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Freedom of Expression, Parody, Copyright and Trademarks

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When I was preparing the presentation for this ALAI-conference and especially when I was deciding on the opening slide, I was not aware that Microsoft Corporation was the main sponsor of this Congress, for at least 50,000 dollars and other generous financial assistance as mentioned in the Congress program.

One might have the impression that the opening slide of this presentation is not very sponsor-friendly. But this coincidence fits perfectly with the perspective that is chosen for this introduction on the issue of parody, copyright and trademark law, and that is the perspective of freedom of expression, freedom to criticise a work or a trademark.

The parodying, ironical or burlesque use of works of art and trademarks is a rather controversial phenomenon. We don't have the illusion this afternoon that we will end the controversy, as we are aware of what David Nimmer once wrote, that is that "the placement of the line between infringement and permissible parody is one for exquisite contemplation." (D. Nimmer, "United States" in Melville B. Nimmer and Paul E. Geller, International Copyright Law and Practice, Matthew Bender, New York/San Francisco, 1997, 146).

Many old, classic and recent actual examples can be given of parody or satire of works of art or trademarks. The common characteristic is that without consent of the owner of the intellectual property rights, when a work or a sign or trademark is used, it is transformed. This transformative use is the vehicle, the medium to criticise the work or its author, or to criticize the trademark or the product, the enterprise or the interests behind it. A parody can also contain a kind of social or political criticism.

A parody in essence is a ridiculing dialogue with an existing, mostly famous work or well-known trademark. In French doctrine the term "travestissement" is used, referring to the "transvestism" of the work or the trademark. It means as a matter of fact changing the nature, the gender of an original work, making a burlesque imitation of it (S. Durrande, "La parodie, le pastiche et la caricature," in X. Propriétés Intellectuelles, Mélanges en l'honneur de André Françon, Paris, Dalloz, 2000, 133-142).

The examples you see on this slide illustrate what is meant. In the first illustration the notion "transvestism" is to be taken even in a rather literal sense.

Sometimes a sign and trademark are used to criticize a product or an enterprise, like e.g. the logo critically referring to the poor quality of the Microsoft 98 software package you saw a few moments ago.

In France, some years ago, the Court of Appeal of Riom accepted the parody defence in both copyright and trademark law in pursuance of a parody of the famous Michelin character. A labour organisation had transformed the Michelin-man into a kind of troglodyte cave-man, with a beard and a bludgeon. The parody of the image of Bibendum on pins referred to Michelin as a high technology enterprise using prehistoric methods in labour organisation and social relations. The Court of Appeal in 1994 did not consider this use of the image and trademark as an infringement of copyright and trademark law. With regard to copyright, the Court applied the explicit parody exception in the French Intellectual Property Law (art. 122-5).

But courts and judges tend not always to appreciate a parody or the critical use of trademarks. On request of the Compagnie Gervais Danone the Paris judge in two separate decisions (23 April and 14 May 2001) issued an order to stop the use of the sign and trademark of Danone in the contest of the actual Danone boycott. The website www.jeboycottedanone.com and the website www.Reseauvoltaire.fr were ordered to stop any use of the sign and trademark of Danone. These websites also contained parodies of products of Danone. The provisional court decisions by the Paris judge where sharply criticised because they are considered to neglect the freedom of critical expression in the context of a social action.

The US District Court for the Northern District of Georgia, in a preliminary injunction on 20 April 2001, prohibited the production, distribution and selling of the book The Wind Done Gone by Alice Randall. The court was of the opinion that the new work's use of copyright materials from Gone With the Wind by Margaret Mitchell went well beyond that which is necessary to create a parody. Randall's book was deemed an excessive transformative use of the original work, in other words. The US Court of Appeals for the Eleventh Circuit on May 25, 2001 however annulled this preliminary injunction, arguing that it amounted to an unlawful prior restraint in violation of the First Amendment.
This brings us to the central issue, that is the tension between the freedom of expression, parody, copyright and trademarks.

Parody is a genre of artistic expression with a very long tradition. The history of parody includes famous examples in Ancient Greek culture, during the Roman Empire (the poetry of Virgil was the subject of a lot of parodies), the Middle Ages. Parodies were made of poetry, sculptures, paintings, novels, music, songs...

