

IN-DEPTH

# Art Law

GERMANY



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# Art Law

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*In-Depth: Art Law* (formerly The Art Law Review) is a unique global overview of this dynamic and growing area of legal expertise. With a focus on recent trends and developments in key jurisdictions worldwide, it examines a wide range of topics including art disputes; fakes, forgeries and authentication; art transactions; artist rights; trusts and foundations; and much more.

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# Germany

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## Introduction

Germany has many world-class public museums, a growing number of superb private museums and a thriving contemporary art scene.<sup>[1]</sup> Although being an important country for art creation and fabrication, from a global market perspective and compared to markets such as the United Kingdom and the United States, the German art market is relatively small, with only slightly more than 2 per cent of worldwide turnover being generated in Germany. While the art market in the EU experienced slowing art sales in 2024, decreasing by 8 per cent, the decline in sales in Germany was only 4 per cent in 2024,<sup>[2]</sup> compared to 5 per cent in 2023.<sup>[3]</sup>

Germany ranks among the top five public auction markets for fine art by sales volume, alongside the US, China, France and the UK.<sup>[4]</sup> The share of sales from female artists' works is above average in Germany at 42 per cent, just below the US, which leads with 46 per cent.<sup>[5]</sup>

## Year in review

The following art law topics are currently being discussed in Germany.

1. After the declaration of the 'Best practices for the Washington conference Principles on Nazi-Confiscated Art' on 25 March 2024,<sup>[6]</sup> a draft law aimed at facilitating the return of Nazi-looted art of the German federal government<sup>[7]</sup> was introduced to the German parliament, but was not passed.
2. On 26 March 2025, the Federal Government, the federal states, and the local authorities agreed to replace the Advisory Commission, which had been handling cases related to Nazi-looted art, with a new arbitration tribunal that will issue binding decisions rather than non-binding recommendations.<sup>[8]</sup> The new arbitration tribunal is expected to begin its work in late 2025.
3. The EU-Regulation 2019/880 on the introduction and the import of cultural goods and the new electronic ICG (Import of Cultural Goods)-System is in full effect since 28 June 2025.<sup>[9]</sup> Moreover, the Cultural Property Protection Act (KGSG) has been amended. The amended provisions of the KGSG are in effect since 23 July 2025.<sup>[10]</sup>
4. After long debates about the 19 per cent VAT rate on art, the 2022 EU VAT Directive<sup>[11]</sup> introduced provisions allowing reduced VAT rates. Accordingly, Germany lowered the VAT rate on art to 7 per cent, which is effective since 1 January 2025.
5. A judgment of the German Federal Court of Justice (BGH) has set new standards for determining whether functional objects can be protected under copyright law.<sup>[12]</sup>
6. The implications of AI on artists' copyright remain unclear. In September 2024, the Hamburg Regional Court issued the first decision on AI-driven data mining and its potential implications for copyright infringements.<sup>[13]</sup> In addition, GEMA – the German music collecting society – is the first collecting society worldwide to file lawsuits against AI companies such as SONO AI and ChatGPT for copyright infringement.<sup>[14]</sup>

7. Regarding the pastiche copyright limitation, which was introduced 2021 in the German Copyright Act to facilitate the use of pre-existing works as 'memes' and alike, the Federal Court of Justice referred questions to the European Court of Justice (CJEU) for a preliminary ruling on how the term 'pastiche' should be understood.<sup>[15]</sup> The first German judgment applying this limitation was given in 2021.<sup>[16]</sup>

## Art disputes

### Title in art

#### Passing of title

Generally, according to the German Civil Code, the purchase of any item has two requirements.

1. First, the parties have to conclude a contract (oral or written) containing all essential components of the transaction, such as details of the object of purchase and the purchase price.
2. Second, the transfer of property requires an agreement on the transfer of title and the handing over of the object to the buyer. If the object is already in the possession of the buyer, it is sufficient to agree on the transfer of title. Alternatively, a loan between the buyer and the seller or between the buyer and a third party suffices (indirect possession). Finally, if a third party (e.g., a museum), is in possession of the sold object, its physical transfer may be replaced by transferring to the buyer the claim for surrender against the third-party possessor.

#### Good-faith acquisition

In general, title can be acquired in a transaction even if the seller or provider is not the owner – unless the acquirer is not in good faith (i.e., if the acquirer either knows that the seller is not the owner of the object or the circumstances of ownership of the object are grossly negligently ignored).

There is no general civil law obligation to investigate the title of the seller, but due diligence becomes necessary under unusual circumstances (e.g., flea market deals, cash deals or other suspicious circumstances). In addition to the rather relaxed due-diligence obligations according to civil law, the Cultural Property Protection Act, which forbids the offer or sale of stolen items, provides for more detailed due-diligence obligations.<sup>[17]</sup>

There is no acquisition in good faith if the item was stolen, lost or otherwise left the owner's possession against its will.<sup>[18]</sup> An exception to this rule, allowing for good-faith acquisition even for stolen goods, is made for money (coins, notes, etc.) and for items that are sold at public auction<sup>[19]</sup> – an extremely relevant (and often criticised) exception for the art market.

Furthermore, German civil law recognises the legal principle of usucapion, according to which it is possible to become the owner of any item (even stolen) after directly possessing it for 10 years in good faith. This makes restitution claims difficult if stolen art has been in the hands of the current possessor for a long time.

### Burden of proof

The burden of proof makes it difficult for a former owner who was dispossessed to reclaim an artwork from the current holder.

Generally, the burden of proof lies with the claimant. Consequently, a claimant claiming ownership has to prove that: (1) they once acquired ownership; (2) ownership was not lost; and (3) the current holder acquired the object in bad faith or was in good faith for less than 10 years.<sup>[20]</sup>

Moreover, German civil law provides for a presumption that the possessor of an object is the owner of the object. Also, due to this, the burden of proof lies with the previous owner, not with the current holder.<sup>[21]</sup>

Finally, regarding usucapion, it generally suffices if the current holder proves that they have had an item in their possession for at least 10 years. The previous owner must prove that the current holder acquired the object in bad faith or discovered that they are not entitled to ownership within the 10-year period.<sup>[22]</sup> The Federal Court of Justice further specified that the current holder claiming usucapion must, at least, explain how the work was acquired. If this explanation proves to be wrong, they cannot claim that ownership was acquired through usucapion.<sup>[23]</sup>

## Nazi-looted art and cultural property

### Nazi-looted art

Cases regarding Nazi-looted art are rarely litigated before state courts in Germany because there has usually either been a subsequent good-faith acquisition or all limitation periods have expired.<sup>[24]</sup> There is no specific exception to the maximum limitation period of 30 years in these cases, which was and is still heavily criticised.<sup>[25]</sup> Hence, such an exception was included in the draft law of the former Federal Government aimed at facilitating the return of Nazi-looted art in 2024, whereby a limitation period could not be invoked if the possessor had not acquired the cultural property in good faith. The law was not passed due to the German parliament dissolving during its legislature period in 2024.<sup>[26]</sup> However, such a regulation was expected to fail regularly in practice anyway, due to difficulties in providing evidence.

