?-7467, ????? 36).

21 ? ???????? ??????? ??? ???????? ??? ???????? ??? ?????? ?????????? ??? ?????????? ??? ? ??
????? ??????? ??? ???????????, ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ???????, ???????
????? «????????? ??????» ??? ?????? ?? ?????????? ???, ?????? ?????????? ??? ???????
????????? ??? ?????????? , ? ?????, ?????? ??? ??? ?????????, ??? ?????? ?? ?????????? ???
??? ?????? ??? ? ?????? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?????? ???????, ??
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ??????? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ??????? ??

22 ??????????, ??????? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??? ??
?????? ?????? ??? ????? ?????????? ? ?????????? ?????????? ??? ?? ?????? ???
????????? ??? ?????????????? ??? ?????? 20 ??? ?????? ?????????? ??????????.

23 ????????????, ? ?????? «????????? ?????» ???????, ??? ?? ?????? ??? ??? ??????
???? ?? ?????? ?????? ??? ?? ?????? ??????. ? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?? ?????? ?????? ??????. ?? ?????????? ??? ?? ?????????? ??? ?
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????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??????. ???????, ??????????
????? ??? ? ??? ? ?????????? ???????, ?????? ?????????? ??? ?????????? ?????? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????? ?? ?????? ??? ?????? ???
????? ?? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???.
24 ??????, ? ?????? ?????????? ?????????? ??? ?????? ?? ??????????.

25 ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??????????????, ??? ??,
??????, ? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
??? ???, ???????, ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ??? ? ?????? ?????????? ??? ?????? ??? ?????????? ??? «?????????» ??? ? ??????
????????? ???????, ?????????? ?? ???????, ??? ?????? ?????????? ??????. ???????, ?
????? ?????? ?????????? ??? «????????? ??????» ??? ?????????? ??? ?? ?????????? ???
????? ??? ??? ?????? ?????????? ??? ?????? ?? ?????? ?? ?????????? ??????????, ??? ??????
????? ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????. ???????, ??? ?
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????.

26 ?? ??? ?????? ??? ?????? ?????????? ??????????, ? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ?????? ? ?????????? ??? ?
?????? ??? ??? ?????? ?? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
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27 ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ?????????????? ??? ?
????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?
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28 ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ? ?????????? ??? ?
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ??? ?
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????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
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????????? ??? ?????? 12, ?????????? 3, ?????? ??, ?????? ???, ??? ?????? ???.

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29 ??? ?? ???? 69, ?????????? 2, ??? ?????????? ????????????, ? ?????????? ??????????
????????????? ??? ?????????? ?????, ?????? ?????? ?????? ?????? ??? ??????????
?????????. ?????????? ??? ? ?????????? ?????? ??? ?????????? ??? ?????????????? ??????????????
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1) ? ?????????? ?????????? ??? ???????, ?????????? ?????? ?????????? ?????????? ???
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????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ??????, ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??????????
?????????, ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 12, ?????????? 3, ??????
??, ?????? ??????, ??? ?????? ?????? 77/388/???, ??? ??????????, ??? 17?? ??? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ?????? ?????? ??????
???????? - ?????? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ???,
???? ?????? ??? ?????? ??? ?????? 1999/49/?? ??? ??????????, ??? 25?? ??? 1999,
??? ?????????? ??? ?????? 77/388 ?? ??? ??? ?????? ?????????? ??????.

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