THE LEGAL NATURE OF PARODY IN COPYRIGHT LAW: LEARNING FROM THE ITALIAN WAY

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This article examines the concept of parody in copyright law, focusing on the distinct approaches taken by the fair use system (American) and statutory exceptions (European), as well as the unique perspective of Italian jurisprudence. Both the fair use and statutory exception systems generally treat parody as a form of copying or imitation that, under certain conditions, is exempted from copyright infringement. The statutory exception approach promoted by EU law operates within the broader framework of a 'no-copying' rule whereby parody is recognised as an exception to this rule: the parodist is a copier, but the legal rule against copying is suspended or derogated in this specific instance. In the fair use system, the parodist is deemed to have 'copied' the original work, but in a way that is transformative - adding something new with a different purpose or character. This transformation is what exempts the act of copying from being classified as infringement. Despite these differences, the two approaches share the underlying assumption that parody involves copying or imitation of an existing work. In contrast, Italian jurisprudence offers a radically different perspective, where parody is not considered a form of copying at all, but rather an independent and original work in its own right. This approach, first established in a landmark 1908 ruling and remained consistent throughout Italian copyright jurisprudence, is now being challenged by EU harmonization. The article argues that the 'Italian way' to parody should be maintained, as it is not only inherently valuable but also keeps alive a fundamental and yet unresolved question in copyright law: What does it mean to copy?

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I. INTRODUCTION

While parodies may be understood differently across countries, cultures, and generations - sense of humour being one of the least universal traits among human beings - they have one thing in common from a legal perspective: they are generally considered exempt from copyright infringement all over the world. The extent and scope of this exemption can differ, with some jurisdictions adopting a more lenient or strict approach than others, but the underlying principles justifying non-infringement remain largely the same. Scholars have thoroughly examined both the foundational principles and the variations in how parody is treated legally.[1] The latter, in particular, has attracted deep scrutiny in light of the fact that European countries, coming from diverse legal histories and doctrinal traditions, are gradually converging toward a unified standard.[2] In this context, theoretical and comparative analysis provides invaluable insights into the evolution of the law while offering guidance on how it should develop more effectively to translate principles into practice in an evolving cultural context.

In this article, I will tackle the question from a different angle, by adopting a deliberately more 'abstract' approach. My question is not 'if' parody is an infringement of author's rights, but rather 'why' is it not so. Yet my question does not aim at understanding rationale or justifications, but a more simple and yet puzzling fact: why doesn't copyright law prohibit the creation of parodies? My short answer to this question is: because parody is not a copy of the work it parodies. Although this answer may appear straightforward and even intuitive, it has never been articulated in its pure form within any legal system or tradition - except one: Italy. Under what might be called the 'Italian way', parody is not viewed as a form of copying or imitation that is exempted from copyright infringement on some special grounds: rather, it is not a copy in the first place. However, if parody is something else than a copy or an imitation, then the very notion of 'copying' that underpins our copyright discourse, whether explicitly or implicitly, is fundamentally questioned. It is this foundational questioning that ultimately interests me, rather than the place of a specific art form within the copyright system.

In the following, I will explore the 'Italian way' by contrasting it with the generally assumed approach in copyright discourse, which treats parody essentially

[1] Among the most thorough recent studies on the topic see: S. Jacques, *The Parody Exception in Copyright Law* (Oxford: Oxford University Press, 2019); E. Derclaye, 'To What Extent is the Parody Exception Truly Harmonised? An Empirical Analysis of the Member States' Case Law Post-Deckmyn' 2 *Intellectual Property Quarterly*, 59 (2023); F. Gattillo, 'Appropriazione artistica tra plagio e parodia: un'analisi di diritto comparato' *Arte e Diritto*, 243 (2022); R. Deazley, 'Copyright and Parody: Taking Backward the Gowers Review?' 73 *The Modern Law Review*, 785 (2010); D. Mendis and M. Kretschmer, *The Treatment of Parodies under Copyright Law in Seven Jurisdictions. A Comparative Review of the Underlying Principles*, UK Intellectual Property Office (1998).

[2] E. Derclaye, 'To What Extent' n 1 above; E. Rosati, 'Just a Laughing Matter? Why the CJEU Decision in *Deckmyn* is Broader than Parody' 52 *Common Market Law Review*, 511 (2015).

as an exempted act of copying. This approach can be split into two sub-approaches: one views cases like parody as derogations to a general rule of 'no-copying', while the other sees parody as aligned with the overarching goal of copyright to promote creativity. In the latter view, parody is specifically considered deserving of exemption from infringement because it is seen as a 'transformative' form of copying.[3] My hypothesis, which I will test in this article, is that the distinct approach developed by Italian jurisprudence is not only inherently robust but also offers insights into one of the most fundamental and yet unresolved questions in copyright law: the meaning of 'copying'. While the 'Italian way' faces challenges from European Union (EU) harmonization and may risk being overshadowed by its effects,[4] I argue that this approach is worth preserving and further elaborating as a fundamental contribution to copyright in our age.

II. PARODY AS EXEMPTED COPYING

A general way to approach parody in copyright law is to treat it as a form of copying that does not violate the author's exclusive right to copy. It is copying, but 'exempted' copying, or in other words, an act that benefits from an exception to the general rule that all copying must be authorized by the author.

While this approach can be easily acknowledged in general terms across different copyright systems, not all jurisdictions explicitly include a statutory exception to this effect in their legislation. Indeed, statutory exceptions for parody have been introduced relatively late in copyright law, with the first example being probably France in 1957.[5] The French approach served as the basis for the exception introduced at EU level through Directive 29/2001 (the 'InfoSoc Directive') in Art 5(3)(k), covering 'use for the purpose of caricature, parody or pastiche'. It is important to recall that the implementation of the exceptions specified in Arts 5(2) and 5(3) of the InfoSoc Directive is discretionary, allowing Member States the freedom to decide whether or not to incorporate any of the listed exceptions in their legislation.[6]

Now, what does it mean to frame a permitted use of a copyright work as an 'exception'? On a very general level, an exception can be understood as a concession

[3] The two sub-approaches can generally be traced back to the 'exception' (European) system and the 'fair use' (American) system, though in my deliberately abstract analysis they do not entirely align with either.

[4] E. Derclaye, 'To What Extent' n 1 above. See discussion below.

