

# On Copyright in Saami Joiks

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1. Copyright acts and the writings of copyright lawyers are usually – as is legislation and law literature in general – primarily based on, made for and adapted to the factual reality which surrounds the statute drafter or legal author. This fact may, more often than not, leave an impress of a certain provincialism on the results of their toil. One might think, however, that this risk should be more easily avoided in the field of copyright than in many other branches of law. After all, the phenomena which copyright lawyers discuss, fight over in court and draft legislation for, are rooted in a cultural heritage which is shared with – at the least – the greater part of the Western world. Furthermore, the works they discuss and prepare acts for are not closed in by national frontiers – in many cases not even by language barriers. It seems possible, therefore, and even probable, that good rules should be considered good rules, and wise thoughts be found quite sensible, even when they are put to the test quite far from home. Copyright law and copyright reasoning should, one might think, be in a position to aspire to universal validity. But then one day, on one's own home ground, one stumbles on a chip of reality which does not fit in at all, and proves that even the idea of the universal validity of copyright law reasoning bears the mark of provincialism.

The ensuing pages should be read as an attempt to convey some reflections stemming from an experience of this kind: a Norwegian copyright lawyer's encounter with the Saami joik.

Some readers will probably appreciate a brief presentation. The *Saami* (formerly called the Lapps) are a North European ethnic group, the indigenous population of the vast open areas in the north of Norway, Sweden and Finland, and some northwestern districts in Russia. Their number is a matter of definition, and a main criterion will be whether the person in question defines himself as Saami or not. Fair estimates give numbers between 30 000 and 50 000. The majority lives in Norway, where the Constitution – since 1988 – enjoins upon the State

authorities to make it possible for the Saami people to uphold and advance its language, its culture and its social life (§ 110 a).<sup>1</sup>

Originally hunters and catchers of whale and seal, the Saami were driven away from their richest hunting grounds when Norwegian colonists pressed northwards. The Saami turned to fishing, and to the trade which has become the dominating feature of their national image – reindeer-breeding. The reindeer Saami trekked with their herds of semi-tame reindeer, from the summer districts to far away parts where reindeer lichen could be scraped from under the snow, and back again in the spring – in some regions as far as 200–250 miles each way.<sup>2</sup> They lived as true nomads and – for centuries – unhindered by national frontiers. Today, however, most of the Saami are settled in neighbourhoods as varied and complex as most other modern communities in the North. Nevertheless, reindeer-breeding is still an important Saami undertaking, and a trade of great symbolic importance, as a key element in Saami culture.

The *joik* (pronounced *yoik*) is a type of literary and musical work,<sup>3</sup> peculiar to the Saami and unlike all other kinds of European folk music.<sup>4</sup> In terms of aesthetics, the joik should no doubt be classified as a song, but this classification may – it will be maintained here – mislead the copyright lawyer.<sup>5</sup>

The early joiks were epic poetry, with a subtle use of double connotation which made it possible to communicate on two levels, so that one message was conveyed to the Saami in the audience, and a different one to outsiders. Thus the joik might be performed at gatherings where e.g. tax collectors and missionaries who had acquired an elementary knowledge of the Saami language, were part of the audience. The outsiders would catch the external features of the narrative, but only the Saami listeners were able to decode the joik and to perceive its real message, which was not for the ears of government officials or missionaries.<sup>6</sup>

Later joiks are seldom epic works, but depict nature, animals and – above all – persons. Nevertheless, the joik as such has become an important symbol of the distinctive character and independence of the Saami.<sup>7</sup> And *Harald Gaski* maintains that “the language in the various types of *joik* has not shown a great deal of variation, in so far as suggestions, understatements and culturally determined figurative meanings have played an important rôle in all of them” (l.c.).

It is a bold attempt – maybe it will be considered rash – for a writer with no knowledge of the Saami language, and little more than a tourist’s insight in Saami culture. Friends and colleagues, to whom joiking is something familiar and very close – as they are themselves joikers and cherish the joik as a central

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<sup>1</sup> See Carsten Smith, *Saami Parliament and Saami Rights – a Minority’s History Changing Today’s Constitution*, in *Rettstenkning i samtiden*, Oslo 1992, pp. 220 sqq.