Nevertheless, it is possible to successfully reclaim looted artworks in Germany, especially if the current holder is a public museum. This is because, after the Washington Conference in 1998, a common declaration of the federal government and the federal states to find and restitute Nazi-looted art<sup>[27]</sup> was decided in 1999, according to which German museums must respect the Washington Principles<sup>[28]</sup> by way of 'self-obligation'.<sup>[29]</sup> Many amicable restitutions from public museums happen on this basis every year.

## Replacement of the Advisory Commission by a new Arbitration Tribunal

Following the Washington Principles and the common declaration of the German federal government and the federal states in 1999, the Advisory Commission was established in 2003 in Germany as a dispute resolution mechanism for unresolved restitution cases. The Advisory Commission issued non-binding recommendations on the return of cultural goods stolen or otherwise taken from its owners between 30 January 1933 and 8 May 1945 (during the National Socialist regime).<sup>[30]</sup> The Commission consisted of 10 very senior, experienced authorities with backgrounds in law, history and philosophy. In its 22 years of work the Commission issued only 25 recommendations; the low number is due to the fact that initiating a procedure required the prior consent of the institution holding the cultural good – a significant hurdle in practice. This was heavily criticised for a long time,<sup>[31]</sup> such criticism also being mirrored in the Best Practices from 2024.<sup>[32]</sup>

The points of criticism (non-binding nature of the recommendations; impossibility to unilaterally initiate proceedings) led to a reform that resulted in a newly established arbitration tribunal.<sup>[33]</sup> This newly established arbitration tribunal is expected to commence its work before the end of 2025. Its decisions will be legally binding for the parties;<sup>[34]</sup> it can be unilaterally called upon, as the Federal Government, federal states and local authorities are required to issue 'standing offers', thereby obligating their institutions to participate in proceedings; and, in addition, it will operate under a more precise assessment framework that considers the specific legal and historical complexities of evaluating Nazi-looted art.<sup>[35]</sup>

The arbitration tribunal was established through an administrative agreement between the Federal Government, the federal states and the local authorities in March 2025.<sup>[36]</sup> The legal entity responsible for such arbitration is the German Lost Art Foundation, based in Magdeburg; the seat of the arbitration panel is Berlin.<sup>[37]</sup> The parties may determine the place of arbitration themselves.<sup>[38]</sup>

The arbitration tribunal is composed of five interdisciplinary members,<sup>[39]</sup> including three lawyers (judges or lawyers qualified for judgeship) and two individuals with expertise in the history of Nazi era or provenance research.<sup>[40]</sup> Each party may select one lawyer and one expert. The selected arbitrators then choose a presiding arbitrator, preferably a judge.<sup>[41]</sup> Arbitrators are appointed for a term of five years, which may be extended by an additional five years. If a case continues beyond this period, their term ends at the conclusion of the arbitration proceedings.

If the claimant is a public institution preserving cultural property, a preliminary procedure is required to seek an amicable settlement. This procedure is deemed to have failed if no agreement has been reached within 20 months of the initial contact, or if the cultural institution fails to respond within three months, or fails to announce or to undertake any actions to examine the case within six months.<sup>[42]</sup> If a resolution of the case cannot be reached due to ongoing provenance research, or if the claimant fails to provide necessary documents, the arbitration tribunal may postpone the proceedings for a reasonable period of time.<sup>[43]</sup>

The evaluation framework<sup>[44]</sup> stipulates that the procedure can be pursued if the cultural property is located in Germany; thus, it is independent of the place of loss (including flight goods). In principle, the parties bear the burden of proof for the facts favourable to them, and the parties must fully disclose information and documents to each other.

When clarifying the conditions for a fair and just solution, point 4 of the Washington Principles must be considered, which states that due to the passage of time and the special circumstances of the Holocaust, gaps and uncertainties regarding the question of origin are inevitable. That is why presenting circumstantial evidence or indirect evidence for requirements shall be sufficient in certain cases.<sup>[45]</sup> Various presumption rules will also facilitate the presentation of evidence, such as the presumption that the possessor of a cultural good between 30 January 1933 and 8 May 1945 was its owner,<sup>[46]</sup> and the presumption that Jewish persons and persons who can be identified as Sinti and Roma faced collective persecution between 30 January 1933 and 8 May 1945.<sup>[47]</sup>

#### Cultural property protection law

The aim of the German Cultural Property Protection Act is twofold: the protection of important national cultural property against removal from Germany<sup>[48]</sup> and the return of illegally removed cultural property.<sup>[49]</sup> The Cultural Property Protection Act has long been the subject of debate and criticism for its overly bureaucratic provisions. Since 23 July 2025, amendments are in effect that aim at facilitating international loans of cultural goods between museums for the purpose of exhibitions, research and restoration projects as well as reducing bureaucracy for traders regarding the fulfilment of due diligence obligations.

#### Export licensing

An export licence needs to be obtained for the export of works of art that exceed certain age and value thresholds, even within the European Union's internal market (depending on the type of cultural property, ranging from no age threshold to 50 or 100 years and from no value to €150,000 in value (e.g., for paintings), depending on whether the work is exported to a country outside of the EU or within the EU. In cases of international loans, an export licence for national cultural property may now be granted for 10 years instead of five.<sup>[50]</sup> It is even possible to extend the export licence retrospectively.

An export licence is mandatory if these thresholds are met.

A licence is granted if the item concerned is not included on the list of 'valuable national cultural property' or found to be of 'national importance'. The process of listing can be commenced regardless of the age or value of the cultural goods.<sup>[51]</sup>

Listed items can no longer be permanently or temporarily exported, unless their export is permitted by the respective competent federal or central state authority.