[5] Art L.211-3 ('*Les bénéficiaires des droits ouverts au présent titre ne peuvent interdire: (…) (4°) La parodie, le pastiche et la caricature, compte tenu des lois du genre*'). See A. Giannopoulou, 'Parody in France' (1-12) available at https://tinyurl.com/2s6arv9t (last visited 30 May 2025).

[6] Art 5(2) and 5(3) European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167 stipulate that 'Member States *may* provide for exceptions or limitations (…) in the following cases'. As it will be seen below, however, this discretionality is limited in other ways.

made by the law in specific situations, or a derogation from a general rule. It is commonly assumed that framing an act as an exception in this sense inevitably limits its scope. However, if it is true that derogations, by definition, must necessarily be interpreted narrowly, the scope of the exempted act ultimately depends on how the 'general rule' is construed. So, if the general rule, as often emphasized in the EU, is that copyright should provide a 'high level of protection to rightsholders',[7] then the exception will inevitably be interpreted narrowly. If, by contrast, copyright is viewed as a regulatory system that balances competing rights and interests, then exceptions to the author's exclusive rights may be interpreted more broadly or even as 'rights' in their own right.[8]

The legal nature of exceptions can be described, more abstractly, as mechanisms that establish a domain where a law that normally governs a specific sphere of human activity is temporarily suspended. When an exception is invoked, the law ceases to function in its usual capacity. More precisely, the law functions by negating itself as a law.[9] As a result, the domain where an exception operates is marked by a distinctive 'legal vacuum'. However, this is not a void in the sense of a not-yet regulated space; rather, it is a space that the specific law deliberately excludes from its scope, intentionally leaving it unregulated, ie not subject to the force of law. When parody is understood as an act of copying that may be exempted from the general rule that provides authors with exclusive rights, copyright law establishes essentially a 'legal void' where that act of copying for that particular purpose is no longer subject to the enforcement of the law. In this context, copyright negates itself in that act. More precisely, it is not just that copyright law ceases to operate (as when copyright expires or is being waived): rather, it operates by negating its operativity.[10]

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[7] The wording appears in the recitals of nearly all EU directives on copyright and related rights, such as in Recitals 4 and 9 of European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167, and has become a sort of *mantra* in the Court of Justice of the European Union jurisprudence. Its origins can probably be traced back to the *Bangemann report* of 1994, whose sentence 'Europe has a vested interest in ensuring that protection of IPRs receives full attention and that a high level of protection is maintained' (p 21) has been frequently cited in subsequent policy documents. For a critical view: M. Borghi, 'Commodification of intangibles in post-IP capitalism: rethinking the counter-hegemonic discourse' 2 *European Law Open* (2023), 434, 438-439.

[8] The jurisprudence of the CJEU has in fact evolved from a derogation-based construal of copyright exceptions to a rights-based approach, where exceptions are seen as reflecting fundamental rights: see M. Borghi, 'Exceptions as users' rights?', in E. Rosati ed, *Routledge Handbook of EU Copyright Law* (London & New York: Routledge, 2021). However, the notion of 'balance' is in itself problematic, as it will be seen below.

[9] Giorgio Agamben's work provides a profound understanding of the implications of the 'state of exception' as the founding moment of a legal order. Although his analysis is based on public law, the structural insights it reveals can be extended to any legal system founded on the dichotomy between 'rule' and 'exception'. See G. Agamben, '*Iustitium*. Stato di eccezione', in Id ed, *Homo sacer. Edizione integrale 1995-2015* (Macerata: Quodlibet 2018), 169-250.

[10] To be precise, this structure applies not only to exceptions, but to other copyright limitations as well, such as the idea/expression dichotomy or the defence of independent creation.

This structure is not merely a neutral definition of copyright mechanisms; rather, it represents a deliberate legislative choice that triggers some consequential dynamics.

One dynamic is that the void created by copyright can, for instance, be filled by other rights. In the ever-expanding catalogue of fundamental human rights, there are numerous possibilities to consider - most notably freedom of speech and artistic expression, but also, more broadly, the freedom to conduct business.[11] In this sense, acts falling within a copyright exception may themselves be governed by higher rights. The understanding of exceptions as 'user rights' is not so much an alternative to their interpretation as (narrow) derogations from the rule, but rather a logical - or even 'natural' - progression. After all, a suspension of the law cannot be maintained indefinitely and a legal order must fill the void, particularly as exceptions gain greater significance in the current economic system.[12]

Alternatively, or even alongside this process, the void left by law can be occupied by *brute force*. With the suspension of the law's authority in the form of exclusive rights, the space may in fact be claimed through mere *de facto* occupation - that is, by exercising exclusive possession and control over that space without any legal title to it.[13] This dynamic is typical of a situation where the subjects that benefit from an exception, either directly or indirectly, can capitalize on positional income or even monopoly rents that do not require formal ownership of exclusive rights over their source of revenues. The current technological and economic landscape exemplifies this scenario.[14] Dominant players in the so-called 'infosphere' derive immense value from the use of copyright protected works facilitated by exceptions - whether directly, such as by using these works to train algorithms, or indirectly, as when for instance 'users' re-use them to create parodies - all without formally owning or asserting any copyright over these works.[15]

The interpretation given by the Court of Justice of the European Union to the parody exception reflects the structure just now examined. In the *Deckmyn*

[11] See J. Pila and P. Torremans, *European Intellectual Property Law* (Oxford: Oxford University Press, 2019), for a tentative catalogue of the fundamental rights that correspond to each copyright exception.

[12] A good deal of European copyright scholarship today focuses on the intersection of intellectual property and fundamental rights. See C. Geiger and E. Izyumenko, 'From Internal to External Balancing, and Back? Copyright Limitations and Fundamental Rights in the Digital Environment', in J. Lopez and C. Saiz Garcia eds, *Digitalización, acceso a contenidos y propiedad intellectual* (Madrid: Dykinson, 2022).

[13] See M. Ricolfi, 'Regulating De Facto Powers: Shifting the Focus', in G. Ghidini and V. Falce eds, *Reforming Intellectual Property* (Cheltenham: Edward Elgar, 2022) and J. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford: Oxford University Press, 2020).

[14] I. Varoufakis, *Technofeudalism* (London: Bodley Head, 2023).