In legal terms, the parody became problematic during the Enlightenment period and industrial revolution (18th/19th centuries) when legal protection was developed for copyright and intellectual/industrial property. However, this could not stop the further development of the parody as a very typical form of expression. In the late 20th century, parodies were made of all kinds of works, especially movies, popular music, comic-albums and ... trademarks.

In actual post-modern information society, the parody is even explicitly recognized as a special form of freedom of expression, as an exception to or a limitation of copyright. Art. 5, 3 (k) of the EC-Directive on the harmonisation of certain aspects of copyright and related rights in the information society allows the Member States to provide for such an exception or limitation “for the purpose of caricature, parody or pastiche” (EC-directive 2001/29 of 22 May 2001, PB. L., 22 June 2001).

Parody as an exception to copyright is also to be understood as a kind of metaphor, legitimising the critical transformative use of works in order to guarantee as much as possible freedom of expression. But this freedom is not an absolute one, and to some extent the exercise of this freedom can be a breach of copyright or trademark law.

Of course, the most prudent way to make a parody without being embarrassed by copyright holders, is to parody a work by an author who has been dead for ages. In such circumstances there is little or no risk that the heirs would start a court action because of copyright infringement.

As far as we know, the producers of the film “The Life of Brian” (Terry Jones/Monty Python 1979) were not confronted with a legal action because of copyright infringement of the famous book they made an unforgettable parody of.

And nor were Goscinny and Uderzo, parodying in the album “Astérix Legionnaire” (1967) the painting of Théodore Gericault “Radeau de la Méduse” (1819, Musée du Louvre, Paris), illustrating the results of the unavoidable confrontation between the pirates and Asterix and Obelix.

But of course, as participants of an international copyright congress, I assume we are only interested in the cases where copyright and trademark law are or might be involved.

The tension between freedom of expression and copyright (and trademark law) can be analysed from two different angles, from two different perspectives.

That is, one can consider copyright and trademark protection as the basic principle. From this perspective, freedom of expression and more specifically parody can be invoked as an exception, only allowing under very restrictive conditions reproduction or adaptation, the transformative use of parts of a protected work. From this perspective, parody is an internal exception within copyright or trademark law. That is one approach.

But, one also can take the freedom of expression as the starting point, referring in the US to the First Amendment and referring in Europe to Article 10 of the European Convention on Human Rights, an article which has a very similar impact as the US First Amendment. That is why Article 10 ECHR can also be qualified as “Europe’s First Amendment.” From this perspective, freedom of expression is the principle, and restrictions based on copyright or trademark protection have to be narrowly interpreted. Copyright and trademark protection are the monopoly islands in the ocean of freedom.

In applying these restrictions, it must be pertinently explained why the application of these restrictions in concreto is really necessary in a democratic society. There must be a pressing social need to prohibit a certain parody or to convict or punish the author of it. According to the Strasbourg case law, Article 10 ECHR also guarantees the expression of ideas and information that “shock, offend and disturb.” The freedom of expression protects not only the content of free speech, but also its form.

This approach, with reference to the First Amendment in the US or to Constitutional guarantees of Article 10 ECHR in Europe, refers to an external perspective. The legitimation of the exceptions for freedom of expression and parody is to be situated outside copyright (and trademark law).
Confronted with intellectual property protection, this second approach guarantees the freedom of speech or parody exception, even if the copyright act or trademark law does not provide such an exception. It doesn't however offer an absolute freedom.

Let's first introduce the issue in its application in copyright. In the second part we will focus on trademark law and parody.

Over the years parody has been recognized as a form that can legitimise the use of a certain content and form of copyrighted works. The copyright holder cannot oppose certain applications of parody.

In some countries there is no specific parody exception in the law, but the parody is recognized as an exception by jurisprudence, as for example was the case in Belgium before the law of 1994 and which still is the case in the Netherlands. In a recent judgment of the Belgian Supreme Court, it is recognized that even without specific reference to parody, the former copyright law of 22 March 1886 “does not prohibit the unauthorized reproduction for purposes of parody, to the extent necessary to achieve the desired effect while respecting the rules of the parodic genre.” (Cass. 5 april 2001, www.cass.be, cfr. infra).

