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The Internet Just Got Funnier

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On October 1, 2014, a new law came into effect that excepts parody, caricature and pastiche from the scope of copyright protection in the United Kingdom. Under the previous law, parodists bore the risk of being sued for breach of copyright if they used clips from television shows, films or songs without the copyright holder's permission. The new law allows the use of such content as long as the use is "fair" (meaning it does not commercially compete with the original work) and is not discriminatory in nature.

The catch is, the use also has to be funny. Recently, the European Court of Justice ("ECJ"), the highest court in the European Union, defined parody as a work that, on the one hand, evokes an existing work while being noticeably different from it and, on the other, constitutes "an expression of humour or mockery." The court, however, stopped short of defining humor and whether humorous intent was sufficient to meet the expression of humor test. This determination was left to be made by the lower court. Commentators believe the ECJ declined to define humor, because it recognized that any standard would be inconsistent across the European Union.

The amendment in the UK and the ECJ decision bring European law more in line with the United States' treatment of parody. In the U.S., parody work is protected under the doctrine of fair use and is not subject to a chuckle test. Developed through years of court decisions, parody has been accepted as a form of protected critique. Modern American parodists such as Bart Baker or James Franco and Seth Rogen rely on this protection to generate millions of YouTube views that, according to Business Insider, can translate into significant income for YouTube and the parodist.

The law in Europe is developing, and it cannot be predicted whether additional factors, such as lucrative YouTube partnerships, may impact future decisions. The ECJ was very concerned with balancing the rights of the copyright holders and those of users of the copyright. Copyright holders should monitor developments in the law, as it is possible that when European courts see how profitable parodies can be, a copyright holder's right to commercial exploitation may outweigh a parodist's right to free expression and compel some form of royalty payments. In the meantime, European courts have made precedent a sentiment felt by copyright holders and internet users everywhere, "if you're going to make a parody, at least make it funny!"

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