

**Treatment of
Parody**
Main Topic

Sherry YIP/CITB/HKSARG
09/10/2013 17:02

Subject: S0360_Ger Hatton (ICMP)
Category:

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From:
To: "co_consultation@cedb.gov.hk" <co_consultation@cedb.gov.hk>
Cc:
Date: 09/10/2013 00:38
Subject: ICMP - Public Consultation on Treatment of Parody under the Copyright Regime HK

To whom it may concern,

Please find attached a submission from ICMP (International Confederation of Music Publishers) on the Public Consultation on Treatment of Parody under the Copyright Regime in Hong Kong.

Yours sincerely,

Ger Hatton
DIRECTOR GENERAL
ICMP, the global voice of music publishing

ICMP is the world trade association representing the interests of the music publishing community internationally. The constituent members of ICMP are music publishers' associations from Europe, Middle East, North and South America, Africa and Asia-Pacific. Included are the leading independent multinational and international companies and regional and national music publishers, mainly SMEs, throughout the world.



ICMP - Public Consultation on Treatment of Parody under the Copyright Regime HK.pdf



ICMP SUBMISSION TO THE PUBLIC CONSULTATION ON TREATMENT OF PARODY UNDER THE COPYRIGHT REGIME

HONG KONG LEGISLATIVE COUNCIL PANEL ON COMMERCE AND INDUSTRY

Brussels, 8th October 2013

ICMP* is grateful for the opportunity to contribute to the public consultation on the treatment of parody under the Hong Kong copyright regime.

INTRODUCTION

ICMP is the world trade association representing the interests of music publishers, and our members are engaged in numerous global commercial transactions. Hong Kong constitutes an important market for our music publisher members, hence our interest in contributing to this consultation.

ICMP welcomes the initiative to carry out regular reviews of the copyright regime in Hong Kong. It is important to keep pace with technological advancements and music publishers are also creating new licensing structures to meet these developments as well as consumers' needs and expectations.

Music publishers are the bridge between the creative process and the market; their role is to discover, nurture, develop and promote authors and composers. In addition to being rightsholders themselves, music publishers are the representatives of authors' and composers' rights. Our core business is licensing, through which we are able to ensure that the works of authors and composers find a commercial outlet and we guarantee that their creative output is rewarded by granting licences for fair compensation and protecting copyrighted music. The economic importance of the licensing of intellectual property rights is crucial in order to sustain creativity.

COMMENTS

We have some concerns regarding the scope of what is being considered in this consultation as a possible exception for parody. This short paper deals with some of these concerns, particularly:

- The consultation paper gives a very broad interpretation of parody, which is interpreted as taking advantage of an existing copyright work in order to express a view and/or a commentary on current events. This interpretation would cut across the normal licensing

activity of a music publisher. Introducing a parody exception in such a manner is problematic as the stated purposes usually fall under the scope of what is normally understood as copying, adaptation, sampling, synchronisation, mash ups and lyric changes. All of these activities are part of the normal licensing activity of music publishers and provide a valuable income stream for their authors and composers.

- We are not aware of any evidence of a need to introduce an exception for parody. As noted in your consultation paper, it must be ensured that the copyright regime strikes the right balance between the legitimate interests of the rightsholder and the users and the general public. This must be done by rightly balancing the right to (intellectual) property rights and freedom of expression. An exception for parody is not necessary to achieve that balance. Indeed, music publishers have well established efficient systems, whose purpose is to promote both wide ranging use of a writer's work and to grant clearance for proposed uses which are approved by the composers. In practical terms, our member publishers estimate that an important percentage of the synchronisation licences and of the requests for adaptation of a work are for uses which could be interpreted as parody. This proves that the current copyright system in Hong Kong indeed serves its purpose to strike the right balance between the legitimate interests of the rightsholder and the users and the general public.
- The introduction of parody as an exception will not in our view drive economic growth while at the same time not disadvantaging the owners of the parodied work. If a parody results in economic gain, then the owners of the parodied work should be entitled to a share of that gain by licensing their work. If the owners of the parodied work do not lose out by being unable to licence their work to be parodied, it must then be because the parody does not generate any economic gain. In any case, an exception for parody cannot be justified.
- As shown in the consultation paper, there is no unified approach in dealing with the issue of parody and the treatment of parody varies in different jurisdictions. Therefore, there is a risk with introducing a parody exception, as it will cause confusion about what is and what is not a parody, and copiers will be able to hide behind that uncertainty. This could significantly undermine the ability of music publishers to license works.
- Finally, one must not forget that, according to the Berne Convention to which Hong Kong is bound, the author has the right to object to derogatory treatment of a work. The introduction of an exception for parody, as interpreted as it is in the consultation paper, would not only lead to the weakening of the moral rights of creators but is also in contradiction with Hong Kong's international obligations.

For the reasons as outlined, ICMP opposes the introduction of an exception for parody, as such an exception would cause significant economic harm to rightsholders while at the same time failing to provide a flow of income back to the underlying rightsholder and creator and would not protect the moral rights of the creator. Furthermore, it must be borne in mind that when introducing an exception or limitation to copyright, Hong Kong must remain within the limits of the Berne 3 Step Test; that is, that such an exception of limitation for copyright shall only be permitted in certain special cases, provided that it does not conflict with the normal exploitation of the work and that it does not unreasonably prejudice the legitimate interests of the rightsholder.

ICMP does not see how the exception for parody as proposed in this consultation document could comply with the 3 Step Test and we would therefore ask the Legislative Council on Commerce and Industry to refrain from introducing such an exception until firm evidence of its need is found.

We are happy to discuss our position further at any point.

Yours sincerely,



Ger Hatton
ICMP Director General

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