In some other countries the parody exception is not explicitly mentioned in the law but is considered as a case of “fair use,” as it is in the US. (Section 107 Copyright Act.) In 1994, in the famous Campbell v. Acuff Rose case, the US Supreme Court decided that a parody by the rap group 2 Live Crew of the song “Oh Pretty Woman” written by Roy Orbison and William Dees in the 1960s, was an acceptable case of “transformative use.” According to the Supreme Court “the goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works” (114 S. Ct. 1164 (1994)). An analogue situation exists in Germany where the parody is legitimised as a kind of authorised adaptation under the Article 24 Copyright Law exception of the “erlaubte freie Benutzung,” which means “a free use,” rather than a “fair use.”

In other countries, like in France and in Belgium since 1994, the parody (together with the caricature and pastiche) is explicitly mentioned in copyright legislation as an exception or as a limitation of copyright. In France, Article L. 122-5, 4° of the Code of Intellectual Property (formerly article 41-4° of the Copyright Act of 11 March 1957) considers parody, pastiche and caricature as exceptions to the patrimonial rights of the author, in so far as “the rules of the genre,” the rules of practice are respected. Article 22, § 1, 6° of the Belgian

Copyright Act 1994 stipulates that the author cannot oppose caricature, parody or pastiche observing fair practices.

This legislation has not widely opened the door to the invocation of the parody exception. Indeed, the parody must not only have certain intrinsic characteristics, but also has to respect “the laws of the genre” or has to be applied according to “fair practices.”

This qualified and restricted character of the parody exception is also to be found in the 2001 EC Directive on Copyright in the Information Society. The Directive allows the Member States to recognize parody as an exception or limitation of copyright, but only “if it does not unreasonably prejudice the legitimate interest of the right holder.”

When is a parody exception applicable in the case of the unconsented use of protected works of art or literature?

First of all, of course, the parody must be a parody. We already have described the main characteristic as a “burlesque imitation,” criticizing, transvestising an existing work. A parody in essence is a creation of a new work that makes ridiculous, or creates at least an antagonistic, critical, humoristic tension with the style, content or form of the original work.

Whether or not a parody will be allowed from the perspective of copyright depends on several criteria, all applicable without a clear hierarchy and with a varying impact.

Apart from the basic condition of a critical contrast, other conditions for the justification of a parody defence are developed in case law and refer to notions such as

- fair use, reproducing not more than necessary
- sufficient new/original elements
- no risk of confusion between the original and the parody
Case law has developed some other criteria which can be put into balance in order to evaluate the legitimate character of a parody defence:

- the effect or harm to the potential market or value of the copyrighted work
- the effect or harm on the moral rights or reputation of the original author

The legitimate interests of the right holder may be of an economic nature (the US case law on parody is often focused on this aspect). But also the protection of the moral rights of the author can be emphasized. From this perspective a parody can be considered as a kind of tarnishment, as damaging the moral integrity or good reputation of the author.

A very important criterion is related to the characteristic of the parody – whether it can be qualified as artistic, or political/editorial, or merely commercial speech. These qualifications have consequences for the degree of free speech protection. Some kinds of parodies may even stay totally outside the scope of free speech protection, e.g. when they are pornographic or obscene (US) or when they incite racism (Europe).

An interesting example of how most of these elements may be involved, is the film “Tarzoon, shame of the jungle,” “Tarzoon, la honte de la jungle.” In the case Burroughs vs. Picha, the Court of Paris in 1978 accepted the parody exception for this movie. Although the Court was of the opinion that the parody of the character of Tarzan was shocking and offending, the Court emphasized that there was no risk of confusion and that the parody did not compromise the moral rights of Edgar Rice Burroughs (Court of grand instance Paris, 3 January 1978, RIDA 1978, 119.)

In Belgium the most famous case is that of “Tin Tin en Suisse,” Tin Tin in Switzerland. The judgment of the Brussels Court of Appeal in 1978 did not accept the parody defence and convicted a certain Callicco because of copyright infringement of the work of Hergé. The parody by Callicco of Tin Tin in the album “Tin Tin en Suisse” was considered as a not authorised use of the work of Georges Rémi, especially because of the defaming style of the parody and the deformation of the characters. According to the Court, this resulted in a breach of the moral rights of the original author. The Court was also of the opinion that Callicco had made the parody, “avec le désir de nuire, de causer un dommage matériel ou moral,” i.e., with the desire to harm, to cause economic or moral damage (Court of Appeal Brussels, June 8, 1978, J.T. 1978, 619. See also A. Berenboom, “La parodique,” Ing. Cons. 1984/3-4, 83.)