#### Import restrictions

According to the German Cultural Property Protection Act (KGSG), introduced in 2016, an item can only be legally imported into Germany if it has been legally exported from its country of origin.<sup>[52]</sup> Therefore, all applicable legislation in the country of origin and all applicable international laws have to be respected. Sanctions in cases of non-compliance are severe (up to five years' imprisonment, fines and confiscation of the item).<sup>[53]</sup> Also, the law provides for public law repatriation claims in cases of unlawfully removed cultural property.<sup>[54]</sup>

In addition, EU-Regulation 2019/880 and Commission Implementing Regulation 2021/1079 are in effect,<sup>[55]</sup> which, however, only apply to cultural objects that were created or discovered outside of the EU.<sup>[56]</sup> An import licence is required for all types of archaeological objects created more than 250 years ago, irrespective of their value. For certain other objects that are at least 200 years old and are worth at least €18,000, a registration of the object and a self-declaration as to its legal origin suffices. In addition, the Regulation provides that EU countries must put an IT system into place to support the import formalities. This provision has been in full effect since 28 June 2025. The EU-Commission developed a ICG (Import of Cultural Goods)-System to carry out the new import requirements (including the issuing of import licences) electronically. The EU-Commission even published a User Guide for the ICG-System.<sup>[57]</sup>

Due diligence

Cultural protection law, rather than civil law, provides for certain due diligence obligations.<sup>[58]</sup>

Whoever puts cultural goods on the market must make sure that the goods are not stolen, illegally excavated or illegally imported. As far as non-professionals are concerned, further inquiry is only necessary if there are any suspicious circumstances.<sup>[59]</sup>

In addition, professionals are obliged to:

1. establish the name and address of the seller, the consignor, the person acquiring the property or the client;
2. prepare a description and an illustration suitable for the identification of the cultural property;
3. check the provenance of the cultural property;
4. examine documents proving lawful import and export;
5. examine prohibitions and restrictions on import, export and trade;
6. check whether the cultural property is registered in publicly accessible directories and databases; and
7. obtain a declaration from the consignor or vendor that the latter is entitled to dispose of the goods.

According to the wording of the law, it is forbidden to place any items on the market that were stolen, illegally excavated or illegally imported. Sales of these items are null and void.<sup>[60]</sup> Thus, someone who places a work on the market must inquire into the work's provenance. Generally, this inquiry is limited to what is economically reasonable.<sup>[61]</sup> According to the recently amended regulations of the KGSG, the provisions on additional due diligence obligations for dealers, such as those relating to lawful acquisition or import and export, will now only apply to items worth €5,000 or more, instead of €2,500.<sup>[62]</sup> However, this limitation does not apply to objects suspected of having been looted during the Nazi era.<sup>[63]</sup> These items can only be sold if this suspicion is eliminated through provenance research or if an amicable solution has been reached.

Limitation periods

There is no specific limitation period for art claims in German law – they fall under the general limitation periods governing all civil law claims.

The following general limitation periods are important in the context of art cases.

1. Warranty claims regarding sales of goods are time-barred 30, five or two years following the transfer of the goods,<sup>[64]</sup> and almost all cases concerning the sale of art will fall under the two-year clause.
2. A declaration of will that was based on deceit can be contested for up to one year after the deceived person discovers the deception and up to, at the latest, 10 years after the declaration of will was given.<sup>[65]</sup>
3. A claim of the owner of a work against the current holder of the work, who did not acquire any title (i.e., a claim against the possessor of a stolen item) is time-barred after 30 years after the loss of the item (i.e., the theft).<sup>[66]</sup> However, if the possessor of the stolen item both acquired it and retained it in good faith for a period of 10 years, usucapion takes place after that 10 years and the original owner can no longer reclaim the stolen item.

## Alternative dispute resolution

Besides the Alternative dispute resolution (ADR) in the field of restitution, such as the former Advisory Commission and the new arbitration tribunal, ADR has also been put in place in other areas of art law; there are several arbitration bodies worldwide that can deal with art-related cases, including the World Intellectual Property Organization,<sup>[67]</sup> the Court of Arbitration for Art<sup>[68]</sup> and the Venice Chamber of Arbitration's<sup>[69]</sup> art sector. In addition, the German Arbitration Institute<sup>[70]</sup> has expressed an interest in art-related cases.<sup>[71]</sup>

## Fakes, forgeries and authentication

Forgeries continue to raise complex criminal law and civil law questions.<sup>[72]</sup>

According to the recently revised chapter on sales in the German Civil Code, goods are free from material defects if they meet the subjective and objective requirements.<sup>[73]</sup> Part of the subjective requirements are the agreed upon quality and the agreed upon suitability for use.<sup>[74]</sup> The quality of an object consists of any features that the parties have agreed upon.<sup>[75]</sup> Therefore, in the context of an authenticity dispute, it is key to establish what exactly the parties agreed upon. This agreement does not necessarily need to be explicit, it can also be implied (e.g., by referring to an expert opinion, a catalogue raisonné, an artist's signature or a certificate of authenticity during the sales negotiations or in an auction house's catalogue). Courts tend to focus on the details of the individual case and are sometimes hesitant to assume a binding agreement regarding the authenticity of an item.<sup>[76]</sup> Therefore, from a buyer's perspective, it is advisable to include an explicit agreement.

If no quality (e.g., authenticity) has been agreed upon, the object (the artwork) meets the objective requirements if it is suitable for its customary use and if its quality is of the standard expected in goods of the same kind.<sup>[77]</sup> To determine the quality that the buyer

can expect, public statements made by the seller – again, references to expert opinion, a catalogue raisonné, etc. – can play an important role.<sup>[78]</sup> If the item is defective, the buyer has different rights, most importantly the right to revocation of the agreement<sup>[79]</sup> or to demand damages or reimbursement of futile expenditure.<sup>[80]</sup>

In addition to these specific remedies, the buyer can retroactively cancel the contract under certain circumstances (e.g., in the case of deception).<sup>[81]</sup> This cancellation right can be exercised for up to one year after becoming aware of the deception, or, at the latest, 10 years after conclusion of the contract. The consequence is the reversal of the transaction.<sup>[82]</sup>

## Art transactions

### Private sales and auctions

There are no specific rules for private sales. Legally, a private sale can be structured in different ways, such as a simple sales contract or, if an intermediary is involved, such as an agency or a commission, following the rules laid down in the Commercial Code.

