Kluwer Copyright Blog

Can Musk's New X/Twitter Rules Be Reconciled with EU Copyright Law?

James Hall (University College London) · Wednesday, May 7th, 2025

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On the 10th of April 2025, new rules came into force as part of Elon Musk's crackdown on impersonation accounts on X (formerly known as Twitter). Under these rules, any account that impersonates, parodies, or caricatures another comes under two requirements: first, that their username must begin with a keyword like 'fake' or 'parody'; and second, that the account cannot use the same profile picture as the account they imitate. Broadly, then, these rules mean that a user cannot post any parodic or caricaturing content to X/Twitter unless they differentiate themselves from the original account in this specific way.

This post aims to explore how that emerging system of rules interacts with existing provisions of EU copyright law.

The CDSM Directive

Article 17 of the Directive on Copyright in the Digital Single Market ("CDSM Directive") governs online content-sharing service providers ("OCSSPs") in their handling of copyright works in the online space.

Art 2(6) defines an OCSSP as a provider of an information society service of which a main purpose is to store and give the public access to large amounts of copyright-protected works or other user-uploaded subject matter, which it organises and promotes for profit-making purposes. X/Twitter is an information society service. It hosts and gives the public access to large numbers of tweets – short textual and visual user-uploaded pieces, many of which could be copyright-protected. The platform does this for a profit-making purpose. Therefore, it can be said that X/Twitter falls within the definition of an OCSSP, and is therefore subject to the rules of Art 17.

Art 17's most notable provisions, contained in Art 17(1) and (4), manage the duties of OCSSPs in responding to the fact that many of the works they host will infringe copyright. It is, however, Art 17(7) that is of particular interest to the present discussion. The relevant parts read:

> "The cooperation between [OCSSPs] and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users which do not infringe copyright […]
>
> 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:
>
> […] (b) Use for the purpose of caricature, parody or pastiche."

The first paragraph establishes that the provision applies in situations involving cooperation between OCSSPs and rightsholders. Notably, it imposes no requirement that such cooperation relate specifically to any actual or particular act of copyright infringement. This suggests that any form of cooperation – regardless of its substantive focus – is sufficient to trigger the application of Art 17(7). X/Twitter's own framing of its new rules, which are described as guides and tools provided to users to aid them in their navigation of the platform, shows the cooperative nature of the emerging changes. By providing such guidance, it appears that X/Twitter is working with rightsholders to ensure that their experience of the platform is mutually beneficial – with the cooperative character of the new rules thus highlighted, it seems that Art 17(7) would be applicable here.

The second paragraph provides that Member States shall ensure that all their users of an OCSSP can rely on the copyright exception of caricature, parody, and pastiche, among others, when uploading content, as confirmed clearly in recital 70.

The Parody Exception

The rule that copyright is not infringed by a caricature, parody, or pastiche has roots in Art 5(2)(k) InfoSoc Directive, where it is an optional exception to copyright infringement that Member States can implement should they wish. In Art 17(7) of the CDSM Directive, by guaranteeing its availability in the online sphere, the EU have made the exception mandatory in digital contexts (see recital 70). This means that all Member States are obligated to ensure that users of OCSSPs can rely on this exception when uploading content to their platforms.

However, this view of the parody exception can be pushed further.

In *Funke Medien* (C?469/17), the Court of Justice of the EU ("CJEU"), sitting as a Grand Chamber, noted that certain exceptions in the InfoSoc Directive, such as the quotation exception, are not mere exceptions from a finding of copyright infringement, but rather represent rights conferred upon users of copyright works. In the same vein, the parody, caricature, and pastiche exception could well follow the same interpretation considering its freedom of expression connotation, a connotation accepted as undisputed at para [20] in *Deckmyn* (C?201/13). Generally,

the potential transformation of copyright exceptions into positive rights was echoed in the Art 17(7) context in *Poland v Parliament and Council* (C 401/19), where the CJEU held that under this provision, Member States were obligated to ensure that users of OCSSPs could upload parodic and caricaturing content to the online space.

The Parody Exception and the New X/Twitter Rules

If Member States are under an obligation to maintain users' positive rights to upload parodic and caricaturing content to an OCSSP like X/Twitter, then Musk's new rules might appear to be in conflict with Art 17(7).

It must be recalled that in *Deckmyn* (C?201/13), the CJEU ruled that a parody constitutes an expression of humour or mockery while evoking the existing work though remaining noticeably different from it. OCSSP users therefore seem to possess a positive right to upload a parody to Twitter/X, so long as the parody falls within this meaning. Should the ability to upload parody be constrained by the imposition of any further requirements, such as a user having to positively identify themselves in a certain way, then surely this makes the exercise of the right to parody conditional on further criteria which are not mandated by EU copyright law. To that end, one might argue that the parody exception is not given its full effect. Under Art 17(7), then, EU Member States may very well be under an obligation to resist these new rules from X/Twitter.

In *Deckmyn*, the CJEU notably ruled that a parody need not attribute its source, fulfil a critical purpose, or be original in its own right. It is possible to infer from this a keenness to demonstrate that the exercise of the parody right cannot be made conditional on other surplus requirements. It therefore appears that X/Twitter's new rules, which introduce the two requirements on uploaders of parodic and caricaturing content, have the effect of making OCSSP users' right to do so conditional on requirements not necessitated under EU law.

It should be noted as an aside that Art 17(7) covers more than parodies, but also caricature and pastiche. Neither caricature nor pastiche have ever been defined by the CJEU (though the upcoming *Pelham II* judgement is expected to define the latter – see more here and here). This is not, though, a hinderance to the above conclusion, since the fact that these rules appear to fall short of even just the parody element is enough to bring them in conflict with Art 17(7).

Potential Responses

There are two potential responses that could be made by X/Twitter in defence of their rules.

First, it is possible that X/Twitter could suggest that they are not an OCSSP at all under the Art 2(6) CDSM Directivedefinition, making Art 17(7) inapplicable *ab initio*. However, two arguments challenge this. First, to do so X/Twitter could potentially rely on the exemption for electronic communication service providers in Art 2(6) CDSM Directive. However, as per Art 2(4) Electronic Communications Code, service providers cannot come under this heading if they exercise editorial control over their content – by indexing, fact-checking, removing, and spotlighting certain posts, X/Twitter is perhaps engaged in such control and therefore cannot fall within the exemption from the OCSSP definition. Second, it should be noted that the Commission have launched an action

against X/Twitter in their capacity as a ‘very large online platform’ under the Digital Services Act; since this is defined in Art 3(i) of the Act to mean a content hosting service, it seems the OCSSP definition is naturally fitting anyway, so the parody rules are inescapable on these grounds.

There is a second potential line of defence. As *Funke Medien* demonstrated, though the user has a right to certain uses which may very well include parody, this must be balanced with the rights and interests of others. As noted above, X/Twitter have framed their rules as necessary to help online users understand misleading information. In fact, these rules are a response to the Commission’s action alleging that the platform’s current rules on the matter fall short of online safety obligations on deceptive information under the Digital Services Act. Therefore, it is plausible that, reading Art 17(7) CDSM Directive in conjunction with other obligations of EU law, though the new rules might represent a challenge for the law of copyright, on balance they might constitute an acceptable response to the broader legislative context.

In short, then, while X/Twitter’s new rules sit uncomfortably with Art 17(7) CDSM Directive and the obligation on Member States to maintain their users’ right to upload parodic and caricaturing content online, an exploration of the law reveals that their exact legal status remains uncertain.

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