<sup>2</sup> Ørnulv Vorren and Ernst Manker, *Samekulturen. En oversikt*. Tromsø 1958, pp. 30–31.

<sup>3</sup> Which maybe really *is* a literary *and* musical work, see *infra* under 4.

<sup>4</sup> The joik has been likened to the Tyrolese yodelling, but experts claim that there is no real likeness at all – joiking is at the same time more primitive and more complicated than yodelling. Music related to the joik is found among some North Asian peoples, see Vorren and Manker, *op. cit.* p. 133.

<sup>5</sup> See *infra* under 4.

<sup>6</sup> See Harald Gaski, *Med ord skal tyvene fordrives. Om samenes episk poetiske dikning*. [With an English Summary.] Karasjok 1987, p. 113.

<sup>7</sup> Cp. Gaski *l.c.*

element in their national culture – may rightly call it an attempt to describe a reality that the scribe neither knows nor understands. Still, there are colleagues in the field of copyright law who should be made aware that a reality of this kind does exist. And a fumbling attempt may, perhaps, inspire (or provoke?) one of those who are qualified for it, to give an adequate description and analysis of the joik and its status in terms of copyright law.

2. Copyright problems specially related to joik were, it seems, not really discussed before the year 1977. But then *Norsk kulturråd*<sup>8</sup> placed such problems on the public agenda. It reported to the Ministry for Cultural Affairs, that “the increasing commercial exploitation of Saami music (joik)” called for attention to “the question of copyright and protection of Saami literary and artistic works”.<sup>9</sup>

This initiative was, in a way, in concord with an international trend – a fact which no doubt made it easier to catch the interest of the Norwegian authorities, but at the same time might throw them off the track:

Some developing countries had felt the need for *legal protection of their folklore*. There was, in these countries, a continuous production of new works of folklore, works created in the traditional style and according to old patterns, but yet carrying the stamp of new artists’ creative minds. The authors were folk dancers, singers and musicians, and their works were, from the beginning, not recorded or otherwise fixed in a material form. Nevertheless, the works were often widely spread, as they were performed by other dancers, singers and musicians who had been present at earlier performances and had memorized the works. In this way a work might, after a short time, be widely known and popular, but “no one” knew who the author was. A popular work which was characteristic of the national or regional culture, and had also a more general appeal, might attract the interest of a gramophone company or a broadcasting corporation. As the author was unknown, some such firms would without scruples treat the work as if it were in the public domain. Nor did they hesitate to “arrange” the work, or to “touch it up”, in order to strengthen its appeal to an international public. In some cases works were quite distorted, so that the versions spread appeared as gross misrepresentations of the culture they stemmed from.<sup>10</sup>

For such reasons questions of folklore were, in accordance with a proposal from India, included in the agenda of the Intellectual Property Conference of Stockholm in 1967, where the Berne Convention was revised.<sup>11</sup> It cannot be said that they found their solution there. But the Conference wrote into the

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<sup>8</sup> The Norwegian Council for Cultural Affairs, a body set up by Parliament to promote culture and to act as an advisory board to the Ministry for Cultural Affairs.

<sup>9</sup> Letter from Norsk kulturråd, jnr. 2759/77/GG/kbi Nov. 25, 1977, to Kirke- og undervisningsdepartementet, with reference to a conference on March 8, 1977.

<sup>10</sup> Cp. *Rapport til Det kgl. Utenriksdepartement fra Den norske delegasjon til Diplomatsk konferanse i Stockholm 11. juni–14. juli 1967 vedrørende revisjon av Bernkonvensjonen til beskyttelse av litterære og kunstneriske verk og Pariskonvensjonen til beskyttelse av den industrielle eiendomsrett*, Oslo 1968, p. 18.

<sup>11</sup> The Stockholm version of the Berne Convention never entered into force. Its articles 1–20 were, however, *verbatim* included in the Paris version of 1971, as articles 1–20. The Paris version is now in force between 129 of the 142 Member States.