Auctions are specifically regulated; to conduct auctions, auctioneers need a permit.<sup>[83]</sup> Auctioneers' ways of doing business are further specified in public law regulations.<sup>[84]</sup>

Legally, one of the differences between private sales and auctions is that an auctioneer can transfer title to a good-faith purchaser when an item is sold at a public auction, even if the item was stolen.<sup>[85]</sup> However, in a private sale, the buyer can negotiate contractual guarantees.

### Art loans

For works on loan in German museums, there is the possibility to apply for immunity from seizure: to protect works of art that are temporarily exhibited in Germany from seizure, the owner can apply for a legally binding commitment to return the loan.<sup>[86]</sup> The application for this legally binding commitment must be submitted to the competent authority in ample time before the import; the duration of immunity from seizure shall not exceed two years but can exceptionally be extended to four years.

If immunity from seizure is granted, no conflicting third-party rights may be asserted against the lender's right to the return of the item. Legal action for recovery, arrest, attachment or seizure as well as official acts of enforcement or seizure are not permitted before the item is returned to the lender.

Moreover, immunity from seizure also prevents the item from being added to the list of cultural property of national significance.

No export licence is needed for the return of the property.

Once granted, immunity from seizure may not be cancelled, withdrawn or revoked.

Public museums in Germany often arrange for a public law guarantee of reimbursement by the state in the event of loss or damage instead of insuring the item, if this is acceptable to the borrower. In this case, it is important to specifically define liability.

## Cross-border transactions

For further details regarding import and export restrictions, see 'Nazi-looted art and cultural property', above.

From a tax point of view, the following generally applies to cross-border transactions.

1. If the seller is an entrepreneur whose turnover exceeds a certain threshold, any sale of goods that takes place in Germany is subject to German VAT. The sale of goods is regarded as taking place in Germany if the goods are located and sold in Germany.
2. After a decade of trade associations' lobbying efforts, a new EU tax directive<sup>[87]</sup> has enabled the reduction of VAT on artworks to 7 per cent. The German legislature has implemented this directive into national law, and since 1 January 2025, VAT on artworks are permanently lowered back from 19 per cent to 7 per cent.
3. For non-EU buyers, a VAT exemption may apply if the goods are bought in Germany and delivered to the home country of the non-EU resident (to be assessed on a case-by-case basis).<sup>[88]</sup>
4. Deliveries to entrepreneurs in other EU countries may qualify for an exemption, so that the sale is exempt from German VAT, with the VAT of the other EU state applying instead (also to be assessed on a case-by-case basis).<sup>[89]</sup>
5. Import from a non-EU state might give rise to import VAT as well as customs duties.
6. There is the possibility of temporarily importing artwork for less than 24 months without any customs duties being charged, if the import is for public exhibition and sale.<sup>[90]</sup>

Germany is a signatory to the 1970 United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property but has not signed the 1995 International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects.

## Art finance

Certain banks in Germany offer loans with artwork as collateral. The legal structure used for the collateral is a pledge in most cases, which means that the artwork must be stored with the bank. As there is no register of security interests in Germany and because of the possibilities of good-faith acquisition, most banks refrain from using other legal structures allowing the artwork to remain with the beneficiary of the loan. Some banks make exceptions in specific circumstances, however.

Similarly, some companies and dealers offer loans to their clients. If this is done on a regular basis, a banking licence might be required.

The art trade as well as art warehouses are subject to the anti-money laundering regulations of the updated German Anti-money Laundering Code,<sup>[91]</sup> transposing the EU's Fifth Anti-Money Laundering Directive.<sup>[92]</sup> In practice, this means a requirement for know-your-customer obligations, such as scans of IDs and passports<sup>[93]</sup> for any transaction or series of connected transactions involving a value of €10,000 or more; the scan must be kept for five years<sup>[94]</sup> after the end of the contractual relationship. If the buyer is a corporation, it is necessary to inquire about the ultimate beneficiary, to document this inquiry and keep the documentation for five years. In cases of doubt or if the ultimate beneficiary is not indicated in the transparency register, an enquiry with the national financial intelligence unit is necessary.<sup>[95]</sup>

## NFTs and tokenised artworks

As the market for NFTs appears to be shrinking<sup>[96]</sup>, the only aspect of interest here is the Regulation on Enhanced Due Diligence for the Transfer of Crypto Assets, as NFTs are predominantly traded with cryptocurrency. The purpose of this Regulation is to prevent money laundering.<sup>[97]</sup> The EU regulation MiCAR of 2023 excludes crypto-assets that are unique and not fungible with other crypto-assets and shall expressly not apply to digital art and such crypto-assets that represent physical assets that are unique and non-fungible.<sup>[98]</sup>

## Artist rights

### Protected artworks

As long as an artwork qualifies as a personal intellectual creation, it is protected under German copyright law; copyright arises automatically upon the creation of the work and belongs to the author.<sup>[99]</sup>

According to the Federal Court of Justice, for a work to be considered a personal creation, it must bear an individual character whose aesthetic content has reached a level that, in the view of those receptive to art and reasonably familiar with artistic perspectives, qualifies it as an artistic creation.<sup>[100]</sup> Such assessment can become particularly difficult in the case of works of applied art – such as design objects including furniture or fashion – as it is difficult to determine whether the threshold of a creative achievement has been reached beyond purely functional or technical aspects.<sup>[101]</sup> In general, the threshold for protection under copyright law should not be set too high in order to avoid depriving an author of their rights too easily. Nevertheless, the German Federal Court of Justice ruled in its *Birkenstock* decision in February 2025 that the Birkenstock sandal was not sufficiently artistically created and therefore not protected under German copyright law: According to the court, it did not differ significantly from other shoes, its form derived from craftsmanship rather than artistic skill, and there was no evidence that the creator of the sandal had any particular artistic intention at the time of its creation.<sup>[102]</sup>

### Moral rights

The moral rights of the author consist of the rights:

1. to publish a work for the first time,<sup>[103]</sup>
2. to be named (or not) as the author (attribution right);<sup>[104]</sup> and
3. to ensure that the work is not distorted.<sup>[105]</sup>

Moral rights expire 70 years after the author's death.

