

Parody

1. Adopting this exception will give people in the UK's creative industries greater freedom to use others' works for parody purposes. Drafting this as a fair dealing exception, as per paragraph (1) in the wording found at Annex B, is intended to allow creators to make minor uses of other people's copyright material for the purposes of parody, caricature or pastiche, without first asking for permission.
2. Paragraph(2)of the draft exception will mean that the benefits of the parody exception should not be undermined by restrictions re-imposed by other means, such as contractual terms.

Parody is a valid form of artistic expression, already recognised by the courts, and allowed under general copyright principles so long as they only 'conjure up the idea of the original, without reproducing any substantial part. It is therefore unclear to us why an exception needs to be introduced.

It is imperative that the three are not 'lumped' together, and each are defined narrowly, to ensure compatibility with the Berne three-step test. There is a danger of the resultant exclusion, particularly in the case of Pastiche, being a 'way in' for copying given that the various dictionary definitions major on imitations of style. Pastiche is defined as follows:

Collins:

1. A work of art that mixes styles, materials etc
2. A work of art that imitates the style of another artist or period

Oxford:

1. A musical or other composition made up of selections from various sources
2. A work composed in the style of a well-known author, composer etc.

*It is basic copyright law that artistic styles aren't the subject matter of copyright protection. Several recent cases confirm this, including *Norowzian v Arks Ltd (no 2)*, a good example of there being no copyright protection for styles.*

Therefore we believe that Pastiche should not be included as this could pose problems which may have to be resolved through the courts – an expense which would probably outweigh any supposed economic growth.

Commentary on the legislation

3. Article 5(3)(k) of the Copyright Directive does not require fair dealing for the exception to apply. However, we have opted to limit the exception in this way. Our view is that the concept of fair dealing is well-established in UK copyright law and needs no further definition.

Q: By framing paragraph (1) as outlined below are we meeting the objective outlined above?

4. By making this a fair dealing exception authors of original work will be protected from abuse of this exception. We do not want this exception to be used as a defence for outright copying of an original work.

Q: Is this sufficiently clear?

Yes, this is clear. However, an argument as to whether it is fair dealing or not would be a court decision – an expensive option which would be unaffordable for most creators.

5. This is a new exception; we intend to group it close to other fair dealing exceptions in the CDPA 1988.

Q: Is this a suitable place for it to be inserted?

Yes – all exceptions should be kept together.

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