[15] J. Cohen, *Between Truth and Power*, n 13 above. I elaborate on this dynamic in M. Borghi, 'Commodification' n 7 above, and by specific refence to fair use in Id, 'Reconstructing fairness: the problem with fair use exclusivity', in D. Gervais ed, *Fairness, Morality and Ordre Public in Intellectual Property* (Cheltenham: Edward Elgar: 2020).

decision, the Court, after defining parody as 'an autonomous concept of EU law' and providing a dictionary-based definition - stating that a parody must 'evoke an existing work, while being noticeably different from it', and must 'constitute an expression of humour or mockery' - further emphasized that applying the parody exception requires striking 'a fair balance between, on the one hand, the interests and rights of [the copyright holder], and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody.'[16] The Court then outlined the three conditions required for the parody exception to apply, but first - more intriguingly for our analysis - clarified what does 'not' constitute a condition:

> The concept of 'parody' (…) is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; that it should relate to the original work itself or mention the source of the parodied work.[17]

The exclusion of the originality requirement and its replacement by the (less stringent) condition of 'noticeable difference' may seem at odds with an exception whose purpose is precisely to remove legal obstacles to an independent act of authorship. Furthermore, the Court's interpretation could result in misunderstandings about what constitutes a parody in the absence of an original act of authorship, including the blatant absurdity of considering any quirky product of so-called generative AI as a 'parody' (or 'pastiche').[18]

However, on a more careful consideration, the Court's interpretation is perfectly consistent with the legal structure 'rule/exception' we have outlined before. The exception creates a carefully defined space of 'copyright void' in which exclusive rights over the work are suspended. Its functioning does not depend on how such 'void' is filled. What matters is only that the resulting work is 'noticeably different' from the parodied work, that its authorship is not misleadingly attributed to the creator of the original, and that the original work is referenced or acknowledged as a source. Conversely, neither the 'copyright *status*' of the resulting work - the parody itself - nor the 'authorial nature' of the exempted act are matter of concern and should not serve as determining factors in distinguishing permissible from impermissible parodies. To be sure, a parody may indeed possess its own original character and qualify for copyright protection in its own rights. However, the fate or status of the parody once the exception has produced its effect is irrelevant to the

[16] Case C-201/13 *Deckmyn* v *Vandersteen*, [2014] ECLI:EU:C:2014:2132, para 27.
[17] ibid para 33.
[18] For a thorough critique see G. Westkamp, 'Borrowed Plumes: Taking Artists' Interests Seriously in Artificial Intelligence Regulation' (2024), available at https://tinyurl.com/ymkyzttm (last visited 30 May 2025)

operation of the exception. The exception simply suspends the operation of copyright law and opens a space of 'copyright vacuum' that may remain unclaimed by any copyright legal entitlements.

III. PARODY AS TRANSFORMATIVE COPYING

An alternative approach views parody not as excluded from infringement due to a provisional suspension of exclusivity but because it is inherently aligned with the purpose of copyright. Here, parody is viewed as an integral component of a copyright system whose aim and purpose are to protect and promote creativity in all forms. Parody is now 'internal' to copyright and no longer a 'foreign body' subject to external areas of law. Under this framework, copyright does not merely exempt parodies but, in a sense, actively encourages their creation. While this perspective emerges in the jurisprudence of many countries, and is certainly not alien to the European tradition, it is most prominently embraced within common law jurisdictions, particularly in the United States (US).

The argument underlying this approach is twofold. First, parody is a form of literary or artistic creativity that requires, by definition, extensive use of another work (the 'parodied' work), so that it may fall under the general definition of a derivative work. However, authors or rightsholders of the to-be-parodied work are unwilling to authorize such kind of derivative use of their work and, in general, uses where their own work is criticized, ridiculed or otherwise put down. This is because, as the saying goes, 'People ask for criticism, but they only want praise'.[19] As a consequence, copyright law must ensure that a 'breathing space' is left for unlicensed uses of protected works.

This view suggests the following: copyright normally operates as a smooth mechanism of prohibitions and permissions - namely, exclusive rights and licenses. In an ideal world, this mechanism would strike the perfect balance of incentives for all stakeholders in the field, including both authors and users. However, in some instances, the system encounters a blockage, resulting in incentives being unbalanced to the detriment of the user. To address this issue, copyright law exempts the parodist from the otherwise required license to carry out their work. In the language made popular by law and economics, fair use is the copyright doctrine that serves as a solution to this market failure.[20] Yet, how does fair use apply to parodies?

The judicially established framework to determine copyright infringement in the United States follows generally a four-step process. First, the court must determine whether the plaintiff's work qualifies for copyright protection (subsistence). Next, it

[19] The saying is quoted in the landmark decision of the US Supreme Court in *Campbell* v *Acuff Rose* 510 US 569 (1994).

[20] W.J. Gordon, 'Fair Use as Market Failure: A Structural and Economic Analysis of the *Betamax* Case and its Predecessors' 82 *Columbia Law Review*, 1600 (1984).

must be shown that the defendant had access to the plaintiff's work (actual copying) and, if so, whether she took copyrightable elements of the work (actionable copying). If all these criteria are met, infringement is established unless the defendant successfully raises a valid defence, with fair use being the primary one.[21]

Within this framework, a determination of parody as non-infringing use could, in theory, arise at either the third or fourth step of the analysis. Specifically, it could be deemed non-actionable copying or, alternatively, actionable copying that qualifies as fair use. Jurisprudence of the United States has largely treated parody as a potential case of fair use, framing it as an act of copying protected by an affirmative defence. The approach has received its most authoritative endorsement in the 1994 Supreme Court ruling in *Campbell* v *Acuff-Rose*, which overturned a judgment that had deemed a parodic version of the song 'Oh, Pretty Woman' to be an infringement. By granting certiorari to determine whether 2 Live Crew's parody of Roy Orbison's iconic song could be a fair use, the Court unequivocally stated:

> It is uncontested here that 2 Live Crew's song would be an infringement of Acuff-Rose's rights in 'Oh, Pretty Woman,' (…) but for a finding of fair use through parody.[22]

Setting aside an in-depth examination if this landmark case, three aspects of the decision are particularly pertinent to our discussion.

