

HKCLA

香港複印授權協會有限公司
The Hong Kong Copyright Licensing Association Limited

10th October 2013

BY FAX (2147-3065) & BY POST

Division 3
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
23rd Floor, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Sirs,

Re : Review of the Public Consultation on the Treatment of Parody under Copyright Regime

We, The Hong Kong Copyright Licensing Association Limited have concluded and summarized our views on the issues covered in the consultation document as follows:

1. As owners of printed or digital form copyright owners, we strongly agree the rights of the owners should be protected. Under the present system, the law and regulations of copyright are established and regulated which among others, various types of licensing so that the rights of copyright owners are protected.
2. For option 1 : it clarifies the existing provisions for criminal sanction under the Copyright Ordinance (regarding both the existing "distribution offence" and the proposed "communication offence") by considering whether the infringing acts have caused "more than trivial" economic prejudice to the copyright owners. We agree to introduce relevant factors so that guidance to the court to determine the magnitude of economic prejudice or what acts constitute "more than trivial". We also agree to Option 1 which clarifies the existing provisions on criminal offences for prejudicial distribution/communication.
3. However, considering the present Copyright Ordinance has provided some exceptions or permitted acts, we do not agree that criminal or civil exemption should be granted to parodies.
4. For option 2 (introducing a specific criminal exemption for parody) : we would also draw your attention that if we pursue this option, we need to consider what are covered by the exemption e.g. (i) should it cover infringing copy or communication for the purpose of "parody" etc. or a certain combination of these terms (ii) statutory definition of "parody" or other relevant terms? (iii) what should be the qualifying conditions for exemption? There are rooms for consideration, so it is important to make them clear to provide certainty.

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5. For option 3 (introducing a fair dealing exception for parody) : We have existing s.38, s.39, 41A of the Copyright Ordinance which can protect, to certain degree, the parody creator. If we introduce the fair dealing exception, it will not attract any civil or criminal liability if the qualifying conditions are met. Qualifying conditions such as "definition of parody" etc. should be considered. In addition, it may limit copyright owners control over their works if they fall within the definition of "fair dealing" and their rights to pursue civil proceedings against parodists for copyright infringement. It seems that there may be possible abuse of "fair dealing" provision and practical problems involved. We suggest further discussion to be made on these areas.

Please feel free to contact our Ms. Priscilla Tin at 3605-3801 if you have any enquiries on our position.

Yours faithfully,



Priscilla Tin
Chairman

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