



Copyright Law & Fundamental Rights

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Agenda

1. The dual role of fundamental rights in (EU) copyright law.
2. The CJEU decisions in *Funke Medien*, *Pelham* and *Spiegel Online*.
3. The parody exception in copyright law.

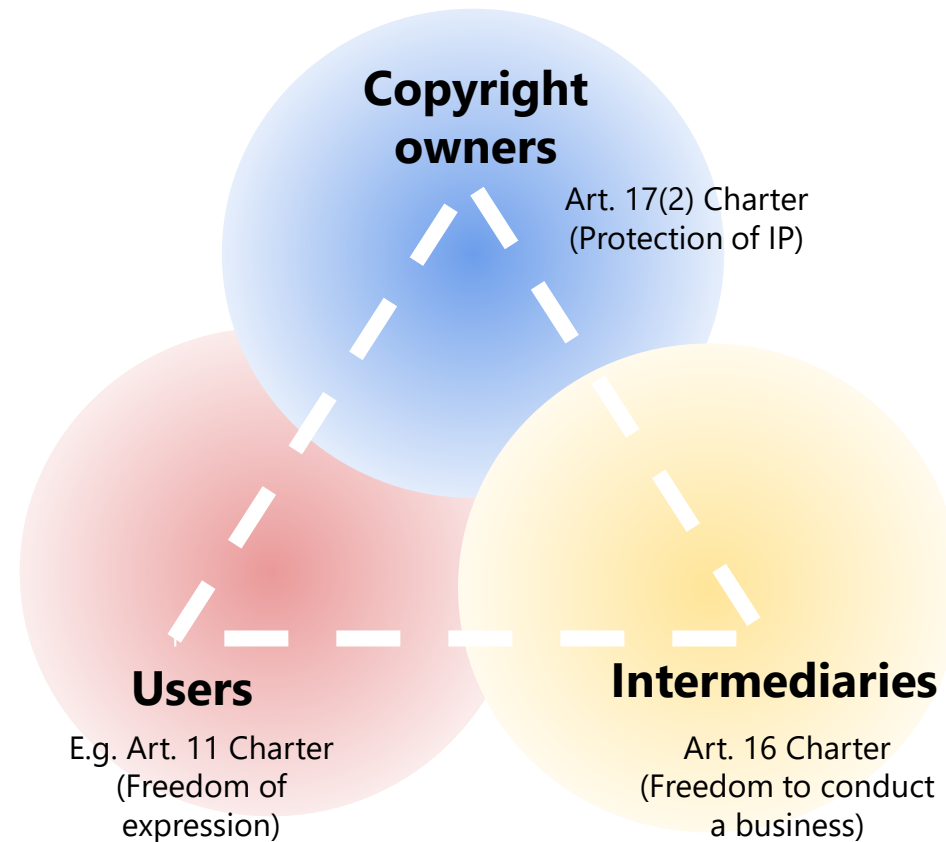
The dual role of fundamental rights in (EU) copyright law

The dual role of fundamental rights in (EU) copyright law

1. Fundamental rights and enforcement of copyrights.
2. Fundamental rights and material rules of copyright law.

The dual role of fundamental rights...

1. Fundamental rights and enforcement of copyrights



The dual role of fundamental rights...

1. Fundamental rights and enforcement of copyrights



- Identifying copyright infringers? *Promusicae* (2008), *Bonnier Audio* (2012)
- Monitoring and filtering internet access? *Scarlet/Sabam* (2012)
- Blocking web pages? *UPC Telekabel* (2014)
- Disconnecting, monitoring or password-protecting WiFi? *Mc Fadden* (2016)

The dual role of fundamental rights...