In practice, claims against distortion may be particularly relevant in the context of architecture, if a building is later modified, as well as with public art that is subsequently moved or modified.

In 2019, the Federal Court of Justice specified the scope of the author's claim against distortion stating that destruction of an artwork by its owner may also constitute distortion.<sup>[106]</sup>

## Resale rights

In the EU in general and in German copyright law in particular, copyright owners receive resale royalties for 70 years following the artist's death, if an original artwork (including an original photograph) is resold and a dealer is involved as purchaser, vendor or intermediary.<sup>[107]</sup> If the vendor is acting as a private individual, the professional dealer involved as purchaser or intermediary shall be jointly and severally liable in addition to the vendor; however, in the relationship between the vendor and dealer, it is the vendor alone who shall be liable for payment. This rule does not apply for sales of less than 400€ or to works of applied art or architecture.

Resale royalties amount to a certain percentage of the sales price.<sup>[108]</sup>

To be able to assert a claim for resale rights, the law provides for a right to request the provision of information from an art dealer or auctioneer (e.g., the sales price) for past sales of the artist's work (going back three years); this includes the name and address of the vendor, if necessary for the assertion of the claim. However, this information request may only be made by a collecting society, which can even ask for access to the account books or to other documents if there is reasonable doubt as to the accuracy or completeness of the information provided. An art dealer or auctioneer may refuse to provide the name and address of a vendor if the dealer pays the share to the author.

## Economic rights

German copyright law provides, as a principle, that the author of a work should be appropriately remunerated for its exploitation. German copyright law provides for the following economic rights:<sup>[109]</sup>

1. the right to make a work available to the public;
2. the right of distribution;
3. the right of reproduction; and
4. the right of broadcasting.

Generally, each use of an artwork or its reproduction other than exhibiting the original artwork, requires the prior consent of the artist.

According to a case decided by the Court of Justice of the European Union,<sup>[110]</sup> this is slightly different in the case of 'framing' (i.e., the direct embedding of work from another website by automatic links). According to the Court, framing only constitutes an infringement if the copyright holder took technical measures to protect the content from being framed.

Reproduction rights, as well as 'online rights' and broadcasting rights, are administered by the German copyright collecting society, VG Bild-Kunst, or its international sister copyright collecting societies, if the artist concerned is a member.

Total buy-out contracts are regarded very critically and are often viewed as being invalid, particularly if the law of general terms and conditions applies.

### Limitations to copyright law

One of the copyright challenges relating to visual arts is the use of pre-existing work by the public and by other artists. The German Copyright Act exhaustively lists limitations, such as the freedom of panorama, which gives the public the right to reproduce, distribute and make available works of art that are permanently located on public streets or squares by photographing or filming them.<sup>[111]</sup> In addition, the right to quote allows the use of a reproduction for the purpose of quotation, provided that the extent of the use is justified by the specific purpose.<sup>[112]</sup> As images must necessarily be quoted as a whole, in practice, a quote is only justified (if at all), if the quoting publication discusses the image scientifically.

In 2021, copyright limitations underwent an important change: the provision allowing for 'free use' was removed and the 'pastiche limitation' was inserted instead.<sup>[113]</sup> This change did not simplify the distinction between the acceptable use of an already existing copyrighted work and an infringing use. The legal basis for the pastiche exception originates from the Information Society ('InfoSoc') Directive of 2001, which does not, however, provide for full harmonisation.<sup>[114]</sup> The reason for implementing this limitation in 2021 was to legalise (at least to a certain extent), the art form of memes and remixes. The new limitation also covers caricatures and parodies. In the first German court decision by the Berlin Regional Court applying the pastiche limitation, the use of an entire component of an existing artwork in a painting was found not to be infringing.<sup>[115]</sup> In the case *Metall auf Metall* the Federal Court of Justice referred the following questions to the European Court of Justice for a preliminary ruling:

1. whether the purpose of pastiche within the InfoSoc-Directive is a catch-all clause at least for artistic engagement with a pre-existing work or other object of reference, including sampling and whether the concept of pastiche is subject to limiting criteria, such as the requirement of humour, stylistic imitation or tribute; and
2. whether the use for the purpose of pastiche requires the determination of an intention on the part of the user to use copyright subject matter for the purpose of a pastiche, or whether it is sufficient for the pastiche character to be recognisable for a person familiar with the copyright subject matter who has the intellectual understanding required to perceive the pastiche.

The oral hearing on this matter took place on 14 January 2025. The Advocate General Emiliou's opinion of 17 June 2025 has already been published.<sup>[116]</sup>

Furthermore, the legality of using copyrighted works for the purpose of training AI systems remains unclear; especially, whether such training may be admissible by text and data mining limitations,<sup>[117]</sup> which were incorporated into the German Copyright Act in 2021. The Hamburg Regional Court was the first European court to issue a ruling on this matter in September 2024,<sup>[118]</sup> deciding that the reproduction of copyrighted works by a non-profit research association in order to create training databases – that may be used for training AI systems – is permitted as text and data mining for scientific purposes.<sup>[119]</sup> However, whether an AI may actually be trained using such a database was expressively not relevant to the decision and therefore not ruled upon. In an *obiter dictum*, the court made important remarks on the concept of a machine-readable opt-out,<sup>[120]</sup> stating that 'machine-readable' must at least encompass what is also human-readable. Thus, a prohibition on use stated in a website's terms and conditions (AGB) must be detectable and, as such, sufficient. The claimant has lodged an appeal against the judgment; the decision of the next higher court (Higher Regional Court of Hamburg) is therefore awaited.

## Trusts, foundations and estates

There is no legal entity such as an 'estate' in German law. If an artist or a collector dies without estate planning, the heirs simply step into the shoes of the deceased person.<sup>[121]</sup> If there are several heirs, they will become a community of heirs (legally a community of part-owners). An inheritance can either be administered as a community or distributed.

During the lifetime or after the death of a collector or artist, there are different options to structure a collection or an artist's legacy.

