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Judgment of the Court in Joined Cases C-580/23 | Mio and Others and C-795/23 | konektra

Copyright protection for utilitarian objects is subject to the same requirements as for other subject matter

Two furniture manufacturers are arguing before the courts in Sweden and Germany, respectively, that two furniture retailers have infringed their copyright in certain furniture.

Swedish manufacturer Galleri Mikael & Thomas Asplund considers that dining tables, ¹ marketed by Swedish group Mio, exhibit strong similarities with tables which it manufactures ² and which, as works of applied art, are protected by copyright.

Swiss manufacturer USM U. Schärer Söhne claims that German online retailer konektra offers a furniture system which is identical to a modular furniture system which it manufactures ³ and which, as a work of applied art, is protected by copyright.

The Court of Appeal sitting in Stockholm and the German Federal Court of Justice referred questions to the Court of Justice concerning the conditions ⁴ under which a utilitarian object may constitute a work of applied art and therefore enjoy copyright protection.

The Court recalls ⁵ that, in certain situations, subject matter may be protected both as a design ⁶ and as a work for the purposes of copyright. ⁷ It clarifies in that regard that there is no relationship of rule and exception between those distinct types of protection. As regards protection as a work for the purposes of copyright, **the originality of subject matter of applied art must be assessed according to the same requirements as those used to assess the originality of other types of subject matter.**

Subject matter which reflects the personality of its author as an expression of his or her free and creative choices constitutes a work for the purposes of copyright. Choices that are dictated by various constraints, particularly technical, do not constitute such free and creative choices. ⁸ That applies also to choices which, while free, do not bear the imprint of the author's personality by giving that subject matter a unique appearance. The author's intentions during the creative process, ⁹ his or her sources of inspiration, ¹⁰ the use of shapes that are already available, ¹¹ the likelihood of a similar independent creation, or the recognition of that subject matter in professional circles ¹² may, depending on the circumstances, be taken into account. However, such circumstances are not, in any event, necessary or decisive for the purpose of establishing the originality of the subject matter.

In order to establish a copyright infringement, it is necessary to determine whether creative elements of the protected work have been reproduced in a recognisable manner in the allegedly infringing subject matter. The same overall visual impression created by the two subject matters at issue and the degree of originality of the work concerned are irrelevant. The mere possibility of a similar creation ¹³ cannot justify a refusal to grant protection.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ In the 'Cord' furniture series.

² In the 'Palais Royal' furniture series.

³ The USM Haller system.

⁴ Pursuant to [Directive 2001/29/EC](#) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

⁵ See judgment of 12 September 2019, *Cofemel*, [C-683/17](#); see also Press Release [No 109/19](#).

⁶ The purpose of that protection is to protect subject matter which, while being new and distinctive, is functional and liable to be mass-produced. It is intended to apply for a limited but sufficient time to ensure a return on the investment necessary for the creation and production of that subject matter, without thereby excessively restricting competition.

⁷ Copyright protection, the duration of which is significantly greater, is reserved to subject matter that merits being classified as works. Copyright does not protect ideas, but only their expression.

⁸ Where the realisation of subject matter has been dictated by technical considerations, rules or other constraints, which have left no room for creative freedom, that subject matter cannot constitute a work.

⁹ Since the author's intentions lie within the realm of ideas, they can be protected only in so far as the author has expressed them in the work.

¹⁰ Where the author of the subject matter has taken inspiration from existing subject matter, copyright protection is limited to the author's own creative elements.

¹¹ The use by the subject matter's author of already available shapes does not, in itself, exclude originality. Subject matter composed solely of available shapes may be original where its author has expressed his or her creative choices in the arrangement of those shapes.

¹² As well as its display in art exhibitions or museums.

¹³ While, for technical reasons, the possibilities for creativity are limited in the case of subject matter of applied art, such a situation is not entirely excluded. Even if it were established, it would not constitute a copyright infringement. In order to establish a potential copyright infringement, it is necessary to determine whether such a similar independent creation does in fact exist, taking into account all the relevant aspects of the particular case, as they existed when the subject matter in question was created, irrespective of factors external and subject to its creation.