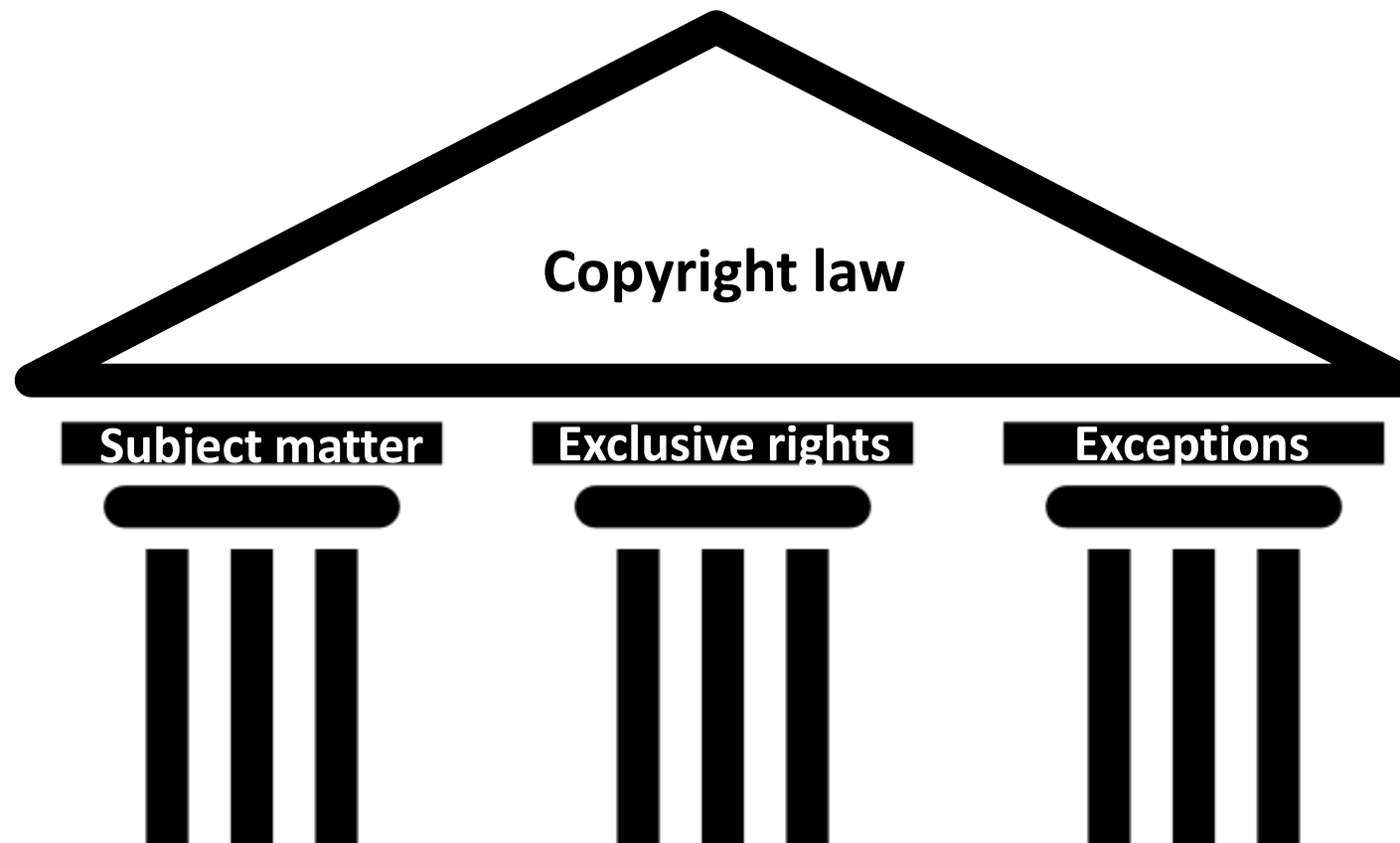
1. Fundamental rights and enforcement of copyrights



