

Caricature, Parody and Pastiche,

Sec. 51a UrhG

The reproduction, distribution and public communication of a published work for the purpose of caricature, parody and pastiche is permitted, Sec. 51a sentence 1 UrhG.

The legal basis under EU law is Art. 5 (3) lit. k of Directive 2001/29/EC.

I. Requirements

Sec. 51a UrhG privileges uses that show perceptible differences from the original work, serve the purpose of discussion and can be assigned to at least one of the three conclusively named categories.

1. Perceptible differences from the original work

The privileged use must show perceptible differences from the original work, because otherwise there is a plagiarism inadmissible under copyright law. On the other hand, a "fading" of the original work is not required, because otherwise there would already be a free use, see Sec. 23 (1) 2 UrhG.

2. Purpose of the Discussion

Sec. 51a UrhG requires that the use of the preexisting work serves a content-related or artistic discussion of the user with the work or another object of reference (third person, other work or social circumstance).

3. Categories covered

Parody = Humorous or mocking confrontation

Caricature = Pictorial representation which, by satirical emphasis or exaggerated depiction of certain characteristic traits, exposes a person, thing or event to ridicule.

Pastiche = Addressing a pre-existing work as an expression of appreciation or reverence.

Ex: Meme, GIF, Mashup, Fan Fiction or Sampling

4. Irrelevant

It is not relevant for the limits of Sec. 51a UrhG,

- whether the act is personal or business,
- which medium, art form or genre is chosen and
- whether the use of the third party's work results in a new personal intellectual creation within the meaning of Sec. 2 (2) UrhG (in this respect still different according to Sec. 24 UrhG old version).

II. Scope of privilege

The reproduction, distribution and public communication of the published pre-existing work is permitted, Sec. 51a p. 1 UrhG.

In addition, the use of an illustration or other reproduction protected by copyright is permitted, Sec. 51a p. 2 UrhG (cf. also Sec. 51 p. 3 UrhG).

There is no obligation to cite the source (cf. ECJ GRUR 2014, 972 para. 33 – *Deckmyn*).