The judgment also stated: “Même s'il peut avoir un droit à la critique, celle-ci ne peut exister au détriment du droit au respect de l'œuvre, qui garantit l'intégrité de celle-ci,” i.e., even if there is a right to criticize, the critique may not persist to the detriment of the right to respect the work, which guarantees the work’s integrity.

It is obvious that the wordings and the considerations of this Court of Appeal judgment nearly made impossible any parody of copyrighted works, because parody in essence is a deformation of the work, a burlesque criticism.

The courts’ distaste for the parody defence is also reflected in other cases. Seven years ago, the comic-album “La vie Sexuelle de Lucky Luke” after a summary proceeding was also considered an infringement of the copyright of Maurice de Bevere Morris. Morris started a procedure against the album of Jean Bucquoi, a controversial Belgian multimedia artist who had produced the album “The Sexual Life of Lucky Luke.” As the judgment formulated it: “le contenu est conforme à son intitulé,” i.e., the content conforms to its title.

The judgment of the Court of Appeal confirmed the decision of the President of the Court of first instance of Brussels of September 2, 1993 to stop immediately the production, distribution and selling of the album because of the infringement of copyright. At that time the Belgian copyright law did not provide explicitly a parody exception, although the judgment of the Court of Appeal of Brussels confirmed the principle that for a parody the authorisation of the author of the original work is not needed. However, the parody exception invoked by the defendant was not accepted. According to the Court, the derived work prima facie did not show sufficient new original elements. The most important argument of the Court was that it was not obvious that the author of the parody had no intention to harm (Brussels 24 March 1994, AM 1996, 318). A remarkable approach indeed, because this creates a presumption of malicious intention by the author of the parody.

It is also to be emphasized that the Court of Appeal was of the opinion that the freedom of expression as protected by the Belgian Constitution and by Article 10 ECHR seemed not to prohibit the judge from deciding by way of a preliminary injunction to stop the production and distribution of the album. At the same time it was emphasized that in doing so a balance had to be found between the freedom of expression and respect for the subjective rights of the author of a copyrighted work.
Although an explicit reference was made in this judgment to Articles 19 and 25 of the Belgian Constitution and Article 10 ECHR concerning freedom of expression, the Court in its evaluation rather neglected the impact of these provisions.

Some months ago, the distributor of a sex parody of the comic-album Jommeke, Pommeke was convicted by a criminal court because of infringement of copyright. The Court was of the opinion that the parody did not contain any originality and that the parody was not inspired by a critical aim, but only had a commercial goal. (Court of Appeal Antwerp 11 October 2000, AJT 2000-2001, 395. See also the judgment a quo: Criminal Court Mechelen February 3, 1999 IRDI 1999, 31.) This motivation certainly raises some doubts.

An interesting case I think is the cover of a catalogue made by an organisation in Antwerp specialised in the printing, editing and distribution of books and revues denying the Holocaust in the Second World War. The organisation calling themselves 'Free Historical Research' (Vrij Historisch Onderzoek) had made a transformative use of a placard of an exposition in the Plantin-Moretus Museum organised by the City of Antwerp. The exposition was focused on the role of the Antwerp printers in the 16th century. Antwerp at that time was a centre of dissidents, supported by the printers in the struggle for the freedom of religion in that period of European history. The cover of the catalogue of the "Free Historical Research" however was a mere reproduction of this placard, with a reference to their own role as Antwerp printers in the 20th century, in their struggle for freedom of expression denying the Holocaust and propagating revisionism. Only the title of the exposition placard of the City of Antwerp was changed.

The placard of the City of Antwerp was considered an original work, although it contained a drawing which belonged to the public domain. The Court was of the opinion that the placard contained enough other elements (layout, title and subtitle) to make it an original work protected by copyright.

According to the Court the parody exception of Article 22 § 1, 6° of the Copyright Act invoked by the defence was not applicable. The cover of the catalogue was only a slavish copy of the original, with only a paraphrasing subtitle. The basic characteristic of a parody, that is the criticism on an original work, was absent in this case. Furthermore the Court referred to the lack of a humoristic effect and to the illegal character of literature denying the Holocaust (Law of 23 March 1995). Finally the judgment also recognised the legitimate interests of the City of Antwerp in preventing association of the denial of the Holocaust with the City of Antwerp (Court of Appeal Antwerp (summary proc.) 20 January 1997, AM 1997, 174).