*Ensuring that 'a fair balance' is struck
between the fundamental rights*

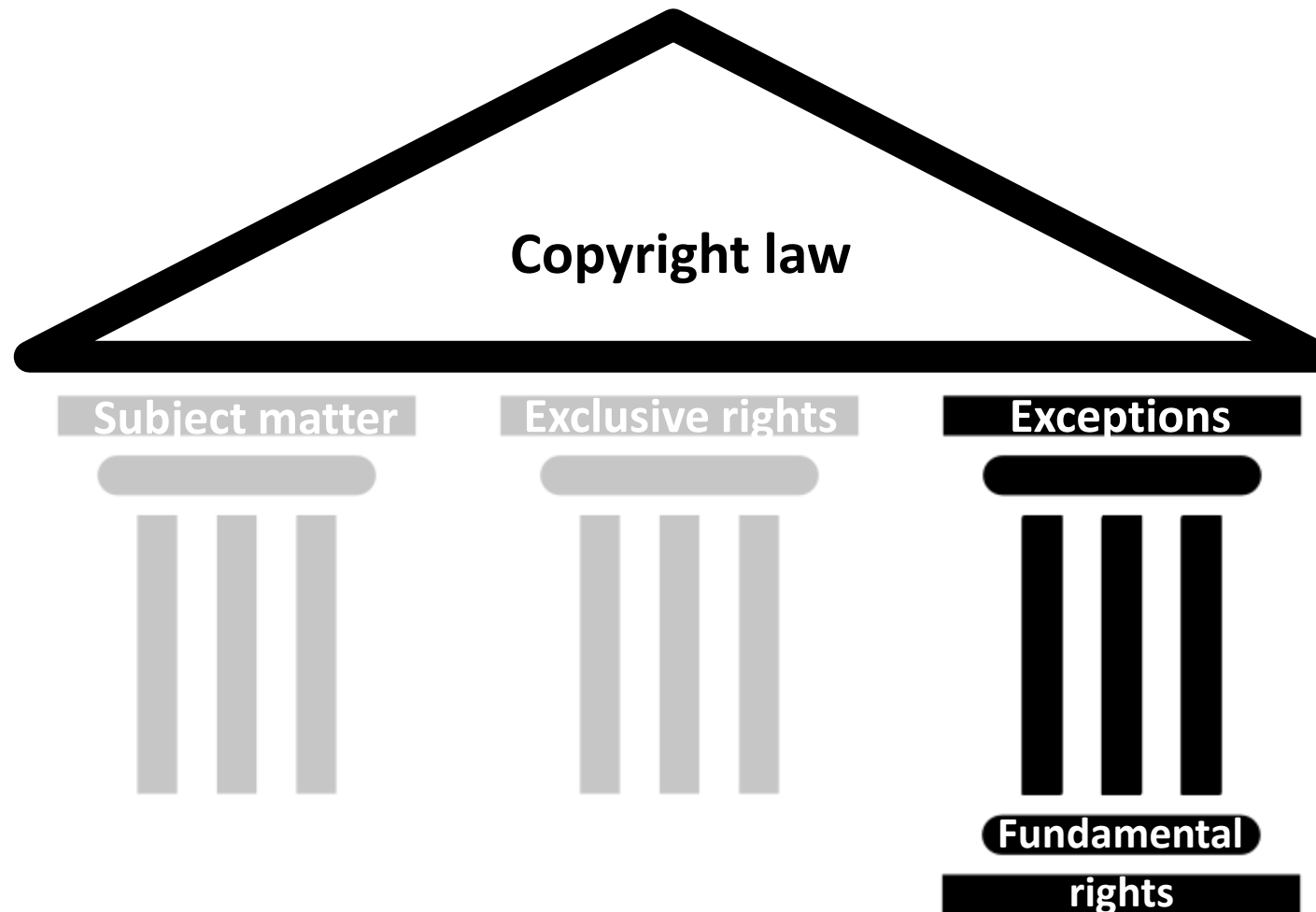
The dual role of fundamental rights...

