CJEU: *Pelham II* and the notion of "pastiche"

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On 14 April 2026, the Court of Justice of the European Union (CJEU) ruled on the *Pelham* case once again, this time to clarify the concept of “pastiche”. In 2019, the Court had already ruled on the electronic copying of a rhythm sequence sample from Kraftwerk’s track *Metall auf Metall* and its use by producer Moses Pelham in a continuous loop in the song *Nur mir*. After years of legal proceedings before the German courts, the CJEU had ruled that unauthorised sampling infringes the phonogram producer's reproduction rights, unless the fragment is incorporated into the new phonogram in a modified form unrecognisable to the ear (for more information on the 2019 case, see: IRIS 2019-8:1/2). Article 5(3)k of the Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society (Infosoc Directive) allows for 'pastiche' to be treated as one of the exceptions to the reproduction and distribution rights. Since, the exception for 'pastiche' has been made mandatory by Article 17(7)b of the 2019 Directive on Copyright and related rights in the Digital Single Market (CDSM Directive), alongside parody and caricature.

However, the transposition of the Infosoc Directive into German law, in the form of Article 51a of the German Copyright Act (*Urheberrechtsgesetz* – UrhG) which entered into force on 7 June 2021, prompted a new debate on the notion of “pastiche” itself. The German Federal Court of Justice (Bundesgerichtshof) therefore referred questions on its interpretation to the CJEU. First, it questioned whether the pastiche exception had a “catch-all” nature, in other words whether it covers any artistic engagement with an existing work without it necessarily requiring an expression of humour, a stylistic imitation or a tribute.

Since the concept of pastiche is not defined by law, the CJEU calls for consideration of its usual meaning in everyday language, taking into account the context in which it occurs and the objectives pursued by the relevant provision. However, the Court also acknowledges that the term is rarely used in everyday language and has various meanings, including humorous or satirical imitation, stylistic imitation, paying tribute, expressing humour or criticism, or engaging in a stylistic exercise. The Court therefore considers the objective of Article 5(3)k of the Infosoc Directive, and establishes that the use of the three distinct concepts of “caricature”, “parody” and “pastiche” in the same article necessarily implies that each concept has its own meaning. Therefore, the concept of “pastiche” should not necessarily be considered as constituting an expression of humour or

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mockery, as this would render void the other notions of their meaning. It should also be kept in mind that the exception in Article 5(3)k is aimed at safeguarding a fair balance between copyright protection and the protection of the freedom of the arts and this should also be considered when interpreting the provision.

The German court also sought to establish whether the user must intend to use a protected subject matter for the purpose of a pastiche, or whether it is sufficient for the pastiche to be objectively recognisable to someone who is familiar with the pre-existing work or protected subject matter and has the requisite intellectual understanding.

On this matter, the CJEU finds that this must be assessed objectively. It therefore considers it sufficient that the “pastiche” nature be recognisable to a person who is familiar with the existing work from which the elements have been borrowed.

Judgment of the Grand Chamber of the CJEU, C-590/23, Pelham II, 14 April 2026

https://infocuria.curia.europa.eu/tabs/document/C/2023/C-0590-23-00000000RP-01-P-01/ARRET/319188-EN-1-html

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