



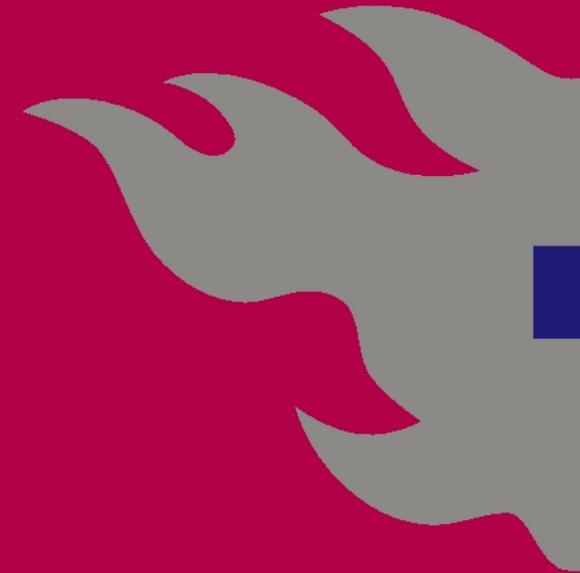
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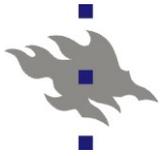
# Copyright exceptions and limitations – narrow interpretation

Taina Pihlajarinne

Professor

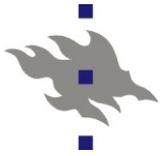
Faculty of Law, University of Helsinki





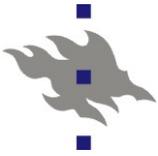
## Narrow interpretation?

- A narrow interpretation of copyright exceptions and limitation as a traditional starting point in Nordic countries
  - Not an absolute principle
  - Slight differences in traditions
    - for instance, in Sweden the starting point has been that the whole copyright system includes elements that need weighing and balancing while in Finland there has been a stronger division. (Kivistö, M: Tekijänoikeus omaisuutena 2016).



## Narrow interpretation?

- Cases Germany *C-476/01* and Commission *C-35/05*: provisions which derogate from general principles adopted by directive must be interpreted narrowly.



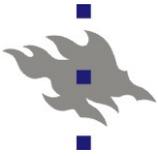
## Narrow interpretation?

### ■ *Infopaq International A/S, C-5/08:*

#### ■ Narrow interpretation of exceptions and limitations

(temporary acts of reproduction)

- Exceptions in relation to the main rule (exclusivity)
- Three step test requires a narrow interpretation of exceptions.
- The recitals 4, 6 and 21 of the Infosoc Directive 2001/29, the need for legal certainty for authors with regard to the protection of their works.



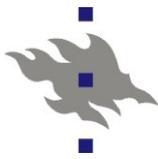
## Narrow interpretation?

- For instance, Deckmyn C-201/13
  - Parody as an autonomous concept of EU law which must be interpreted uniformly
    - Parody evokes an existing work but is noticeably different from it; it constitutes an expression of humour or mockery; it does not have to have an original character of its own; it must be attributed to a person other than the author of the original work itself; it must relate to the original work itself or mention the source of the parodied work.



## Narrow interpretation?

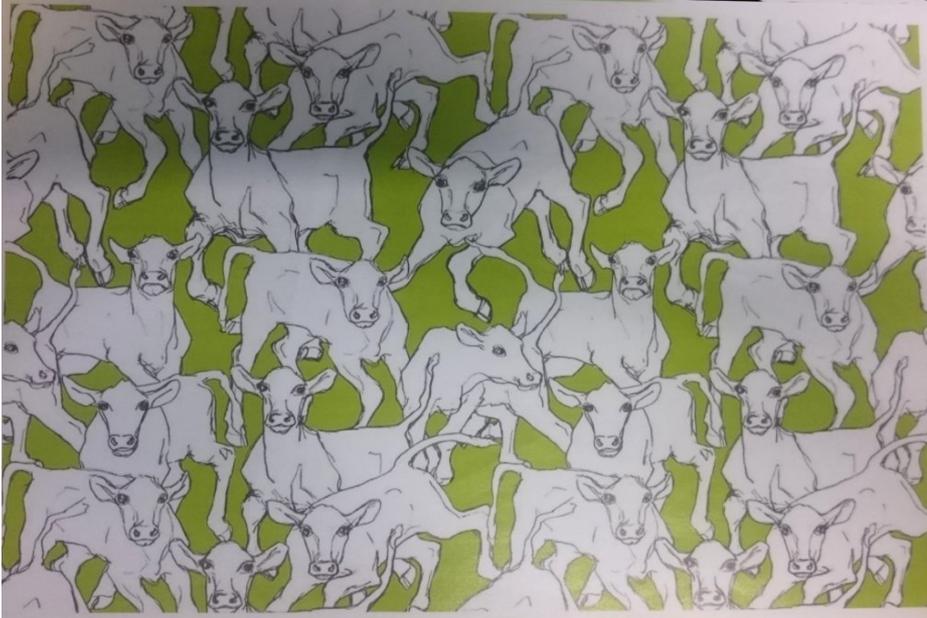
- A fair balance between the right holder's rights and the freedom of expression of the user.
- Is there fair balance? All the circumstances of the case must be taken into account (including principle of non-discrimination based on race, colour and ethnic origin).
- Is the traditional Nordic idea on assessing parody as an independent work in line with Deckmyn?
  - Not obligatory exception in EU-law
  - In Nordic tradition parody is perceived as an exception (but not as an explicit one).
  - “specific form of independent work”.

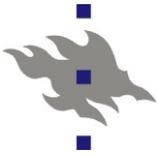


## For instance, the Finnish copyright Council statement 2017:4 (Miina Äkkijyrkkä / Bjarne Melgaard)

- Guidelines adopted in Deckmyn were utilised

-an independent work and was not an infringement





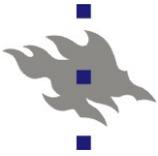
## Narrow interpretation?

- Spiegel Online GmbH v. Volker Beck, C-516/17
  - The relationship between narrow interpretation and fundamental rights (freedom of expression and freedom of information).
  - A narrow interpretation, but... exceptions and limitations must be effective and their goals must be reached. Especially in the case where the provisions aim to ensure fundamental freedoms.
  - Exceptions or limitations themselves confer rights for the users of works.
  - A fair balance between the rights of right holders and the rights of users of works.



## Narrow interpretation?

- Also protection of intellectual property rights is recognized as a system of fundamental rights
- In striking the balance between the exclusive rights and the rights of the users, a national court must have an interpretation which is consistent with the wording of exceptions and safeguards their effectiveness and fundamental rights.
- Similarly Funke Medien, C-469/17



## Conclusions

- Previously, a broad scope of discretion was assumed to exist in level of exceptions and limitations. CJEU's case law has deminished this flexibility.
  - > **more uniformity** at the EU level when considering the scope of E&Ls and key concepts & principles.
- Narrow interpretation
  - Previously: a starting point.
  - The recent case law of CJEU has undermined its role while recognised that such principle exists.
  - Priority to the assessment of aims of the exception, fair balance & embedding fundamental rights into the E&Ls.
  - > **more flexibility** in level of weighing and balancing and in giving room for fundamental rights.



## Conclusions

- Uniformity and inflexibility in systematic level but at the same time, more flexibility for case by case – assessments.
  - Instead of systematic level, member states tradition will be reflected more in level of case law, in acts of weighing and balancing?
- The principle of narrow interpretation is gradually stepping aside?
  - More room for societal needs and less stringent property right –approach
  - Feasible in environment where, for instance, digitalisation and call for sustainability creates new challenges that needs to be tackled