2. Fundamental rights and material rules of copyright law



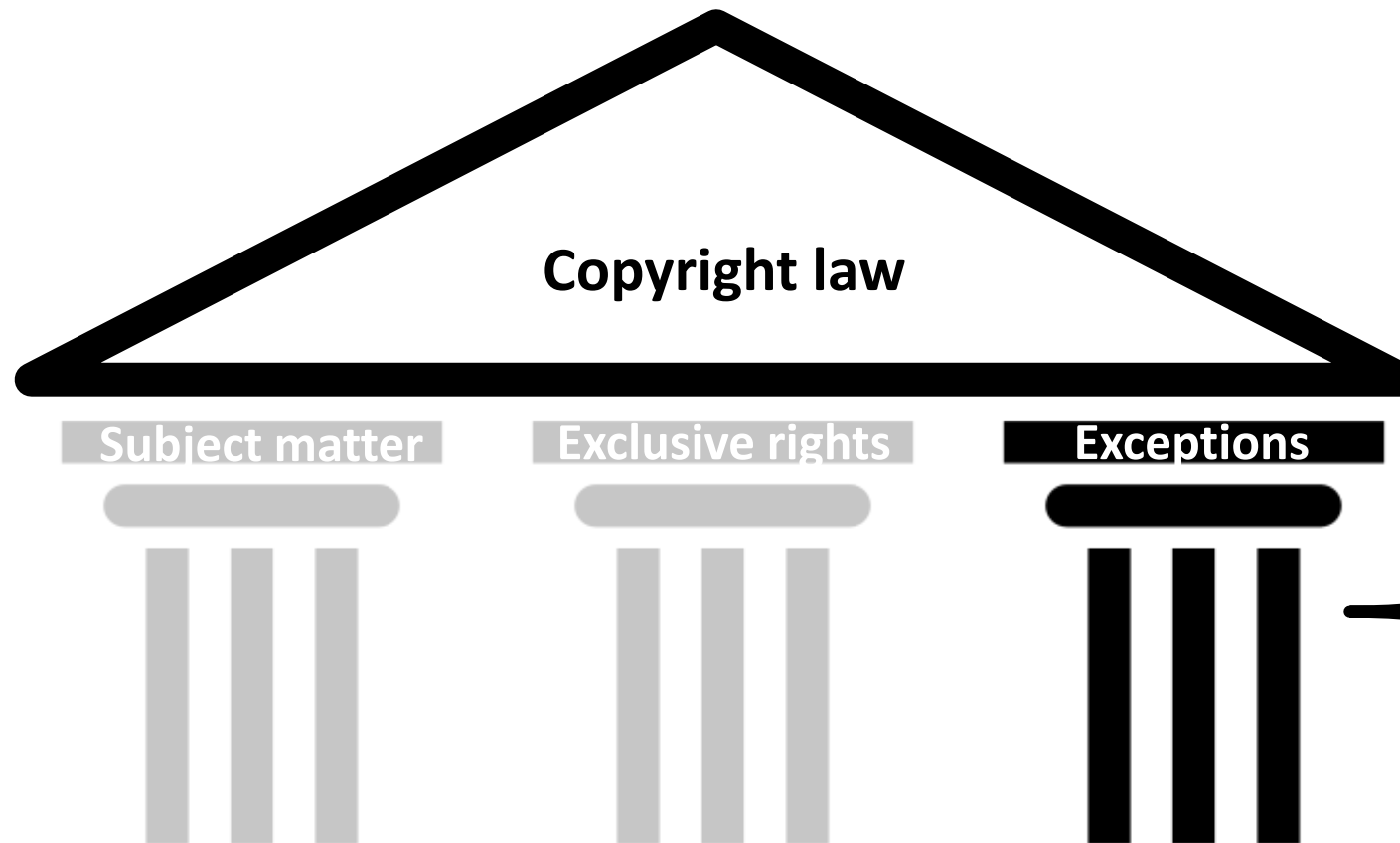
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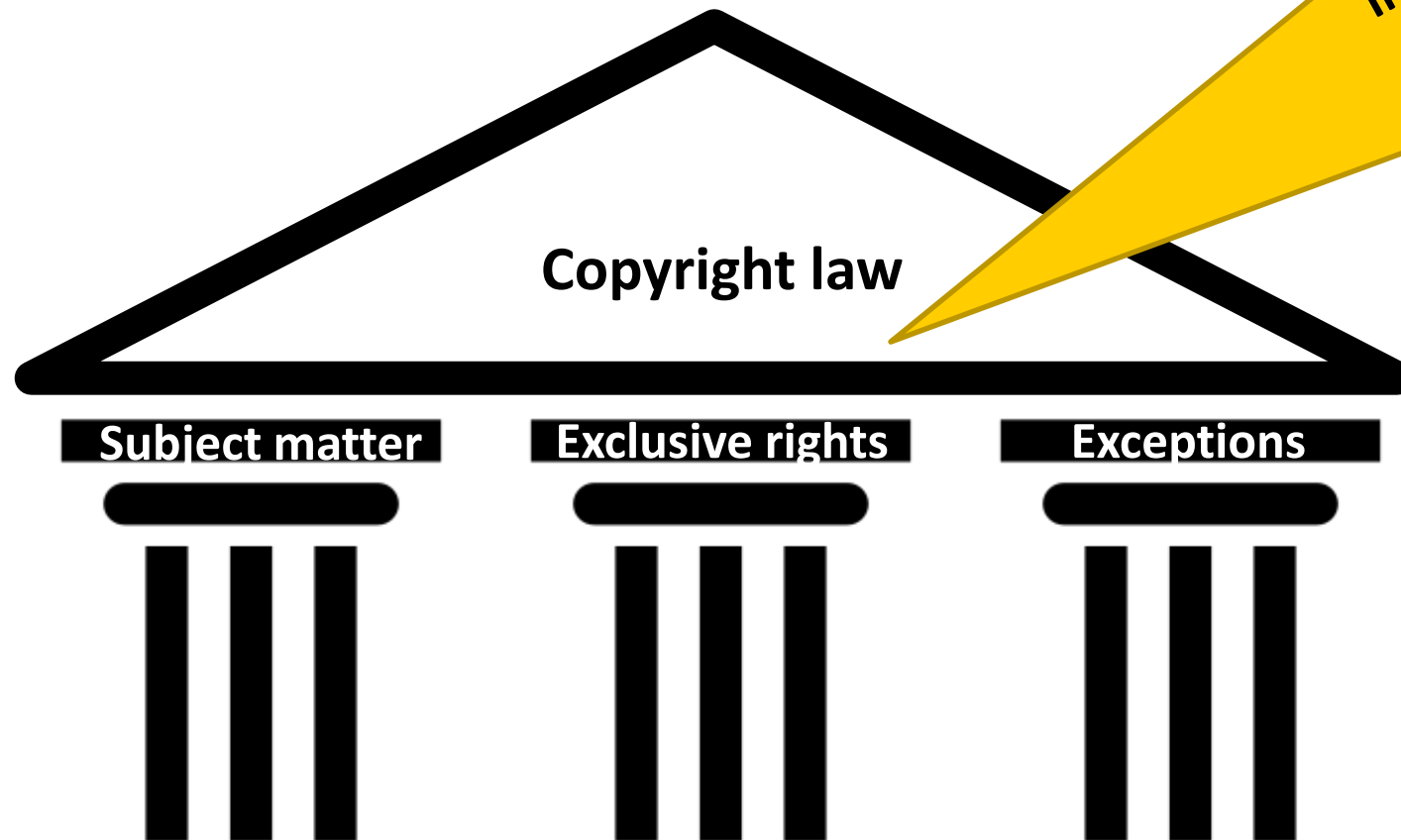
2. Fundamental rights and material rules of copyright law



- Harmonized.
- Art. 5 of the Copyright Directive (2001) offers a closed list of exceptions Member States *may* implement.