So far we have seen some Belgian parody cases in the field of copyright, which I hope contain some relevant elements that can be helpful for a more profound analysis of the parody in copyright cases.

But what is the situation if trademark law is also involved?

Is there a need for a parody exception in trademark law?

According to the Benelux Uniform Trademark Act, the use of signs and trademarks for identical or similar goods is not allowed if it can lead to confusion. If there is not a possibility of (a likelihood of) confusion between a trademark and a parody, there is no infringement of trademark law at all (Cass. 23 September 1997, Ing. Cons. 1998, 237, met noot L. VAN BUNNEN, "La parodie de marque : comparaison du droit Benelux avec le droit français" - Case of Lacoste vs. Wacoost, persiflage).

This means that in principle there will be no problem with a real, genuine parody, as a basic characteristic of the parody is that it does not lead to confusion with the original work, sign or trademark. There is no need to invoke a parody exception in trademark law under these circumstances.

On the other hand, other kinds of parodying or satirical use of signs and trademarks can be legitimised under Article 13, A, 1, d of the Trademark Law as a kind of use with a just cause, in as far as this use is not unduly deriving benefit from the original sign or trademark or is not detrimental to them.

A parody under certain circumstances could however be in conflict with unfair competition rules or could lead to civil liability when the transformative use is considered as a fault that induced damage to the right holder or injured business reputation.

What are the practical implications for parody in the context of trademark protection?

Belgian case law shows that only very little room is left for the parodying use of signs and trademarks. Until recently one might have had the impression that parody of signs and trademarks was not allowed at all.
Courts rather seem to find parody distasteful. First of all, they take for granted the potential of confusion or focus on the confusing elements between the trademark and the parody, although this fact-finding is very controversial. Secondly, the courts are reluctant or even explicitly refuse to recognize the free speech arguments derived from constitutional provisions and Article 10 ECHR in trademark law cases.

A recent judgment however, confirmed by the Supreme Court, has demonstrated that a parody at the same time can be in accordance with copyright law and trademark law.

In the case of *Batman vs. Bèteman*, the defendant referred to the parody exception as recognized in copyright. The Court refused the parody defence and was of the opinion that trademark law and copyright law were to be regarded as two different, distinguished fields of law, each with its own logic. As the Benelux Uniform Trademark Act did not contain any exception referring to parody, the sign and trademark Bèteman was annulled by the Court. The Court decided that the parody defence cannot be raised against a claim of trademark nullity because “trade mark and copyright have to be distinguished and have another ratio legis” (Court of first instance Brussels 11 May 1993, Ing. Cons 1993, 150).

Nor in the Chippendales-case of 1996 did the Court accept parody as an excuse to use the name “Chippendales” for a local striptease event. Unfortunately, I did not find any supportive visual illustration of this case. The Court was of the opinion that the use of the name Chippendales for a similar kind of activity was damaging the exclusivity rights of the Chippendales trademark and refused to take into consideration the parody exception (Court of Appeal Antwerp (summary proc.) 10 November 1996, IRDI 1998, 372).

The President of the Court of first instance of Antwerp in a decision of 3 July 1998 did not accept the argument of parody in the case of “Les Misérables/Les Désirables” either. The rightholders of the trademark “Les Misérables,” being the title of their musical, started an action against a theatre play under the title “Les Désirables.” The defendants invoked the parody exception referring to article 22, § 1, 6 of the Copyright Act 1994. The president of the Court was of the opinion that the case was not on copyright law, but on trademark law and that trademark law did not provide any exception for caricature, parody or pastiche. The defendants also invoked Article 10 of the European Convention on Human Rights guaranteeing the freedom of expression. The president of the Court however decided that because infringement of trademark law is an offense, the defendant could not rely on the protection of the European Convention of Human Rights, an approach which obviously is not in line with the case law of the European Court of Human Rights in Strasbourg. This case is actually pending before the Court of Appeal in Antwerp (Pres. Court of first instance Antwerp (summary proc.) 3 July 1998, IRDI 1998, 388. See also B. Ponet, “De parodie: van het auteursrecht naar het merkenrecht,” IRDI 1998, 305-315).

