

Pastiche in German law

The term “pastiche” in § 51a UrhG is sufficiently open to cover, apart from mere stylistic imitations, the adoption of protected elements of foreign works by another work as long as the new work enters in an artistic dialogue with the work used. However, the existence of an “interaction” with the pre-existing work must not be taken lightly. In addition to displaying an artistic character of its own which goes beyond simply collecting or distorting works of other authors, this always requires a sufficient internal distance from the individual traits of the older work. Hopefully, in the “metal on metal” case, the ECJ will find an interpretation of Article 5(3)(k) of the InfoSoc Directive which enables the courts to take into account the protection of artistic freedom guaranteed by Art. 13 of the Charter of fundamental rights as well as the interests of rightholders.