

MIRROR, MIRROR ON THE WALL: HOW DOES FAIRNESS LOOK IN VISUAL ARTS?

The research paper examines the contemporary shape of fairness in visual arts via case studies. At the outset, appropriation art seems particularly apt to collide with IP law, while freedom of expression, coupled with artistic freedom and aesthetics, must be taken into account. The law must somehow come to terms with art which manifestly rests on borrowed imagery and which recycles, remixes and relocates that imagery. Indeed, IP law includes instruments which may be evoked in the context of appropriation. For its part, copyright law includes exceptions and limitations which implement various dimensions of fairness, including the quotation right. With visual arts, the question becomes that of citing imagery for artistic purposes. In this regard, not only the more traditional forms of visual arts but also video art in particular face new opportunities and challenges in the digital realm.

However, the lines between infringing misappropriation and justified uses are not necessarily clear-cut. Famous examples include cases involving artists such as Jeff Koons and Richard Prince. More recently, the former was deemed by a French court to have essentially reproduced without authorization a pre-existing picture for his sculpture called *Naked*.

In the research paper, fairness is approached as a concept mediating between the legal and the aesthetic conceptualizations of good practice and fairness. The focus is on copyright law and the quotation right in EU law, while Finnish law is also discussed. For its part, the US doctrine of 'fair use' is utilized for comparative purposes. The theoretical framework of the research draws from systems theory, while the legal analysis tilts towards discourse analysis.

The research is part of the project "Art, Copyright and the Transformation of Authorship" (2016-2019): <https://blogs.helsinki.fi/taidejatekijanoikeus/projektin-esittely-project-abstract/osahankkeet/>. This research paper presents the second part of the subproject "Variations of Fairness", with the first part tackling parody and copyright law.¹

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The final research paper will be co-authored by Senior Lecturer Rosa Ballardini, University of Lapland.

¹ For parody and copyright, see A. Alén-Savikko (2016) Vakavasti otettava (va)iva – tekijänoikeudellisia huomioita parodiasta [Serious affection – remarks on parody from the perspective of copyright law]. In P. Korpisaari (ed.) Oikeus, tieto ja viesti. Viestintäoikeuden vuosikirja 2015 (Forum Iuris), 196–259: <https://www.edilex.fi/artikkelit/18063>. See also a related research publication A. Alén-Savikko (2018) Circus and copyright. NIR 1/2018, 22–46: www.nir.nu/.