First, the court rejected the Court of Appeals' determination that, by 'taking the heart of the original and making it the heart of a new work', defendant had, qualitatively, taken too much.[23] Admittedly, the Court acknowledged, 'Parody presents a difficult case', because in order to achieve its humorous effect through distorted imitation of the original work it 'must be able to 'conjure up' at least enough of that original to make the object of its critical wit recognizable'.[24] However, precisely for this reason, the lower court erred in considering the substantiality of taking (be it also determined qualitatively) as an evidence of infringement. To the Court 'Copying does not become excessive 'in relation to parodic purpose'

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[21] 17 US Code § 107: 'the fair use of a copyrighted work (…) for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors'.

[22] *Campbell* v *Acuff-Rose Music, Inc.* n 19 above, 574.

[23] ibid

[24] ibid 588.

merely because the portion taken was the original's heart'.[25] Not all taking amounts to infringing copying.

Second, the discriminant between lawful and unlawful taking does not depend on the value of the amount seized from the plaintiff's work, but it must be assessed in relation of the legitimate purpose of taking. Taking may have the purpose of superseding or replacing the original work or, alternatively, to 'transform it' by creating 'something new, with a further purpose or different character'.[26] If the latter is the case, then the act is not only presided by first amendment rights (freedom of speech), but is also at the core of copyright concerns. In case of the creation of a parody, taking may be both quantitatively and qualitatively higher than for other works based upon existing works:

> the goal of copyright, to promote science and the arts, is generally furthered by the creation of 'transformative' works. Such works thus lie at the heart of the fair use doctrine's guarantee of 'breathing space' within the confines of copyright.[27]

The implicit assumption is that 'transforming' a work inherently involves copying. However, since creating transformative works aligns with the constitutional purpose of copyright, the framework of copyright itself provides mechanisms to ensure the necessary 'breathing space' for such creativity. In principle, any act of copying, transformative or otherwise, could theoretically be authorized by the original author. Yet authors may exercise their (legitimate) exclusivity in ways that frustrate the overarching purpose of copyright. Fair use prevents potential *ex ante* market failure by defining and governing the scope of 'legitimate' transformations.

For the purpose of this article, the 'transformative copying' approach adds something different to the understanding of parody: it teaches that not all copying is an infringing copying. Because of the transformative character, copying can even be an integral part of the logical functioning of copyright. This approach enriches the 'exempted copying' view by revealing that copyright is not merely a general rule of 'no-copying' but a system for legally distinguishing permissible from impermissible copying.[28]

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[25] ibid. The considerations about the portion taken relate to the discussion of factor 3 in the fair use analysis.

[26] ibid 579. The Court notably arrived at this phrasing by drawing on Judge Leval's interpretation of factor 1 in the fair use analysis. According to Leval, factor 1 - *purpose and character of the use* - involves determining whether the defendant's work 'adds something new, with a further purpose or different character, altering the original with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is *transformative*.' P. Leval, 'Toward a Fair Use Standard' 103 *Harvard Law Review*, 1105 (1990).

[27] *Campbell* v *Acuff-Rose Music, Inc.* n 19 above, 579.

[28] To my knowledge, this point has never been articulated as clearly as in A. Drassinower, 'Copyright is Not About Copying' 125 *Harvard Law Review Forum*, 108 (2012), available at https://tinyurl.com/346a8m9k (last visited 30 May 2025).

IV. PARODY AS NON-COPYING

A third approach understands parody in an entirely different manner from the 'exempted' or 'transformative' copying frameworks: it removes parody from the category of copying altogether. As anticipated above, this approach is the defining feature of what I call the 'Italian way' to parody.

The question of whether parody constitutes copyright infringement holds a notable place in Italian legal history, especially when contrasted with the relatively scant attention it has received in other jurisdictions at least until recent years. This may be because, as a commentator put it in a leading early 20th-century treatise, 'the art of parody lacks abroad the noble traditions it enjoys in Italy'.[29] Whatever the reason, the Italian judicial and doctrinal approach shows distinct features that set it apart from other countries' legal traditions. The point was made in a 1996 judgment, where the court proudly emphasized the Italian uniqueness on the matter:

> There is no paradox in the fact that our legal system, by safeguarding parody solely through general copyright principles, effectively provides it with a more favourable regime - despite not explicitly mentioning it (in the statute) - compared to foreign legal systems that expressly regulate it. Other jurisdictions have, indeed, addressed parody in order to circumscribe its legitimate scope, while our system, though it could abstractly be inspired by the same principles, has, in practice, taken a different path (and in light of the historical evidence cited above [in this decision], it appears to have done so on the basis of a fully conscious option of long-standing tradition).[30]

The 'historical evidence' referenced here specifically pertains to a landmark 1908 judgment in a case before the Tribunal of Naples between the renowned poet Gabriele D'Annunzio and the Neapolitan playwright and actor Eduardo Scarpetta. Although the decision was neither the first on this issue nor delivered by a higher court (the case concluded with this initial judgment and was never brought to appeal), it gained recognition as a respected precedent in subsequent infringement cases. This was due not only to the prominence of the parties involved but also, and more importantly, to the exceptional quality of the court's reasoning.[31]

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[29] N. Stolfi, *La proprietà intellettuale* (Torino: UTET, 1915), II, 579-580.

[30] Tribunale di Milano 29 January 1996, *Il Foro Italiano*, 119/4, 1426 (1996).

[31] Tribunale Penale di Napoli, 27 May 1908, *La Legge*, 49/4, 370 (1909). The case arose from the 1904 staging of Scarpetta's play *Il figlio di Jorio* ('Jorio's Son'), an irreverent parody of D'Annunzio's dramatic work *La figlia di Jorio* ('Jorio's Daughter'). At the turn of the 20th century, Scarpetta was the most celebrated Neapolitan playwright and actor, known for highly successful plays cantered around the fictional character Felice Sciosciammocca (among others *Miseria e nobiltà*, later the subject of famous film adaptations). Following the tradition of popular theatre, Scarpetta often adapted and reinterpreted classic plays, themes, and characters in a comic vein. In *Il figlio di Jorio* he reimagined the original by altering the characters' genders, their dialect, and the setting - shifting from a central Italian locale to (needless to say) Naples. It transformed

In the following, I will examine the court's argument to highlight what I believe is the most distinctive characteristic of the 'different path' taken by Italian jurisprudence on parody, namely its interpretation of parody as a form of art that does not constitute copying in the first place.