A rather classical option is to set up a private foundation, which, if it is recognised as being charitable, can lead to considerable tax benefits. To set up a foundation, the founder must establish, via a public administrative body, that the foundation can permanently pursue its (charitable) purpose in a self-sustaining way with its assets. In particular, in times of very low interest rates or inflation, it takes a considerable financial effort to set up a foundation. Moreover, the foundation must have a long-term objective. As an alternative to the classical foundation, which has the purpose of existing forever, foundations can be set up for a limited amount of time only (for a minimum of 10 years, however) and these use their own assets to accomplish this purpose.<sup>[122]</sup> Following the latest reform of the law applying to foundations in the German Civil Code in July 2021,<sup>[123]</sup> it is possible to transform a foundation with a long-term objective into a 'consumption foundation' with a limited term if it is foreseeable that the foundation is unable to support itself any longer. However, this requires the consent of the foundation supervisory authority. Despite this new possibility, a foundation is not the most flexible structure.

Alternatively, it is possible to set up a limited liability company or an association or other type of entity for an estate.

All of these entities can, if they pursue a charitable purpose as defined by the law, apply for official non-profit status, enabling them to receive charitable gifts and obtain tax benefits.

No gift or inheritance tax applies to gifts or bequests to non-profit organisations and non-profit museums.

Giving or bequeathing artwork can be beneficial in terms of gift/inheritance tax. Generally, the rate of gift/inheritance tax is currently levied at 30 per cent, 43 per cent or even 50 per cent in certain cases, depending on the asset type or degree of kinship of the parties. Gifts or bequests of artworks can be tax-exempt to up to 60 per cent, or even 100 per cent under certain additional conditions, if there is a public interest in safeguarding the artwork and if they are publicly accessible for at least 10 years.<sup>[124]</sup>

## Outlook and conclusions

Art law in Germany is a complex field, as different kinds of general legal rules according to civil law, commercial law, public law and criminal law, as well as certain art-specific legal rules (e.g., those concerning cultural property), in addition to 'soft law' such as the Washington Principles or trade customs, apply. Art law in Germany is permanently evolving through case law and new legislation.

## Endnotes

1 Although sales in the Post-War and Contemporary sector in Germany declined by 8 per cent in 2024 (Clare McAndrew, Art Market Report 2025 (The Art Basel § UBS, 2025), p. 197), this decline followed a significant increase of 24 per cent in the previous year (Clare McAndrew, Art Market Report 2024 (The Art Basel § UBS, 2024), p. 178). <sup>^</sup> [Back to section](#)

2 Clare McAndrew, Art Market Report 2025 (The Art Basel § UBS, 2025), p. 29. <sup>^</sup> [Back to section](#)

3 Clare McAndrew, Art Market Report 2024 (The Art Basel § UBS, 2024), p. 28. <sup>^</sup> [Back to section](#)

4 Clare McAndrew, Art Market Report 2025 (The Art Basel § UBS, 2025), p. 163. <sup>^</sup> [Back to section](#)

5 Ibid., p. 87. <sup>^</sup> [Back to section](#)

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<https://www.state.gov/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art/>. <sup>^</sup> [Back to section](#)

7 Draft Law of the German Federal Government, 9 October 2024, Drucksache 20/13258,

<https://dip.bundestag.de/vorgang/gesetz-zur-erleichterten-durchsetzung-der-r%C3%BCckgabe-von-ns-verfolg>. <sup>^</sup> [Back to section](#)

- 8 Administrative Resolution, 26 March 2025,  
<https://www.kmk.org/aktuelles/artikelansicht/verwaltungsabkommen-zur-einrichtung-einer-schiedsgerichtsbarke>  
^ [Back to section](#)
- 9 EU-Regulation 2019/880 of 17 April 2019,  
<https://eur-lex.europa.eu/eli/reg/2019/880/oj>. ^ [Back to section](#)
- 10 The Cultural Property Protection Act (KGSG), 31. July 2016 BGBl. I S. 1914, last amended by Art. 1 17 July 2025 BGBl. 2025 I Nr. 167. ^ [Back to section](#)
- 11 Directive (EU) 2022/542 of the Council of 5 April 2022 amending Directives 2006/112/EG and (EU) 2020/285 as regards rates of value added tax; see Section V.iii. ^ [Back to section](#)
- 12 Federal Court of Justice, judgment dated 20 February 2025, Az. I ZR 16/24, in: ZUM 2025, 335 (Birkenstock Shoes). ^ [Back to section](#)
- 13 Hamburg Regional Court, judgment dated 27 September 2024, Az. 310 O 227/23. ^ [Back to section](#)
- 14 <https://www.gema.de/de/aktuelles/ki-und-musik/ki-klage>. ^ [Back to section](#)
- 15 See Section VI.v. ^ [Back to section](#)
- 16 See Section VI.v. ^ [Back to section](#)
- 17 Section 40 et seq. of the German Cultural Property Protection Act (KGSG). ^ [Back to section](#)
- 18 Section 935, Paragraph 1 of the German Civil Code (BGB). ^ [Back to section](#)
- 19 id., Paragraph 2. ^ [Back to section](#)
- 20 Grüneberg-Herrler, Commentary on the BGB, 82, Section 932, No. 15. ^ [Back to section](#)
- 21 Section 1006, BGB. ^ [Back to section](#)
- 22 id., Section 937. ^ [Back to section](#)
- 23 Federal Court of Justice, judgment dated 19 July 2019, Az. V ZR 255/17. ^ [Back to section](#)