Convention – as article 15 (4) – a provision entitling each Member State to designate an authority with competence to represent anonymous authors to unpublished works which are, in all probability, created by a national of that state.<sup>12</sup> This authority should be empowered to claim *remuneration* for the use of such works; remunerations which could not reach the actual author, but could at least be transferred to his country and spent on the advancement of his national culture. Furthermore, the authority should have competence to take action in cases of grave *distortions* of such works.

The provision in article 15 (4) does not use the word folklore – it was “considered to be extremely difficult to define”. The Conference accepted, however, a statement in the General Report, that the provision’s main field of application would “coincide with those productions which are generally described as folklore”.<sup>13</sup>

*Norsk kulturråd* proposed to the Ministry – on the recommendation of its own Sub-Committee for Saami music – that Norway should establish an authority in accordance with article 15 (4), to represent the anonymous authors of Saami works, especially joiks.<sup>14</sup> The Ministry now consulted another advisory board, *Det sakkyndige råd for åndsverk*,<sup>15</sup> which pointed out that the proposition seemed to miss the real problem. The fact was, it was held forth, that authors of joiks were, as a rule, *not* anonymous. In this respect they did not differ much from Norwegian authors in general. There was, therefore, in the opinion of *Det sakkyndige råd for åndsverk*, no need for a special agency to act on behalf of this particular group of authors.<sup>16</sup> The Ministry concurred in this conclusion.

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<sup>12</sup> Article 15 (4) of the Berne Convention (Paris) text:

“4. a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all countries of the Union.”

Cp. Sec. 169 of the United Kingdom Copyright, Designs and Patents Act 1988.

<sup>13</sup> See the Report on the Work of Main Committee I (Substantive Provisions of the Berne Convention. Articles 1 to 20) of the Intellectual Property Conference of Stockholm, 1967, No. 252. The English version of the Report is printed in several publications, e.g. in *Copyright*, 1967, pp. 183 sqq.

<sup>14</sup> See the letter mentioned in note 9 *supra*.

<sup>15</sup> The Expert Council for Literary and Artistic Works.

<sup>16</sup> It is possible that even the developing countries’ need for a special folklore copyright authority may have been somewhat exaggerated. On June 14, 1999, only one of the then 140 Member States of the Berne Union – India – had notified the Director General of the International Bureau of W.I.P.O. (World Intellectual Property Organization) of its appointment of an authority as mentioned in article 15 (4).

A plausible explanation of this lack of interest may be that the traditional copyright system is not the most suitable means for controlling the commercial exploitation of folklore, see for a discussion of this question e.g. Claude Masouyé, *The protection of expressions of folklore*, *Revue Internationale du Droit d’Auteur (RIDA)* 115 (1983) pp. 2 sqq. Several

3. The recommendation of the Sub-Committee for Saami music was not, however, concerned only with the idea of a folklore authority. The Sub-Committee also called attention to the fact that certain peculiarities of the joiks made them very different from other works. The difference was so great, it was claimed, that some of the fundamental rules of the copyright legislation were ill suited for application on joik works.

It should be mentioned here, that the picture drawn by the Sub-Committee for Saami music and included in the reports from the discussions,<sup>17</sup> may not have been entirely correct. Studies of the available literature on joik<sup>18</sup> will throw some doubt on some of the details. Furthermore, it is possible that the factual reality has changed over the years, as a result, *inter alia*, of changes in the *use* of joik.