In examining the scope of infringement (*'contraffazione'*) under the current law, the court embarked on a refined and scholarly elegant exploration of the historical and theoretical foundations of author's rights, that led to the (not surprising) recognition that legal protection encompasses the literary work as reflecting the author's unique individuality and ensures the ability to receive fair remuneration for their work. Accordingly, the scope and limitations of any infringement action revolve around two key factors: the misappropriation of this distinctive individual character and the resulting deprivation of opportunities for fair compensation.

Until this point, the court adhered to well-established reasoning in copyright infringement cases. However, a notable departure from traditional doctrinal arguments soon emerged. First, the court subtly diverged from the prevailing jurisprudence of the time by asserting that the permissibility or not of parody cannot be resolved through conventional 'objective' criteria, such as the extent of the material taken (*quantum of taking*) or substantial similarity between the two works. Since parody, by its very nature, relies on using another work as a model for imitation, none of these criteria are effective in distinguishing between permissible and infringing parody. This remains the true even when such assessments consider the distinction - made popular by long-standing doctrine - between the 'internal' and 'external' form of the work, as the parody may well make abundant use of the external form. According to the court, the key consideration is only whether the 'special essence' of the claimant's work has been reproduced in the defendant's work. While this argument merely foreshadows a consideration now widely recognized in legal rulings,[32] in the court's reasoning it serves as a foundation for the next logical step, which anticipates the genuinely original argument will be seen shortly. To the court:

D'Annunzio's introspective drama about impoverished shepherds into a lighthearted comedy filled with quarrels and exaggerated gestures. Before staging it, and at the suggestion of his producer, Scarpetta sought D'Annunzio's permission. According to court records, Scarpetta claimed that the poet enjoyed hearing excerpts of his parody read aloud and found them hilarious, but declined to give written authorisation. D'Annunzio allegedly remarked, '*Parody is permitted by law, so I won't give permission for something you are already allowed to do*'. The play was staged at a prominent Naples theatre but was met with a disastrous reception. Additionally, groups of D'Annunzio supporters protested the play, condemning it as a disrespectful mockery of the poet's masterpiece. Soon after, the lawsuit for copyright infringement was launched. The court proceedings are collected in *D'Annunzio contro Scarpetta. Cronaca di una storia di plagio dagli atti processuali. Introduzione di Giuseppe Cricenti* (Manocalzati: Edizioni il Papavero, 2024). The story is also portrayed in the 2021 film *Qui rido io*, directed by Mario Martone and featuring Toni Servillo in the role of Scarpetta. For a discussion of the legal implications see L. Moscati, 'Sulla parodia e la causa D'Annunzio-Scarpetta', *Historia et jus*, 2021.

[32] As in *Campbell* v *Acuff-Rose Music, Inc.* n 19 above.

> Noting that a parody has reproduced all or almost all of the episodes of the parodied work, has retained all or almost all of the forms of expression, has no relevance, since those similarities do not constitute an infringing reproduction, but are the distinctive characters of an autonomous form of art equally deserving legal protection.[33]

This point is also emphasized in Benedetto Croce's expert opinion in support of Scarpetta, with which the court unequivocally concurs:

> Counterfeiting (…) consists in altering the language or details of a work while retaining its spirit. Parody, in contrast, may preserve numerous details or even the language of the parodied work, but it always alters its animating spirit. The distinction between the two is therefore straightforward: and it is an *inconclusive method*, to determine whether a work is a counterfeiting rather than a parody, to *search and compare the greater or lesser number of details* found in that work that are *similar* to the original. Instead, the focus should be on whether the animating spirit or tone of the original has been altered: from tragic to comic, from serious to ridiculous, from sad to playful.[34]

The court, however, goes beyond merely rejecting the 'inconclusive method' of using reproduction and substantial similarity as benchmarks for infringement. More notably, it shifts the focus of the distinction between permissible and impermissible parody away from the divide between infringing and non-infringing copying. In a more radical approach, the court frames the issue as one between copying and *non-copying*. Parody is not a non-infringing use because it is a permissible form of copying (justified by its particular form of expression), but rather because it does not constitute copying at all. This is how the court puts it:

> It should not appear strange that, in this form of art, a type of imitation is permissible that for other kinds of artistic production would instead be considered infringing, because if we look deeper rather than merely grasping the surface of things, we realise that, in parody, that imitation is *merely apparent* and it is not a real imitation. (...) (T)he parody is not a *real imitation* of the parodied work, but, in identical form, reveals a substantial and profound antithesis, a new individuality.[35]

And further down it concludes:

> (P)arody, either because it *only apparently* imitates the parodied work, and an *apparent imitation* does not constitute a infringing reproduction; or

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[33] Tribunale Penale di Napoli 27 May 1908, *La Legge*, 49/4, 374 (1909). Translation mine.

[34] 'La perizia di B. Croce', in *D'Annunzio contro Scarpetta* n 31 above, 33-34. Translation and italics mine.

[35] Tribunale Penale di Napoli 27 May 1908 n 30 above, Translation and italics mine.

> because it has its own individuality distinct from that of the parodied work and indeed in antithesis with it; or because it does not subtract, but rather consolidates the profit due to the author of the parodied work - for either reasons it is unquestionably and evidently *lawful* in any case.[36]

The objective similarity or even identity with protected expressions of the parodied work are irrelevant as they do not amount to copying, if not only 'in appearance'. Absent actual reproduction, infringement can be in principle ruled out, while other factors such as the parody's distinctive character and the absence of economic competition with the original work are ancillary considerations.

V. THE DOCTRINE OF 'APPARENT IMITATION' AND ITS AFTERMATHS

The reasoning developed by the Neapolitan judges left a lasting impact on subsequent legal interpretations, though exploring its full implications lies beyond the scope of this article. For our purposes, it suffices to highlight the effect of what we might call the doctrine of 'apparent imitation' on the traditional framework for assessing copyright infringement. What does this doctrine entail? In parody cases, it shifts the focus from assessing 'how much' or 'how substantial' the copying was to determining whether the copying was real or merely apparent. If the copying is deemed apparent, the quantity of material taken becomes irrelevant.