The dual role of fundamental rights...

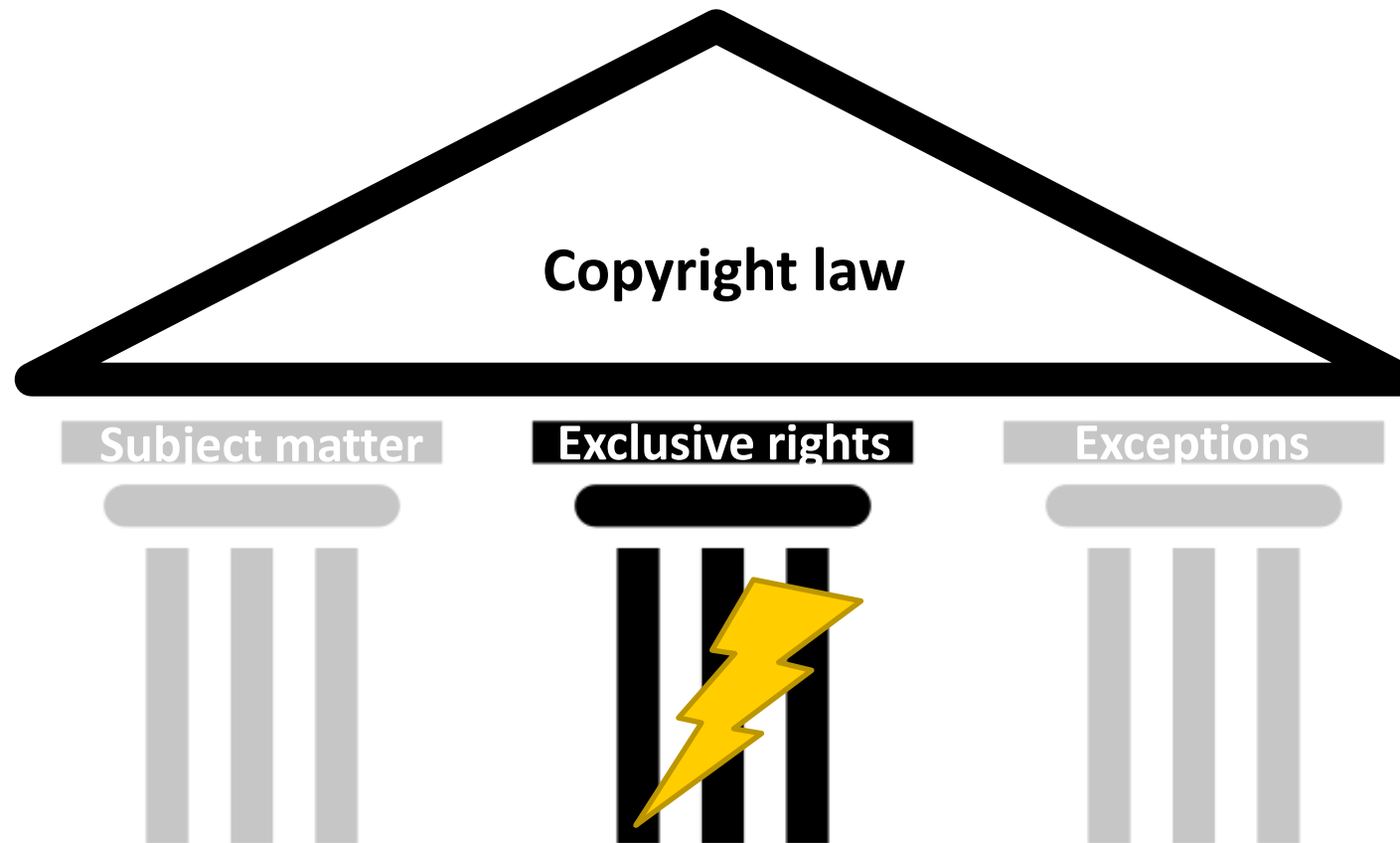
2. Fundamental rights and material rules of copyright law



Fundamental rights?
In Charter and ECHR

The dual role of fundamental rights...

