

Treatment of Parody Main Topic

Sherry YIP/CITB/HKSARG
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Subject: S0416_Wendy YU
Category:

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Subject: This is a method to prohibit parody in Hong Kong.

The article 61 of the TRIPS Agreement on intellectual property which came into effect on 1 January 1995, gave excuse to the HK Government to impose a criminal liability "in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale... Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale."

Which may include parody work, however it is only the HK Government decided to impose such a criminal liability on HK people. No other jurisdiction had imposed criminal liability on parody works. However the drafted law had put the burden of proof on the defendant that is against the HK law, and the proposed criminal liability is too far away from the level of penalties applied for crimes of a corresponding gravity.

According to the Article 61 of the Trips Agreement

Which means the HK government shall impose any case of infringement of intellectual property rights. This gave the HKIPD to even believes they can impose a strict liability to any parody conduct. However, the Trips Agreement cannot allow HK Law to change its so far still good law "the presumption of innocence" and the burden of proof, Woolmington v Director of Public Prosecutions [1935] All ER Rep 1, House of Lords.

And the Hong Kong Ordinance, CAP 8, section 10, Evidence provides the defendant the right of silent, which means the prosecution must provide evidence including to prove there is an infringement of intellectual property rights i.e., using the copyright without getting permission from the copyright holder.

Supported by the Berne Convention for the Protection of Literary and Artistic Works Article 12, Authors of literary or artistic works shall enjoy the **exclusive right** of authorizing adaptations, arrangements and other alterations of their works.

Therefore it is the prosecution's duty to ask the individual copyright holder whether the parody work with or without consent to be used.

The criminal justice is not done, because parody works not a crime of a corresponding gravity that the Remedies include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

This is a method to prohibit parody in Hong Kong.