



PRESS RELEASE No 50/26

Luxembourg, 14 April 2026

Judgment of the Court in Case C-590/23 | Pelham (Concept of 'pastiche')

The Court of Justice clarifies the scope of the exception for 'pastiche' in relation to sampling

That exception is aimed at safeguarding a fair balance between copyright protection and the protection of the freedom of the arts

In the context of a long-running dispute regarding the reproduction of a sample from a track of the German band Kraftwerk, the Court of Justice clarifies the scope of the exception for 'pastiche', which allows the use of elements of a work that are protected by copyright without the prior authorisation of rightholders.

The Court finds, *inter alia*, that that exception covers creations which evoke one or more existing works, while being noticeably different from them, and which use, including by means of sampling, some of those works' characteristic elements protected by copyright, in order to engage with those works in an artistic or creative dialogue that is recognisable as such. That dialogue can take different forms, in particular the form of an overt stylistic imitation of those works, of a tribute to them or of humorous or critical engagement with them.

The German band Kraftwerk published, in 1977, a phonogram containing the track '*Metall auf Metall*'.

The two founders of that band brought proceedings before the German courts against the two composers of the song '*Nur mir*' and the producer of the phonograms on which that song appeared in 1997 (and, again, in 2004), Pelham GmbH. They ¹ claim that those composers and that producer infringed, *inter alia*, their copyright-related right that they hold as producers of phonograms ² by electronically copying a sample of approximately two seconds of a rhythm sequence from the track '*Metall auf Metall*' and using that sample in a continuous loop in the song '*Nur mir*'.

In that dispute, which has continued for over 20 years, ³ the question has not been settled as to the lawfulness of that sample, after 7 June 2021, where used for the purpose of 'pastiche'. On that day, an exception to copyright and to the rights of phonogram producers entered into force in Germany, authorising, for the purpose of caricature, parody or pastiche, the reproduction, distribution and communication to the public of a published work.

Since that exception has its origin in EU law, ⁴ the Federal Court of Justice asked the Court of Justice to clarify the scope of the concept of 'pastiche'.

The Court of Justice answers that the exception for 'pastiche' ⁵ covers creations which evoke one or more existing works, while being noticeably different from them, and which use, including by means of sampling, some of those works' characteristic elements protected by copyright, in order to engage with those works in an artistic or creative dialogue that is recognisable as such. ⁶ That dialogue can take different forms, in particular the form of an overt stylistic imitation of those works, of a tribute to them or of humorous or critical engagement with them.

In order for a finding to be made that use is 'for the purpose' of pastiche, it is sufficient that the 'pastiche' nature be recognisable for a person who is familiar with the existing work from which the elements have been borrowed. A finding

that the user intended to use the work for that purpose is therefore not necessary.

The Court notes that that interpretation of the exception for 'pastiche' ensures a fair balance between the protection of the freedom of the arts and copyright protection, as well as legal certainty.

It is for the Federal Court of Justice to rule on the dispute pending before it by taking account of the answers provided by the Court of Justice. In its order for reference, the Federal Court of Justice noted that, based on the findings made by the previous court,⁷ the song 'Nur mir' artistically engages with the rhythm sequence taken from the track 'Metall auf Metall', which is in a different music genre, while being, despite the reduction in tempo and the metric modulation, recognisable as alluding to the original.

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, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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

Stay Connected!



¹ As one of the two founders died in 2020, his successor in title has been a party to the dispute since then.

² Containing the track 'Metall auf Metall'.

³ In response to a previous reference for a preliminary ruling from the German Federal Court of Justice in the same dispute, the Court of Justice has already specified that sampling can infringe the rights of a phonogram producer when it takes place without that producer's authorisation. However, the use of a sound sample in a modified form unrecognisable to the ear does not infringe those rights, even without such authorisation (see judgment of 29 July 2019, *Pelham and Others*, [C-476/17](#); see also Press Release [No 98/19](#)).

⁴ [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. Under that directive, Member States may provide for exceptions or limitations to the exclusive rights of reproduction and communication to the public, inter alia where there is use for the purpose of caricature, parody or pastiche.

⁵ Set out in Article 5(3)(k) of the directive. The Court states in that context that that exception does not have a catch-all nature (*Auffangtatbestand*) covering every form of creative use of copyright-protected material.

⁶ Therefore, the concept of 'pastiche' does not cover concealed imitations of protected subject matter or plagiarism.

⁷ Namely, the Higher Regional Court, Hamburg.