Nevertheless, the picture drawn by the Sub-Committee was at least *partly* correct. And it was, in any case, the picture shown to the authorities considering the matter and taken for a basis by them. It was, in *Hans Petter Graver's* words, accepted as “the valid reality”.<sup>19</sup>

It was pointed out that the main part of the joiks known to the Sub-Committee were *personal joiks* – compositions portraying a real person. In the personal joik, music as well as words aim at a detailed and vivid characterization of this person, usually with elements of impertinence and not infrequently with rudeness. The personal joik is often made when the person portrayed has reached marriageable age, and may compromise him or her in a very personal and indiscreet way, e.g. with allusions to bad habits or vices, moral lapses, physical characteristics, expected sexual skills etc. But even those personal joiks that are neither rude nor impertinent will be of a very personal character. And once created, personal joiks will stick with the persons portrayed for the rest of their lives and may have a decisive influence on their posthumous reputation. “. . . the personal *joiks* have functioned as an important medium of social integration

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developing countries have enacted special provisions on folklore, often modelled on systems of *domaine public payant*: The works may be used without authorization, but royalties or dues must be paid. The problems seem to be rather dissimilar in the different developing countries, and model acts drafted by W.I.P.O. and UNESCO suggest alternative modes of regulation.

For further information on these questions see Masouyé, *op. cit.*, and Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986*, [London 1987] pp. 313–315, where further references are found. Folklore questions were the subject of the Seventh Congress of the INTERGU (Internationale Gesellschaft für Urheberrecht) in Athens 1978; mimeographed contributions in English by *J.H. Kwabena Nketia, Johannes Riedel and Yu. Rudakov* have been circulated.

<sup>17</sup> See the reports from the sitting of *Det sakkyndige råd for åndsverk* on April 7, 1978. A member of the Sub-Committee for Saami music was present, and his statement was, in the main, entered in the sitting's minutes. An abstract of the statement is included in a letter from *Det sakkyndige råd for åndsverk* to the Ministry for Cultural Affairs October 24, 1978, after discussion of the matter in a second sitting.

<sup>18</sup> The library of Karasjok (*Karasjok bibliotek/samisk spesialbibliotek*) has a good collection of literature on joik.

<sup>19</sup> Hans Petter Graver, *Den juristskapte virkelighet*, Oslo 1986.

within the Sami community. In this respect, they have come close to being the most intimately personal possession one could have.”<sup>20</sup>

In the case of personal joiks, the question of authorship was, the Sub-Committee contended, quite irrelevant to the Saami. According to the Saami conception of law, *the personal joik was owned by the person portrayed*.

In 1980 the Norwegian contribution to the European Broadcasting Union’s Melody Grand Prix was a “protest song”, *Samiid Ædnan* (Saami land), which included a rather substantial sequence of joiking. The joik in the song was closely similar to a personal joik from Finnmark. The composer was heavily criticized in Saami quarters for not having secured the consent of the person portrayed in this joik.

The Saami conception that the personal joik is owned by the person portrayed, seems not to have been weakened over the years. See, e.g., the Oslo newspaper *Aftenposten* for August 10, 1995, where the director of a Saami gramophone company is quoted in connection with another company’s unauthorized use of a joik: “The Karasjok man portrayed in the joik, who – according to the Saami conception of law – is the owner of the rights in the joik . . .”

To the Saami, therefore, public performance and marketing of recordings of personal joiks, without the consent of the person portrayed in the joik, is offensive, sometimes even outrageous. And this will often be so, even if all the controversial textual elements are left out. The music by itself contains characterizations of the person, and personal joiks are never meant to be heard by a greater audience – they are intended for use within a closed circle. The personal joik is a personal document, which should not be taken out of the milieu it was made for.

Although the Sub-Committee did not mention this, it could be added that the commercial “arrangements” of the joiks will often distort their portraits of the persons. A non-Saami, who is ignorant e.g. of the connotation pattern of the joiks and treats the joik as just another piece of music, will unwittingly break up or change its coded message. To the Saami, therefore, the apparently innocent “arrangement” of a personal joik may change the characterization of the person portrayed, and may even be felt as a gross attack on his reputation.

