

Angewandte Kunst: Ist der Werkschutz in der EU wirklich harmonisiert, und
wenn ja, wie?

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- **The work is the author's own original creation.**
- **The creation reflects the author's personality or creative persona.**
- **By the creation of a work, its author should have expressed his or her creative capacity on the basis of a free set of choices by which the author puts his or her stamp on the work.**
- **A protected work must have come to be *expressed* in an identifiable or *distinct form*.**
- **A risk of independent *double creation* should be almost excluded or implausible**



Smultronmönstret

Jordgubbsmönstret

Mini Maglite, NJA 2009 p. 159



*Patent and Market Court of Appeal, PMÖD nr PMT
5885-18, 2019.03.22 Daniel Wellington*





Tissot 2004



Mio

C-580/23

The claimant's object (Axelson)





Request for a preliminary ruling

C-580/23

Request for a preliminary ruling I.

- 1. In the assessment of whether a subject-matter of **applied art** merits the far-reaching protection of copyright as a work within the meaning of Articles 2 to 4 of Directive 2001/29/EC, how should the **examination be carried out** – and which factors must or should be taken into account – in the question of whether the subject-matter reflects the author’s personality by giving expression to his or her free and creative choices? In that regard, the question is in particular whether the examination of originality should focus on **factors surrounding the creative process** and the **author’s explanation** of the actual choices that he or she made in the creation of the subject-matter **or** on factors relating to the subject-matter itself and **the end result** of the creative process and whether the **subject-matter itself gives expression to artistic effect**.

Request ...

II.

- **2.** For the answer to Question 1 and the question of whether a subject-matter of applied art reflects the author's personality by giving expression to his or her free and creative choices, **what is the significance of the facts that**
- (a) the subject-matter consists of elements that are **found in common designs**?
- (b) the subject-matter builds on and constitutes a **variation of an earlier known design** or an ongoing design **trend**?
- (c) identical or similar subject-matter has been **created before** or – independently and without knowing whether the subject-matter of applied art for which protection as a work is claimed – **after the creation** of the subject-matter in question?

Request ...

III.

- 3. How should the assessment of similarity be carried out – and what similarity is required – in the examination of whether an allegedly infringing subject-matter of applied art is covered by a work's scope of protection and infringes the exclusive right to the work which, according to Articles 2 to 4 of Directive 2001/29/EC, must be conferred on the author? In that regard, the question is in particular whether the examination should focus on whether the work is recognisable in the allegedly infringing subject-matter or on whether the allegedly infringing subject-matter creates the same overall impression as the work, or what else the examination should focus on.

Request ...

IV.

- 4. For the answer to Question 3 and the question of whether an allegedly infringing subject-matter of applied art is covered by a work's scope of protection and infringes the exclusive right to the work, **what is the significance of**
- (a) the **degree of originality** of the work for the scope of the work's protection?
- (b) the fact that the work and the allegedly infringing subject-matter of applied art consist of elements found in common designs or build on and constitute variations of **earlier known designs** or an ongoing design trend?

Supreme Court of Sweden, NJA 2017 p. 75, Svenska syndabocker



Markus Andersson



Jonas Lemberg



*Patent and Market Court of Appeal, PMÖD, Svea
Hov:R , 23 June 2021 (En svensk tiger)*

ARON FLAM

DET HÄR ÄR EN



SVENSK TIGER

C- 833/18, EU:C:2020:461, Brompton Bicycle

