

**Treatment of
Parody**
Main Topic

Sherry YIP/CITB/HKSARG
14/11/2013 10:38

Subject: S0442_Dr Haggen SO Hau-heng
Category:

Originator	Reviewers	Review Options	
Sherry YIP/CITB/HKSAR G		Type of review:	One reviewer at a time
		Time Limit Options:	No time limit for each review
		Notify originator after:	final reviewer

From:
To: co_consultation@cedb.gov.hk
Date: 13/11/2013 12:29
Subject: Submission on "Treatment of Parody under the Copyright Regime"

Dear Sir/Madam,

Please find my submission attached. This is an expansion of what I presented in the legco panel on Nov 4.

Thanks and Regards,

Haggen

----- Forwarded message -----

From: panel_ci <panel_ci@legco.gov.hk>
Date: 2013/10/30
Subject: 工商事務委員會就"版權制度下如何處理戲仿作品"特別會議的確認信
To:

蘇孝恒博士：

閣下曾表示有意出席上述會議，詳情請參閱隨文附上的確認信。

工商事務委員會代行



Haggen Parody.pdf

13 November, 2013

Dear Sir or Madam,

I would like to express my views on the consultation document "Treatment of Parody under the Copyright Regime".

I would urge the government to introduce a fair dealing exception for parody (Option 3) as suggested in the consultation document. Also, at the same time, I would an introduction of User-Generated Contents ("UGC") as an separated exemption independent from other fair dealing exemptions, which is proposed by the Copyright and Derivative Works Alliance (Option 4).

Unlike physical properties, copyright is a type of intellectual property that is artificially created to promote creativity by providing income for the creators. Protecting this property rights to obtain monetary incentive is not the only way to promote creativity as creativity also rely on a good number of other factors such as education and free flow of ideas. A number of these factors can be promoted by defining a smaller artificial boundary of copyright property rights, thus increase the rights that the individuals and the community can exercise. Exemptions are thus provided in the copyright ordinance and they should be not viewed as "evil" by the collecting societies, as they are also important in promoting creativity.

In the LC Paper No. CB(1)179/13-14(09) "IFPI Comments on the Treatment of Parody under the Copyright Regime Consultation in Hong Kong", it was suggested that to make option 3 acceptable, only parody and neither satire, pastiche nor caricature, should be exempted. Moreover, parody was suggested to be defined in a very narrow way where nine conditions were imposed.

If a fair dealing exception for parody is to be introduced then we suggest that such an exception must only apply where the parody work:-

- (a) comments on the original underlying work;
- (b) has humorous or critical intent;
- (c) acknowledges directly or indirectly the source of the original work;
- (d) is non-commercial and distribution/communication is not for the purpose of, or in the course of, any trade or business;
- (e) has no adverse effect on the market of the original underlying work or causes no more than trivial economic prejudice to the copyright owner;
- (f) uses only as much of the underlying works as is necessary to convey the parodic message;
- (g) is an original work in itself;
- (h) is sufficiently distinguishable from the underlying work so there will be no risk of confusion; and
- (i) is not a straightforward lift of the underlying work.

Quoted from LC Paper No. CB(1)179/13-14(09) "IFPI Comments on the Treatment of Parody under the Copyright Regime Consultation in Hong Kong"

The above qualifying conditions were said to be necessary in order to protect the rights of the copyright holders. It is interesting to note that at the end of point (h), the conjunction is "and". This means that only when all nine conditions are met, the work can then be qualified as parody. This implied that any creator would need to remember all nine conditions and limit themselves whenever they are writing a parody. This would hardly seem to be a promotion of creativity, which the copyright system is about. If such qualification is adopted, it would even further harm the respect of the current legal system. Therefore, I would urge the government to introduce a fair dealing

exception for parody (Option 3) as suggested in the consultation document, with exemptions on parody, satire, pastiche and caricature.

In the LC Paper No. CB(1)179/13-14(11) "就《在版權制度下如何處理戲仿作品》「香港動漫畫聯會」代表鄧永雄於 2013 年 11 月 4 日立法會工商事務委員會會議發言稿", Dōjin (同人) was regarded as a way to nurture young artists in the Anime and Comic industry.

It is not uncommon that talented artists sing covers of popular songs on YouTube and then be discovered and signed by big record labels. One advantages for the record companies to sign those artists is that they already have fans bases and the effort in marketing is lowered. A recent example in Hong Kong is "Robynn and Kendy" and their early cover songs are still in their official channel <http://www.youtube.com/user/RobynnAndKendy>. The creative industry is currently receiving benefits from these activities of creating derivative works and so the copyright holders did not sue the creators who technically are infringing copyright. In short, the copyright holders gain, in this case, from a more relaxed copyright protection. Nevertheless, this situation is not favourable to the creator as the copyright holders do not qualify when they will take legal actions and creators have to always take the risks.

The above activities involve creating derivatives from original works but they may not fall into either parody, satire, pastiche or caricature. The UGC exemption is a good way to define what is already allowed. Having this exemption written in the law will remove fear and promote the legitimacy of those activities, thus promote the overall creativity in Hong Kong. I would urge the collecting societies to see beyond what they are earning today and invest in the future by supporting the UGC exemption.

In conclusion, I would recommend the government to include Option 3 and 4 in the coming copyright amendment bill.

Yours faithfully,

Dr. Hau Heng Haggen So