This principle appears to implicitly guide the Italian approach to parody, as evidenced in more recent judgments. In a 1996 case before the Tribunal of Milan involving novelist Susanna Tamaro and comedian Daniele Luttazzi, the contested parody largely consisted of verbatim reproductions of extensive portions of the novel, with only a single word altered.[37] The court, referencing among others the old precedent set by the Tribunale of Napoli, ruled in favour of the defendant. What stands out in this decision is not merely the broad interpretation of permissible parody but the court's complete setting-aside of considerations concerning the quantity and substantiality of the material taken. Given that parody consists, by definition, in a substantial subversion (in a humorous and burlesque manner) of the very same expressions of another work:

> to postulate the illegitimacy of parody on the ground of the use of extrinsic elements of the parodied work or in relation to the amount of such use,

[36] ibid, translation and italics mine.

[37] Tribunale di Milano 29 January 1996 n 30 above. Tamaro authored the bestselling novel *Va' dove ti porta il cuore* (translated in English as *Follow Your Heart*), which Luttazzi parodied in an 'adults-only' version titled *Va' dove ti porta il clito* (roughly translatable as *Follow Your Clitoris*). The comical-irreverent effect of the parody largely stemmed from the simple substitution, in the original text, of the word 'heart' with the other word.

results in an obvious and inadmissible logical and conceptual contradiction.[38]

Not only the quantity and quality of the amount taken is not determinant in the assessment of infringement, but is also 'logically contradictory' to take it into consideration. The court reaches this conclusion because it is persuaded that the parodist's imitation is purely apparent. The parodist can take all external elements from the targeted work and yet this does not constitute an imitation in a copyright sense, due to the subversion and inversion of their meaning.

This approach has been eventually formalized in Italian jurisprudence through a concept borrowed from aesthetic theory, namely the notion of a 'semantic gap' ('*scarto semantico*') between the use of expressive elements in the original work and in the allegedly infringing one. The 'semantic gap doctrine' holds that infringement is excluded when an expressive form is reused in a new work with a different literary or artistic meaning.[39] While this doctrine shares clear parallels with the concept of 'transformative use' in the US fair use analysis - and may reflect an influence of US copyright jurisprudence[40] - it can be more accurately interpreted as an expression of a broader implicit principle in copyright law, namely the principle that determining infringement requires assessing the 'overall meaning of the two works' to establish whether the similarity in expressive form reflects an identical representation of ideas, emotions, and meanings.[41]

VI. WHAT DOES IT MEAN TO COPY?

The exclusion of parody from copyright infringement on the ground that it does not constitute a copy of the parodied work preserved copying as a benchmark for copyright infringement. But if copying is not the same as taking a substantial part and even the whole of the plaintiff's work, what is then copying? The Italian way may help to clarify some well-established assumptions in both the conventional

[38] ibid 1430. The court also observed, in passing, that 'using a scanner (to identify the copied parts) would be entirely irrelevant'.

[39] The doctrine has been first introduced by the Italian Supreme Court in 2015, in a case concerning the use by songwriter Francesco De Gregori of the incipit of the lyrics of an earlier iconic song ('*Prendi questa mano zingara*'); the Court held that the use was not infringing because the fragment of lyrics inserted in the defendant's song did not retain the same poetic-literary meaning but showed 'in a clear and evident manner a semantic gap' with respect to the earlier song: Corte di Cassazione 19 February 2015 no 3340, *Giurisprudenza italiana*, 106 (2016) commented by A. Cogo, 'Il plagio d'opera musicale tra identità del testo e diversità del contesto'. The 'semantic gap' doctrine has since been applied in other cases by both the Italian Supreme Court and lower courts.

[40] The Tribunale di Milano's decision in the case of the Giacometti variations is a case in point, where the court extensively - and rather unconventionally - drew on US fair use jurisprudence to support its a finding of non infringement. Tribunale di Milano 14 July 2011, *Reportorio del Foro italiano*, (2012). On the intersection of common-law and civil-law approaches to 'plagiarism' see G. Dore, *Plagio e diritto d'autore. Un'analisi comparata e interdisciplinare* (Padova: CEDAM, 2021).

[41] A. Cogo, Il plagio' n 39 above.

copyright discourse and the developments of legislation and jurisprudence.

One of these assumptions is that expressions and not ideas are the subject matter of copyright, so that anyone is free to make use of the 'idea' while not appropriating the 'form'.[42] Copyright jurisprudence extensively elaborates on the notion that copying occurs when someone takes the expressive form of a work. In copyright language, the expressive form may consist, for example, of the 'choice, sequence and combination' of words in a text,[43] but also the ensemble of 'plots, settings and characters' that shape a fictional work,[44] or the 'selection, coordination, and arrangement' of facts[45] and the manner in which they are presented of narrated in a non-fictional work, and so forth and so on. However, the case of parody illustrates that 'copying' is not the same as 'taking the expressive form'. Indeed, the virtuosity of the parodist often lies in making subtle, even imperceptible changes to the original expressions - altering just a single word or simply the tone in which it is delivered - capable of instantly transforming seriousness into outright hilarity. In this sense, parody instructs that the fact of taking original expressions may be a consequence, an exterior manifestation, but not the definition of copying. In fact, there can be copying even when the expressive form has been altered into something 'new' (as it occurs when works are grinded into what Noam Chomsky called a 'high-tech plagiarism' machine)[46] and there can be no copying when the entirety of the expressive form is taken, as in the case of parody. So logically, if not chronologically, copying precedes taking, not the other way round.

In terms of the idea/expression dichotomy, this logic can be understood as one where an author's original expression manifests itself as an 'idea' or a 'fact' in turn, which the parodist then freely uses to create its own original expression. No copying occurs - unless we unduly stretch the definition of copying to include the use of unprotectable ideas or facts. This implies that an author's expression, before being subject to exclusivity, is fundamentally available for appropriation by others. The unique characteristic of creative works, as opposed for instance to trade marks, is that they inherently invite appropriation and reinterpretation by others.[47] And,

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[42] Agreement on Trade-Related Aspects of Intellectual Property Rights, Art 9(2): 'Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such'.

[43] Case C-5/08 *Infopaq International A/S* v *Danske Dagblades Forening*, [2009] ECLI:EU:C:2009:465, para 45.