- 24** In a recent judgment of the Federal Court of Justice from 2023 (Federal Court of Justice, judgment dated 21 July 2023, Az. V ZR 112/22), an art collector failed in his attempt to have an entry about a painting by the painter Andreas Achenbach deleted from the Lost Art database. The Federal Supreme Court denied an encroachment on property by the search report of a cultural asset based on true facts. Consequently, this does not justify a claim by the current owner against the initiator of the report to request deletion. The court explains that the search report only refers to the former ownership of the work of art and the circumstances of the loss, and no statements are made about the current ownership, so that the owner's right of disposal is not restricted. ^ [Back to section](#)
- 25** <https://www.beratende-kommission.de/de/kommission>; Memorandum to the public, demanding German politics to pass a restitution regulation, <https://www.beratende-kommission.de/de/presse#s-04-september-2023>. ^ [Back to section](#)
- 26** In response to former Chancellor Olaf Scholz's vote of no confidence in 2024, the Federal President dissolved the 20th German Parliament (Bundestag) and announced elections for early 2025. ^ [Back to section](#)
- 27**  
[www.kulturgutverluste.de/Webs/DE/Stiftung/Grundlagen/Washingtoner-Prinzipien/Index.html](http://www.kulturgutverluste.de/Webs/DE/Stiftung/Grundlagen/Washingtoner-Prinzipien/Index.html).  
^ [Back to section](#)
- 28** *ibid.* ^ [Back to section](#)
- 29** Declaration by the federal government, the federal states and the central municipal organisations on the tracing and restitution of cultural property confiscated as a result of Nazi persecution, in particular from Jewish ownership (joint declaration), available, in German, at [www.kulturgutverluste.de/Content/08\\_Downloads/DE/Grundlagen/Gemeinsame-Erklaerung/Gemeinsame-Erkl](http://www.kulturgutverluste.de/Content/08_Downloads/DE/Grundlagen/Gemeinsame-Erklaerung/Gemeinsame-Erkl)  
^ [Back to section](#)
- 30** Administrative Agreement (Verwaltungsabkommen), 26 March 2025, <https://www.kmk.org/aktuelles/artikelansicht/verwaltungsabkommen-zur-einrichtung-einer-schiedsgerichtsbarke>  
^ [Back to section](#)
- 31**  
<https://www.bundesregierung.de/breg-de/bundesregierung/bundespresseamt/roth-kuendigt-reform-der-beraten>  
^ [Back to section](#)
- 32** Point I. of the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art. ^ [Back to section](#)
- 33** The Commission will continue its work until the arbitration tribunal has been finally established and commenced its work, expectedly in autumn 2025. ^ [Back to section](#)
- 34** Section 27 para. 4 of the Rules of Arbitration (Schiedsordnung). ^ [Back to section](#)

- 35** Assessment framework (Bewertungsrahmen) as Amendment 2 to the Rules of Arbitration,  
[https://kulturstaatsminister.de/fileadmin/user\\_upload/Downloads/Aufarbeiten/Verwaltungsabkommen\\_Schiedsg](https://kulturstaatsminister.de/fileadmin/user_upload/Downloads/Aufarbeiten/Verwaltungsabkommen_Schiedsg)  
^ [Back to section](#)
- 36** id, Section 2 para. 1. ^ [Back to section](#)
- 37** id, Section 2 para. 1. ^ [Back to section](#)
- 38** id., Section 2 para. 2. ^ [Back to section](#)
- 39** Amendment 1 to the Rules of Arbitration (Schiedsrichterverzeichnis). ^ [Back to section](#)
- 40** Section 10 para. 4 of the Rules of Arbitration Court. ^ [Back to section](#)
- 41** id., Section 12. ^ [Back to section](#)
- 42** id., Section 7. ^ [Back to section](#)
- 43** id., Section 9 para. 3. ^ [Back to section](#)
- 44** Amendment 2 to the Rules of Arbitration (Bewertungsrahmen). ^ [Back to section](#)
- 45** id., Section 2.2.1. ^ [Back to section](#)
- 46** id., Section 5.2. ^ [Back to section](#)
- 47** id., Section 7.2. ^ [Back to section](#)
- 48** See Section 1, Nos. 1–3, KGSG. ^ [Back to section](#)
- 49** id., Nos. 4–6. ^ [Back to section](#)
- 50** id., Section 22 para. 3. ^ [Back to section](#)
- 51** The list and thresholds can be found at  
[www.kulturgutschutz-deutschland.de/EN/Service/Publications/UebersichtWertgrenzenEN.pdf?\\_\\_blob=publication](http://www.kulturgutschutz-deutschland.de/EN/Service/Publications/UebersichtWertgrenzenEN.pdf?__blob=publication)  
^ [Back to section](#)
- 52** Section 28, KGSG. ^ [Back to section](#)
- 53** id., Section 83 et seq. ^ [Back to section](#)
- 54** id., Section 49 et seq. ^ [Back to section](#)

- 55** Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods as well as and Commission Implementing Regulation 2021/1079 on the Import of Cultural Goods. ^ [Back to section](#)
- 56** *ibid.* ^ [Back to section](#)
- 57** Official ICG-System User Guide,  
[https://kunstverwaltung.bund.de/SharedDocs/Downloads/DE/202507\\_Nutzerhandbuch\\_ICG.pdf?\\_\\_blob=public](https://kunstverwaltung.bund.de/SharedDocs/Downloads/DE/202507_Nutzerhandbuch_ICG.pdf?__blob=public)  
^ [Back to section](#)
- 58** Section 40 et seq., KGSG. ^ [Back to section](#)
- 59** Federal Court of Justice, judgment dated 24 April 2019, in: NJW 2019, p. 3147 marginal no. 47. ^ [Back to section](#)
- 60** Section 40, KGSG. ^ [Back to section](#)
- 61** *id.*, Section 42. ^ [Back to section](#)
- 62** *id.*, Section 42 para. 1. ^ [Back to section](#)
- 63** For example, because they can be found in the database at [www.lostart.de](http://www.lostart.de). ^ [Back to section](#)
- 64** Section 438, Paragraph 1, Nos. 1–3, BGB. ^ [Back to section](#)
- 65** *id.*, Section 123, Paragraph 1. ^ [Back to section](#)
- 66** *id.*, Section 197, Paragraph 1, Nos. 2, 200. ^ [Back to section](#)
- 67** As far as intellectual property and copyright disputes are concerned. ^ [Back to section](#)
- 68** [www.cafa.world/cafa/about\\_us/](http://www.cafa.world/cafa/about_us/). ^ [Back to section](#)
- 69** The Venice Chamber of Arbitration recently published new arbitration rules developed by a committee of experts in the field. ^ [Back to section](#)
- 70** [www.disarb.org/](http://www.disarb.org/). ^ [Back to section](#)
- 71** In 2018, the Institute's international autumn conference dealt exclusively with alternative dispute resolution in art-related matters. ^ [Back to section](#)
- 72** A good example of a recent case concerning this topic is one concerning a fake Alexander Rodchenko and Alexandra Exter work (Federal Court of Justice, judgment dated 19 May 2020, Az. 2 StR 398/19). An important guiding principle for the court was that even an item for which it is not possible to determine whether it is a forgery has a certain value, even if the provenance was forged. ^ [Back to section](#)