Thus, the reality as described by the Sub-Committee presented problems which could obviously not be solved by means of special legislation on folklore protection. There would also be a problem with regard to Norway’s obligations under international law. Rules to the effect that copyright should originate as vested in a person other than the author of the work, are not easily reconciled with the demands of the Berne Convention.<sup>21</sup>

As far as concerns circles where there exists a firm, established and well known conception of law, to the effect that the person portrayed in a personal joik is the owner of the rights in it, it may be maintained that the author’s rights

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<sup>20</sup> Gaski *l.c.*

<sup>21</sup> Even though it is nowhere stated explicitly in its text, it must be considered a fundamental principle of the Berne Convention that copyright should originate as vested in the person who creates the work. Implicitly the principle appears in article 2 (6) (Paris).

must be considered *assigned* to the person portrayed. Where such a conception is shared by the joiker, it must be presumed that he – in making and making known to others a joik about another person – has accepted the immediate transfer of the rights in the joik to that other person. In such cases it seems reasonable to talk of a tacit assignment of the author's rights.

No matter how this question is answered, there is little doubt that the public performance of a personal joik, without the consent of the person portrayed, may constitute a violation of unwritten law on the right of privacy. In some cases such spreading to the public of information on strictly personal matters will also be a criminal offence: Section 390 of the Criminal Act 1902 makes it an offence to violate a person's privacy "by making information on personal or domestic affairs available to the general public".

The scope of protection accorded by the law of privacy will, however, be rather dubious. *Det sakkyndige råd for åndsverk* proposed therefore, the enactment of a special provision on personal joiks, modelled on a section of the act on photographic pictures, which set limits to the right to use photographs of persons without the consent of the person depicted.<sup>22</sup> *Det sakkyndige råd for åndsverk* referred also to Section 2, Subsection 4 of the Copyright Act 1961. This provision set limits to the copyright holder's use of his rights in

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<sup>22</sup> Section 15 of the Act on photographic pictures 1960:

"Even when, under this Act, there is copyright in photographs depicting persons, such a photograph may not be reproduced, exhibited publicly or made accessible to the public in any other way without the consent of the person depicted. The photographer may, however, exhibit the photograph for purposes of advertisement in connection with his business, unless the person depicted has prohibited such exhibition.

The following photographs may be reproduced and publicly exhibited without the consent of the person depicted:

1. pictures of current and general interest,
2. pictures in which the person depicted is merely incidental to the main matter of the photograph,
3. pictures of assemblies, open-air processions, or occasions and events of general interest."

An act of June 23, 1995, in force from June 30, 1995, repealed the Act on photographic pictures and transferred its provisions to the Copyright Act 1961, where the old Section 15 is, on the whole, reborn as a new Section 45c:

"Photographs depicting a person may not be reproduced or exhibited publicly without the consent of the person depicted, except when

- a) the picture is of current and general interest,
- b) the picture of the person is merely incidental to the main subject matter of the photograph,
- c) the photograph shows assemblies, open-air processions, or occasions and events of general interest,
- d) copies of the photograph are exhibited in an ordinary way for purposes of advertisement for the photographer's business, unless the person depicted has prohibited such exhibition,

e) the picture is used as mentioned in Section 23, subsection 1, third sentence [use in biographical writings] or in Section 27, subsection 2 [use for certain official purposes].

This protection extends through the life-time of the depicted person, and 15 years from the end of the calendar year in which he died."

commissioned portraits.<sup>23</sup> *Det sakkyndige råd for åndsverk* held forth that it seemed as if “a personal joik is normally far more indiscreet with regard to personal matters, than is the ordinary photographic or artistic portrait”. It could be maintained, therefore, “that the need for a provision making public renderings conditional upon the consent of the person characterized, is substantially stronger in the case of personal joiks, than with regard to photographs of persons or artistic portraits”.<sup>24</sup>

The Ministry for Cultural Affairs sent this proposal to *Opphavsrettslovutvalget* – a semi-permanent committee preparing revisions of the Copyright Act and the Act on photographic pictures – declaring without reservation that the Ministry “concurred” in the statement of *Det sakkyndige råd for åndsverk*. *Opphavsrettslovutvalget* was requested “to consider the matter, and to take up the question of legislation” on personal joiks.<sup>25</sup> This committee, however, found that the question “should be viewed mainly as a matter of right to privacy”, as a provision of the proposed kind “would, in relation to the author, . . . call for considerations of a character different from the existing provisions on the protection of photographs of persons and artistic portraits” – a rather cryptic statement which the committee did not elaborate – and thus kicked the ball back to the Ministry for Cultural Affairs.<sup>26</sup> The Ministry then played it to the Ministry of Justice’s Department of Legislation.<sup>27</sup> There, it seems, the ball was promptly laid dead, and has since not been in play.