There is however a recent and interesting case in which copyright and trademark law both are involved, the case of “Vers l’Avenir” vs. “L’Avenir Vert” (“Towards the Future/The Future is Green”). The case concerns an issue of a political tract published in pre-election time by Ecolo, the green political party in the French-speaking part of Belgium. The title of the political tract “L’Avenir Vert” clearly refers to the newspaper “Vers l’Avenir.” In first instance, the Court of Namur in a judgment of 8 December 1995 convicted Ecolo and the responsible person because of infringement of copyright law. The Court however found no breach of trademark law (Court of first instance of Namur 8 December 1995, Journ. Proc. 1995/295, 27 with note B. Michaux).

The Court of Appeal of Liège found neither infringement of trademark law nor of copyright law (Court of Appeal Liège 6 October 1997, Journ. Proc. 1997/336, 28, with note B. Michaux “Presse et Marque Déposée,” Journ. Proc. 1997/337, 28). With regard to the trademark aspect, the Court of Appeal was of the opinion that “L’Avenir Vert” contained no risk of confusion with the newspaper “Vers l’Avenir.” For the public the difference between the newspaper and the electoral propaganda of the political party Ecolo was sufficiently obvious. In such circumstances there is no illegal use of sign or a trademark according to the Benelux Uniform Trademark Act (See also Benelux Court of Justice 2 October 2000, case A 98/3, Brewery Haacht vs. S.A. Société générale des grandes sources Belges).

It is to be underscored that the non-infringement of trademark law in this case is not because of an application of a parody exception or because of any other defence based on free speech. The essence is that even if there is similarity or “concordance of the semantic content” between the two trademarks and signs, and even if there is some resemblance because some characteristics of the title and its layout are derived from the original trademark, the essential and decisive criterion is that of the risk of confusion in the eyes of the public. The risk of association between the two trademarks or signs is in itself not a sufficient criterion for the trademark infringement according to the Benelux Uniform Trademark Act. Trademark law narrows its own application, leaving relevant possibilities for other uses.
As far as copyright is concerned the Court was of the opinion that all requirements of the parody exception were fulfilled in the case of “L’Avenir Vert.” The Court emphasized:

a. the absence of the risk of confusion in the mind of the public between the two works,
b. that the parody does not contain more elements of the original work than necessary,
c. the humoristic or rather ironical effect
d. the critical function and the aim of ridiculing the original work (“une function critique visant à râiller l’oeuvre parodiée”).

The Court came to the conclusion that “L’Avenir Vert” contained no parasitic abuse of the journal “Vers l’Avenir” and that the authors of the parody with originality and creativity have developed an appearance of similarity (“un semblant de similitude”) between the journal, “Vers l’Avenir” and their electoral propaganda. That appearance of similarity however did not infringe trademark law nor copyright law.

In its judgment of 5 april 2001 the Supreme Court has entirely approved the interpretation and application of the trademark and copyright law by the Liège Court of Appeal in this case (Cass. 5 april 2001, www.cass.be, AM 2001 (to be published, with note B. Michaux)).

Time to draw some conclusions.

Most of the illustrations we have seen, confirm that the determination of the line between illicit infringement of copyright and trademark law on the one hand and legitimate parody on the other, is indeed very difficult to draw. This mainly has to do with what we could call the inherent paradoxes of the parody, which means:

- reproduction is necessary, but not too much (substantial taking);
- there must be resemblance, but no confusion;
- additional elements are needed, but not too many (the public must be able to recognize the original);
- that parody must be critical – offensive, but not defamatory (antithesis, no animus iniurandi).

These inherent paradoxes often lead to an open interpretation whether or not one has to do with a parody or whether or not the parody observes the rules of the genre or fair practices. This is a highly fact-specific determination, which however may camouflage some important legal principles involved. It is important however to bring these principles to the surface.

It can also be emphasized that it is not the parody as such which legitimates an exception on copyright or trademark law, it is rather the freedom of expression and the right to criticise that are the basic values behind this exception. This also means that the exception of parody should be interpreted and applied as an open concept, as a kind of a metaphor indeed legitimising the artistic and critical use of works protected by intellectual property rights.

As Hess wrote in his interesting study of the parody: it wouldn’t be a good evolution if copyright could be applied in order to prohibit a generally recognised form of artistic expression, a form which has its roots in a tradition of more than 2500 years (G. Hess, Urheberrechtsprobleme der Parodie, Baden-Baden, Nomos Verlagsgesellschaft, 1993, 150).

And one could add that what copyright should not prohibit, trademark law shouldn’t prohibit either.