[44] *Penguin Random House LLC* v *Colting* 270 F. Supp. 3d, 736 (S.D.N.Y. 2017).

[45] *Feist Publications, Inc.* v *Rural Telephone Service Co.* 499 US 340 (1991).

[46] 'Noam Chomsky: The False Promise of ChatGPT' *The New York Times*, available at https://tinyurl.com/fzh6uz5u (last visited 30 May 2025).

[47] I owe this insight to A. Drassinower, 'Authorship as Public Address: On the Specificity of Copyright vis-à-vis Patent and Trade-Mark' 199(1) *Michigan State Law Review*, 200 (2008), now also explored more systematically in Id, *What's Wrong with Copying?* (Cambridge MA: Harvard University Press, 2015). While not 'inviting' public appropriation per se, trade marks may still become part of the public communication sphere in ways that challenge positive law. See C. Crea, *Segni sociali e proprietà escludente. Per una critica del mercato delle appropriazioni communicative* (Napoli: Edizioni Scientifiche Italiane, 2022).

from a copyright perspective, it is irrelevant whether this re-appropriation is due to an independent effort or a parasitic 'free riding' on the author's effort. Parody is quintessentially parasitical, in that it entirely dependent upon the initial work whose expressive form is taken as the indispensable 'raw material' to create an independent work. While this element or parasitism might attract considerations of unfair competition or personality rights, it has per se no relevance from a copyright perspective.

In this regard, the 'apparent imitation' doctrine - which excludes parody on the basis of non-copying - aligns seamlessly with the inherent logic of copyright. By addressing a fundamental copyright issue using the framework's own principles and language, this approach appears more straightforward and cohesive. It is, if I may say so, more elegant and precise than the 'semantic gap' theory developed later by Italian supreme court jurisprudence, which introduces concepts from external fields like semantics and critical theory, adding unnecessary complexity.

VII. THE ITALIAN WAY BETWEEN HARMONIZATION AND DILUTION

Whatever theory one may ascribe to the 'Italian way,' the reality remains that national laws must nowadays contend with EU law. Indeed, the harmonization of copyright exceptions remains one of the most debated aspects of contemporary EU copyright law. While the InfoSoc Directive does not mandate Member States to adopt the exceptions outlined in Art 5(2) and (3), the CJEU has clarified two key principles. First, Member States may select which exceptions from the 'menu' to transpose in their legislation but cannot introduce exceptions that are not part of EU law.[48] Second, if a Member State opts to implement an exception, it must adhere to the uniform interpretation established by the Court.[49]

None of these principles should, in theory, affect the 'Italian way'. As seen before, the latter treats parody as a case of non-copying instead as an exception to infringement, thereby allowing Italian national courts to safely disregard the CJEU jurisprudence on the parody exception (or, for what matters, on any other optional exception that is not part of national law).

There are however two obstacles that stand in the way of an autonomous approach to parody. The first is the recent Directive on Copyright in the Digital Single Market. Within the framework of its newly established obligations for internet platforms to 'police' copyright content online, the Directive includes a

[48] Case C-301/15 *Soulier and Doke* v *Premier ministre, Ministre de la Culture et de la Communication*, [2016] ECLI:EU:C:2016:878 and Case C-476/17 *Pelham GmbH* v *Ralf Hütter,* [2019] ECLI:EU:C:2019:624 (ruling out the French exception for out-of-print books and the German 'free uses' exception respectively).

[49] Case C-467/08 *Padawan SL* v *Sociedad General de Autores y Editores de Espana (SGAE),* [2010] ECLI:EU:C:2010:620 (on the private copying exception), *Deckmyn* v *Vandersteen* n 16 above (on the parody exception).

provision requiring Member States to ensure that end-users can invoke certain 'existing exceptions', including parody, when uploading content to these platforms.[50] Although the provision refers to 'existing exceptions', some legislators and commentators alike have interpreted it as necessitating the explicit inclusion of parody in national statutes if such an exception is not already acknowledged.[51]

However, what truly impedes the Italian courts is not the exception itself but the 'rule': the reproduction right as compulsorily harmonized by Art 2 of the InfoSoc Directive and the relevant CJEU case law. When the European court rules that the reproduction right must be construed broadly, so that it can be infringed by merely taking an 11-word excerpt from a text,[52] or a segment of a song no matter how short, as long as it is not 'unrecognisable to the ear' in another song[53] - when *any* taking is in practice a *prima facie* infringement of the reproduction right, the only avenue to avoid infringement is through the application of an exception. Is this the direction European copyright law is moving towards - a cast-iron 'rules-and-exceptions' system where judicial interpretation is reduced to 'balancing' competing rights and interests within an encoded framework?[54]

Alas, recent developments in Italian jurisprudence provide little cause for optimism. In the first significant 'post-*Deckmyn*' case in 2022, the Court of Cassation took a concerning turn. The case involved a claim over the unauthorized use of the fictional character Zorro in an advertising campaign (yes, Zorro is copyrighted too).[55] The defendant unsuccessfully argued that the use qualified as

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[50] European Parliament and of the Council Directive 2019/790 of 17 April 2019 of the on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.) [2019] OJ L 130, Art 17(7): 'Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services:

– quotation, criticism, review;

– use for the purpose of caricature, parody or pastiche.'

The CJEU has upheld the provision as essential for ensuring the proverbial 'fair balance' between safeguarding the interests of rightsholders and protecting users' freedom of expression. (Case C-401/19 *Republic of Poland* v *European Parliament and Council of the European Union*, [2019] ECLI:EU:C:2022:297, para 87). Italy has transposed this provision almost verbatim in Art 102-*nonies*(2), legge 22 April 1941 no 633.

[51] The question is thoroughly discussed in E. Rosati 'Just a Laughing Matter? Why the CJEU Decision in *Deckmyn* is Broader than Parody' n 2 above.

[52] Case C-5/08 *Infopaq International A/S* v *Danske Dagblades Forening*, [2009] ECLI: EU:C:2009:465., para 51

[53] *Pelham GmbH* v *Ralf Hütter* n 48 above, para 37.