4. Consequently, the copyright legislation is still without special provisions on works of joik. This fact may cause some problems in addition to the conflicts already mentioned.

In matters of copyright law the joik has, on the whole, been regarded as a Saami song or ballad, and considered to be governed by the general rules on such works – *composite works*, as they are often called.

A song – a ballad – is made up of words and music; it is a collocation of two independent works of different categories. Lyrics and music should, obviously, be *suitied* to each other, but the literary work and the musical work can, nevertheless, be disunited and rendered and enjoyed separately.<sup>28</sup> It is true that

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<sup>23</sup> Section 2, Subsection 4 stated that “In cases of commissioned portrayals of another person the author of the work may not make use of his rights . . . unless both the person portrayed and the person who has commissioned the portrait have given their consent thereto”. The subsection was repealed by the act of June 1995 (see note 22 *supra*) and replaced by a new Section 39j, headed “Commissioned portraits”, where Subsection 3 provides that the rules of Section 45c (see note 22 *supra*) shall apply even if the portrait is not photographic.

<sup>24</sup> The letter of October 24, 1978, mentioned in note 17 *supra*.

<sup>25</sup> Letter from *Kirke- og undervisningsdepartementet* to *Opphavsrettslovutvalget* November 6, 1978, jnr. 4572 Ku 78 Grd:ms.

<sup>26</sup> Letter from *Opphavsrettslovutvalget* to *Kirke- og undervisningsdepartementet* May 7, 1979, the Ministry’s archive No. 02525 Ku May 9 1979.

<sup>27</sup> Letter from *Kirke- og undervisningsdepartementet* to *Justisdepartementet* June 14, 1979, jnr. 2525 Ku 79 Grd:AA.

<sup>28</sup> This must, it seems, be true in fact, irrespective of whether it is also true in law. With regard to the question of law, United States copyright law differs from the prevailing European view. In US law a song with lyrics will, where words and music are made with the intention

the song's music should serve to "colour" or to "deepen" the lyrics. Nor can it be denied that when the words are sung, they do in a certain sense form part of the music. Judge *Paul Baker*, Q.C., has remarked on the relationship between words and music in a song, that it is "misleading to think of them in mutually exclusive compartments. The words by themselves are or may be the subject of literary copyright. But those same words when sung are to me part of the music. After all one gets enjoyment from hearing a song sung in a language with which one is totally unfamiliar. The enjoyment could well be diminished if the vocal line were replaced by another instrument, e.g. the piano or a flute..."<sup>29</sup> This may well be so. But the lyrics by themselves are, nevertheless, immediately accessible to the listener or the reader; he can grasp the literary work's message and enjoy its literary qualities without support from the music. And the musical work may, likewise, be enjoyed totally detached from the ballad's words. If the human voice forms an inherent part of the musical work, as in judge Baker's illustration, the actual words may still be left out and the vocal part sung as a *vocalise*.<sup>30</sup>

In joiks, I have been given to understand, this is not necessarily so. There words, rythm, tones, pitch and use of the voice may often combine to constitute a unitary and inseverable whole, where the music may hold an indispensable key to the narrative and the characterization.