- 73** Section 434, Paragraph 1, Sentence 1, BGB. [^ Back to section](#)
- 74** id., Section 434, Paragraph 2, Nos. 1, 2. [^ Back to section](#)
- 75** id., Section 434, Paragraph 2 ATE. [^ Back to section](#)
- 76** While works that copy a specific work of art are undoubtedly forgeries, this is not the case for artworks imitating the style of an artist (Federal Court of Justice, judgment dated 8 August 1989, I ZR 135/87 – Emil Nolde), works generated by AI 'in the style of' a specific work of art are not forgeries. [^ Back to section](#)
- 77** Section 434, Paragraph 3, Nos. 1, 2(a), BGB. [^ Back to section](#)
- 78** id., Section 434, Paragraph 3, No. 2(b). [^ Back to section](#)
- 79** id., Section 437, No. 2. [^ Back to section](#)
- 80** id., Section 437, No. 3. [^ Back to section](#)
- 81** id., Section 123. [^ Back to section](#)
- 82** id., Section 812 et seq. [^ Back to section](#)
- 83** Section 34b, Paragraph 1, General Administrative Business Regulation. [^ Back to section](#)
- 84** Auctioneer Regulation of 24 April 2003 (Federal Law Gazette (BGBl), p. 547), last amended by Article 15 of the Act of 11 December 2024 (BGBl. 2024 I No. 411). [^ Back to section](#)
- 85** Section 935, Paragraph 2, BGB. [^ Back to section](#)
- 86** Section 73 et seq., KGSG. [^ Back to section](#)
- 87** Council Directive 2006/112/EC of 11 December 2006 on the common system of value added tax. [^ Back to section](#)
- 88** Section 4, No. 1(a), Income Tax Act (UStG) in connection with Section 6, UStG. [^ Back to section](#)
- 89** id., Section 4, No. 1(b), in connection with id., Section 6a. [^ Back to section](#)
- 90** With or without an ATA carnet (an international customs and temporary export–import document); in the latter case, generally, security has to be provided. [^ Back to section](#)
- 91** Section 2, Paragraph 1, No. 13 of the German Anti-money Laundering Code (GWG). [^ Back to section](#)

- 92** Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. The EU's Sixth Anti-Money Laundering Directive (EU) 2024/1640 of 31 May 2024 was adopted and is to be implemented by the member states by 2027; its focus is on clarifying due diligence obligations for companies and introducing cash limits (10,000€). [^ Back to section](#)
- 93** Section 12, GWG. [^ Back to section](#)
- 94** id., Section 8. [^ Back to section](#)
- 95** id., Section 27 et seq. [^ Back to section](#)
- 96** A study by dappGambl from 2023 shows that 95 per cent of all NFTs are now almost worthless. The study examined 73,257 NFT collections. Of these, 69,795 were still worth 0 ether. [^ Back to section](#)
- 97** This can take place, for example, by 'wash trades', illegal trading using black money held as cryptocurrency, whereby traders or investors buy and sell the same non-fungible tokens multiple times over a short period, feeding misleading information to other market participants about an asset's price or liquidity; see 'Non-Fungible Token (NFT) und Geldwäsche – eine aktuelle Einordnung', Schemmel, Compliance Berater, 2022, 286. [^ Back to section](#)
- 98** Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto Assets, and amending regulations (EU) no. 1093/2010 and (EU) no. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCAR), recital (10). [^ Back to section](#)
- 99** Section 2 para. 2, German Copyright Act (UrhG). [^ Back to section](#)
- 100** Federal Court of Justice, judgment dated 20 February 2025, Az. I ZR 16/24, in: ZUM 2025, 335. [^ Back to section](#)
- 101** Design objects can nevertheless be subject to protection under Design Law, as Design Law is an independent area of law. The new EU directive 2024/2823 of 23 October 2024 even stipulates an extension of the scope of protection to digital embodiments of a design, <https://eur-lex.europa.eu/eli/dir/2024/2823/oj>. [^ Back to section](#)
- 102** Federal Court of Justice, judgment dated 20 February 2025, Az. I ZR 16/24, in: ZUM 2025, 335. [^ Back to section](#)
- 103** Section 12, UrhG. [^ Back to section](#)
- 104** id., Section 13. [^ Back to section](#)

- 105** id., Section 14. ^ [Back to section](#)
- 106** Federal Court of Justice, judgment dated 21 February 2019, Az. I ZR 15/18; in: ZUM 2019, 528. ^ [Back to section](#)
- 107** Section 26, UrhG. ^ [Back to section](#)
- 108** This starts at 4 per cent for a sales price of up to €50,000 and reduces to 0.25 per cent for a sales price above €500,000. The royalty cannot exceed €12,500, however, regardless of how high the sales price is. ^ [Back to section](#)
- 109** Section 15 et seq., UrhG. ^ [Back to section](#)
- 110** VG Bild-Kunst v. Stiftung Preußischer Kulturbesitz, Case C-392/19, ECLI:EU:C:2021:181. ^ [Back to section](#)
- 111** Section 59, UrhG. ^ [Back to section](#)
- 112** id., Section 51. ^ [Back to section](#)
- 113** id., Section 51a. ^ [Back to section](#)
- 114** Directive (EU) 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. ^ [Back to section](#)
- 115** Regional Court of Berlin, judgment of 2 November 2021, Az. 15 O 551/19, in: GRUR-RS 2021, 48603. ^ [Back to section](#)
- 116** Opinion of the Advocate General Emiliou of 17 June 2025 (C-590/23), in: BeckRS 2025, 13204. ^ [Back to section](#)
- 117** Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. ^ [Back to section](#)
- 118** Regional Court of Hamburg, judgment dated 27 September 2024, Az. 310 O 227/23. ^ [Back to section](#)
- 119** Section 60d, UrhG. ^ [Back to section](#)

**120** Section 44d para. 3 UrhG stipulates that text and data mining is not permitted if the rights holder has expressly prohibited such use in a machine-readable format ('opt-out' option). However, Section 60d UrhG, which serves as the *lex specialis* for text and data mining for scientific purposes, does not provide for such an opt-out mechanism. As the court found Section 60d applicable in this case, the rights holder's prohibition of use – set out in its terms and conditions – was deemed irrelevant and insufficient to prevent the use of the works. [^ Back to section](#)

**121** Section 1922, BGB. [^ Back to section](#)

**122** id., Section 80, Paragraph 2. [^ Back to section](#)

**123** id., Section 86–86h. [^ Back to section](#)

**124** Section 13, Paragraph 1, No. 2(a), (b) of the Inheritance Tax and Gift Tax Law (ErbStG). [^ Back to section](#)



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