[54] For a critique of the concept of 'balance' in copyright law see A. Drassinower, 'From Distribution to Dialogue: Remarks on the Concept of Balance in Copyright Law' 34 *Journal of Corporate Law*, 991 (2009), and, from a more general private law perspective C. Salvi, *L'invenzione della proprietà. La destinazione universale dei beni e i suoi nemici* (Padova: Marsilio, 2021), 150-151 (cited and commented in R. Caso, 'Il diritto d'autore e la parodia dietro la maschera di Zorro. Duellando (in Cassazione) tra esclusiva e libertà sul giusto (e instabile) equilibrio tra diritti fondamentali' *Il Foro italiano*, 806 (2023).

[55] Corte di Cassazione 11 October 2022 no 5497, *Il Foro italiano*, 806 (2023); R. Caso, 'Il diritto d'autore' n 54 above.

a permissible parody. The troubling aspect of this decision is not the outcome itself but the reasoning behind it. The Court completely disregarded its own established doctrines, in particular the 'semantic gap' theory,[56] and instead argued that, since Italian law lacks a specific parody exception, the act must be analysed under the closest existing exception: the one for summary and quotation for criticism or review. By categorizing parody as an exception, the Court opened the (back)door to applying the CJEU's *Deckmyn* ruling as a binding authority, particularly its 'balancing' requirement. As a result, Italian consolidated jurisprudence ended up being diluted and watered-down within the *mare magnum* of balancing fundamental rights and equally significant interests.

VIII. CONSEQUENCES OF *DECKMYN* (OR THROWING OUT THE BABY WITH THE BATHWATER)

The acceptance of the *Deckmyn* ruling as binding on Italian courts carries both practical and theoretical implications. Practically, the *Deckmyn* decision establishes that a parody need only be 'noticeably different' from the original work, without the requirement to meet a standard of originality.[57] Commentators have noted that this prevents national courts from demanding that a parody qualifies as an original work in its own right to be deemed legitimate, arguing that such a demand would unduly constrain the scope of application of the parody exception.[58] However, upon closer analysis, this concern appears more theoretical than practical and raises its own issues.

First, viewing parody as an independent, autonomous work is less a prerequisite for its legitimacy and more a logical outcome of its nature as legally defined by the jurisprudence. A legitimate parody is one that transforms expressive elements by subverting or antithetically altering their meaning and effect. Such 'semantic gap' does not arise by magic, but is necessarily the effect of an act of authorship.[59] By definition, a legitimate parody must be original in a copyright sense; otherwise, it is just copying in disguise.

Second, the existence of parodies that are 'noticeably different' from the parodied work yet fail to meet the (notoriously low) standard of originality seems largely hypothetical, existing more in copyright textbooks than in actual reality. The most

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[56] See n 39 above. Since its elaboration in 2015, the theory has been consistently applied by lower courts in cases of copyright infringement, including on two occasions by the Cassation Court (R. Caso, 'Il diritto d'autore' n 54 above).

[57] See Case C-201/13 *Deckmyn* v *Vandersteen* n 16 above.

[58] E. Rosati 'Just a Laughing Matter? Why the CJEU Decision in *Deckmyn* is Broader than Parody' n 2 above, E. Derclaye, 'To What Extent' n 1 above.

[59] On the fallacies of parody (and other intelligent acts) without authorship see G. Westkamp, 'Borrowed Plumes' n 18 above. On AI as magic thinking see D. Tafani, 'Artificial Intelligence and Imposture. Magic, Ethics and Power' *Filosofia politica*, 129 (2023).

plausible example of a non-original parody that is not confusingly similar to the parodied work would be one that copies or closely imitates an already existing parody.[60] But this raises perhaps a more fundamental question: is this truly the *rationale* that EU wants to attach to the parody exception - to enable the proliferation of recycled parodies as bastions of the fundamental right of freedom of expression?

However, the more significant consequence of abandoning the Italian way in the name of a (possibly too hurriedly assumed) duty of harmonization lies in the realm of copyright theory. At a time where the prevailing EU jurisprudence routinely sidesteps fundamental questions about the nature of copyright, relegating them to the passe-partout notion of 'fair balancing', the Italian way still offers a rare opportunity to keep foundational issues alive. Shutting down this approach would be a regrettable step, undermining a valuable space for critical engagement with the core principles of copyright.

IX. CONCLUDING REMARKS

This article explored the legal treatment of parody within copyright law, adopting a deliberately abstract theoretical perspective in comparing the fair use doctrine, the statutory exception framework, and the distinctive Italian approach. While both the fair use and statutory exception models view parody as a form of copying that may be exempt from infringement under certain conditions, Italian jurisprudence stands apart in that it conceives parody as an independent and original work - not 'in spite of', but precisely *because* it creatively engages with another's expressive form. Grounded in the doctrine of 'apparent imitation' and the concept of 'semantic gap', this interpretation triggers fundamental questions about the very nature of copying and the essence of the idea/expression dichotomy - questions that transcend this particular form of art and remain unaddressed across the copyright jurisprudence worldwide.

The analysis raises some issues about the CJEU's approach in the landmark *Deckmyn* judgment and its reliance on the over-encompassing and flawed notion of 'balancing' rights and interests. By discarding the requirement that a parody must be an original works of authorship in its own merits, and instead allowing a standard of mere 'noticeable difference', the judgment further dilutes the already shaky connotations of the exception, potentially equating parody with uses of dubious

[60] Copying is not the only bar to originality. Another obstacle under CJEU jurisprudence arises when technical considerations, rules, or constraints leave no room for 'creative freedom' (Case C-833/18 *Brompton Bicycle Ltd* v *Chedech/Get2Get*, [2020] ECLI:EU:C:2020:461, paras 24-27, and cited jurisprudence). Unsurprisingly, this criterion has typically been applied to 'borderline' copyright works, such as technical devices, sports games, industrial designs, and compilations. By contrast, it is generally straightforward to satisfy in the context of 'core' copyright works.

authorial significance, whose primary value may be to feed the insatiable content demands of online platforms and tech companies. Furthermore, the reliance on balancing creates an overly procedural focus, sidelining deeper, substantive discussions about the purpose and principles of copyright law.

In contrast, the Italian approach offers a compelling alternative. By rejecting the categorization of parody as a form of copying - whether exempted or transformative - Italian jurisprudence interprets parody as an entirely distinct and autonomous act of authorship. Ultimately, the 'Italian way' challenges the exclusionary nature on an author's original expression, bringing into light the inherently public and shared nature of human authorship.