2. Fundamental rights and material rules of copyright law



e.g. CJEU in *GS Media* and *Renckhoff*

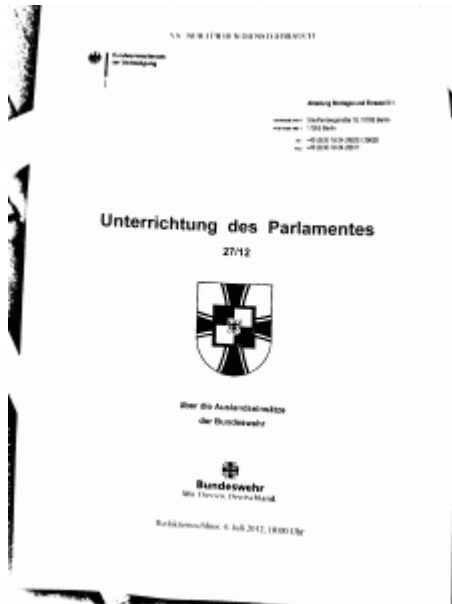
The dual role of fundamental rights...

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**The CJEU decisions in
Funke Medien, Pelham
and *Spiegel Online***

The CJEU decisions in *Funke Medien*, *Pelham* and *Spiegel Online*



The CJEU decisions in *Funke Medien*, *Pelham* and *Spiegel Online*

External limitation by fundamental rights

CJEU rules that one cannot rely on fundamental rights in cases that are not provided for in Art. 5 of the Copyright Directive.



The CJEU decisions in *Funke Medien*, *Pelham* and *Spiegel Online*

Interpretation of exceptions

“It follows that the interpretation of the exceptions and limitations provided for in Article 5 (...) must allow (...) their **effectiveness** to be safeguarded and their **purpose** to be observed, since such a requirement is of particular importance where those exceptions and limitations aim, as do those provided for in Article 5(3)(c) and (d) of Directive 2001/29, to ensure observance of fundamental freedoms.”



The parody exception in copyright law

The parody exception in the Copyright Directive

Art. 5(3)(k) of the Copyright Directive

Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

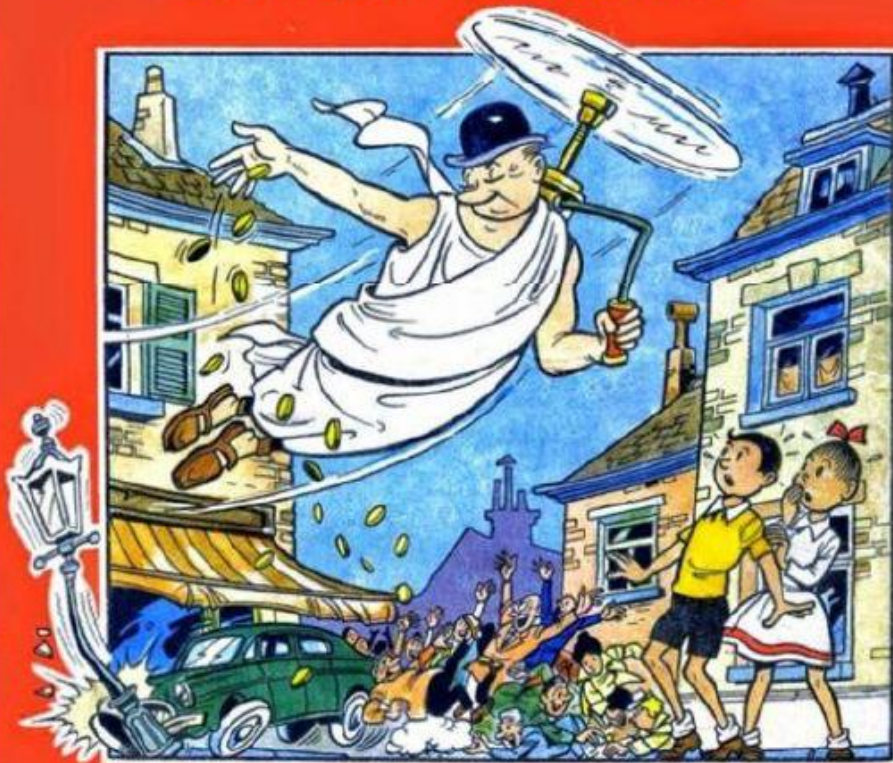
(...)