The words of the joik are often mere hints. There may be a few words conveying a straight – or coded – meaning, while the rest of the "text" consists only of syllables which have no immediately intelligible meaning, but are often onomatopoetic and slip into the music and blend with it. The music paints its own descriptive sound pictures, which are woven into the totality. Some points may be emphasized pantomimically.<sup>31</sup>

The real meaning of the joik – the coded message – can often be understood only by those who – on account of close intellectual fellowship and of fellow-feeling caused by common experience and a common cultural back-ground –

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that they be merged into *interdependent* parts of a unitary whole, be considered a *joint work* (17 USCA Sec. 101), so that the author of the lyrics and the composer of the music are co-owners of the copyright in the song (Sec. 201). In most European countries, however, the definition of joint works encompasses only works in which the contributing authors' parts are *inseparable*, see e.g. The United Kingdom Copyright, Designs and Patents Act 1988, Sec. 10, "a "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors", Germany's Copyright Act 1965, § 8 (1), "if two or more persons have created a work in common, and their respective contributions cannot be separately exploited, such persons shall be co-authors of the work", Norway's Copyright Act 1961, § 6, "if a work has two or more authors whose individual contributions cannot be disunited so as to constitute independent works, the copyright shall belong to the authors jointly". – For a closer view of this question, see e.g. Nancy Perkins Spyke, *The Joint Work Dilemma: The Separately Copyrightable Contribution Requirement and Co-Ownership Principles*, Journal of the Copyright Society of the USA, vol. 40, pp. 463 sqq. (1993).

<sup>29</sup> Williamson Music LTD. and Others v. The Pearson Partnership LTD. and Another, Fleet Street Reports [1987] 97 (109).

<sup>30</sup> Cp. David Lester and Paul Mitchell, *Joynson-Hicks on UK Copyright Law*, London 1989, p. 7.

<sup>31</sup> See e.g. Vorren and Manker, *op. cit.* p. 134.

possess a special susceptibility for such associations that the combination of descriptive music, text, onomatopoeias, pitch and rythm is intended to evoke. It may also be the joiker's intention that each listener should enter his own store of experience and emotional memories into the joik's message.

If this is so, the joik should not be considered only as a song or a ballad. The joiks then represent something different, *a special category of artistic works*, maybe a kind of literary *and* musical work. For works in this category, even the problem of plagiarism may present itself differently from what we meet in other categories of work. Or, if not differently, certainly as more complicated.

The question of plagiarism is often said to depend on whether the work has been copied in such a way that individual elements of the work – elements carrying the impress of the author's individual, creative efforts – are present also in the copied version, and must be said to have preserved their identity. The wording is quite obviously open to criticism, but it is serviceable for the cue function needed here.

If the imitator helps himself to the lyrics of another author's song or ballad, there will normally be no doubt that there is plagiarism and therefore infringement. With joiks, the answer is not necessarily incontestable. There the text may, by itself, appear as something of very minor importance, a few simple words with no definite sense at all. The sense of the text may change when it is merged with new music, or new rythm and pitch, so that the words, even when copied *verbatim*, do *not* in actual fact preserve their identity, and thus do not appear as bearing the impress of the original author's individual, creative efforts.

The question will be left open here, whether decisions on plagiarism with regard to joik should not be left to those who are themselves deeply rooted in the culture joiking emanates from. Even to them, however, it may happen that a joik seems too elusive to be caught and held by rules of law.

A poem by *Paulus Utsi* expresses ideas of this kind. If a lawyer, who cannot even read the Saami original, should venture to convey the gist of Utsi's lines, they might be rendered like this:

The joik is a refuge for thoughts  
 whereto thoughts may be led  
 Therefore the words it gives out  
                   are so few  
 The free sounds soar  
                   wider than words

The joik lifts the soul of man  
flies with the thoughts  
over the clouds  
It has the thoughts  
for a friend  
In the beauty of nature<sup>32</sup>

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<sup>32</sup> Translated from Utsi's own Swedish version, as printed in Rolf Kjellström, Gunnar Ternhag and Håkan Rydving, *Om joik*, Hedemora 1988, p. [3], of the poem *Juigosa birra* from 1974:

Juoiggus lea jurdagiid luotkka  
gosa jurdagiiddis doalvu  
Danin das eai leat sánit nu ollu  
mat olggos addojuvvojit  
Dat luovus jienat mannet  
viidáseapput go sánit

Juoiggus lokte olbmo miela  
girdá jurdagiiguin  
balvvažiid badjel  
Atná jurdagiid  
guoibminis  
luonddu čábbodaga siste