use for the purpose of caricature, parody or pastiche;

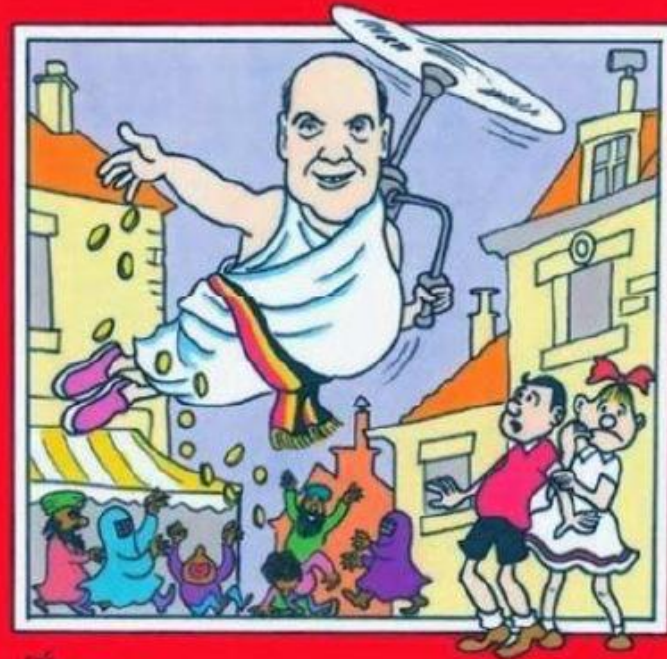
W. VANDERSTEEN

SUSKE EN WISKE

DE WILDE WELDOENER



DE WILDE WELDOENER



1962
W. VANDERSTEEN

The CJEU decision in *Deckmyn*

ECLI:EU:C:2014:2132

There is no definition of parody in the Copyright Directive.

“essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it, and, secondly, to constitute an expression of humour or mockery.”

“the exception for parody ... must strike a fair balance between, on the one hand, the **interests and rights of persons referred to in Articles 2 and 3** of that directive, and, on the other, the **freedom of expression** of the user of a protected work who is relying on the exception for parody, within the meaning of Article 5(3)(k).”





LIJNTJE

**Nijntje is al 3 dagen waker.
Ze zit lekker op de pep.**

**“Pep is slecht”, zegt mammi.
“niet met me fokken,”
roept nijntje
“ik sta super strak”**

**Nijntje weet wat goed spul is.
Mammi is een mellow-teef.**

Court of Appeals Amsterdam (2011)
ECLI:NL:GHAMS:2011:BS7825.

nijn - eleven



Court of Appeals Amsterdam (2011)
ECLI:NL:GHAMS:2011:BS7825.

Conclusion

Conclusion

- Only very limited **external** limitation of copyright by fundamental rights appears possible.
 - In absence of clear fundamental rights-based exceptions, fundamental rights may play a bigger role in trademark law?
- Fundamental rights play an increasingly important role in copyright law '**internally**'. But that does require careful balancing of primacy of EU legislator and interpretative freedom of the CJEU and MS courts.

Thank you!

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