

**Treatment of
Parody**
Main Topic

Carman KM
HO/CITB/HKSARG
05/12/2013 08:45

Subject: S1014_Grace Chui (Hong Kong Recording Industry Alliance Limited)
Category:

Originator	Reviewers	Review Options	
Carman KM HO/CITB/HKSAR G		Type of review:	One reviewer at a time
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**HKRIA's comments on the Treatment of Parody under the Copyright Regime
Consultation Paper.**

to: co_consultation@cedb.gov.hk

15/11/2013 14:19

Cc:

From:

To: "co_consultation@cedb.gov.hk" <co_consultation@cedb.gov.hk>

Cc:

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,

Please find attached our comments on the Treatment of Parody under the Copyright Regime Consultation Paper.

Best regards,
Grace Chui
Legal Officer
Hong Kong Recording Industry Alliance Limited
Tel:
Fax:
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HKRIA Comments on Treatment of Parody under Copyright Regime Consultation.pdf



Comments on the Treatment of Parody under the Copyright Regime Consultation in Hong Kong

Hong Kong Recording Industry Alliance Limited (“**HKRIA**”) is a not-for-profit copyright management organization to handle the copyrights of members who are record companies from Hong Kong and overseas regarding the broadcast, public performance and relevant usage of sound recordings (recorded music) and music videos. We license the use of sound recordings (recorded music), music videos and karaoke videos in broadcast, public performance and new media in Hong Kong, Macau and other territories.

The Copyright (Amendment) Bill introduced by the HKSAR Government in 2011 to the Legislative Council could bring Hong Kong’s copyright legislation in line with rapid technological advancements. This Bill, unfortunately, did not get to Second Reading Debate and has been shelved. We are pleased that the HKSAR Government is consulting the public on the treatment of parody under the copyright regime (“**the Consultation**”) which will facilitate the re-introduction of an amended Bill updating the copyright law of HKSAR.

Below are HKRIA’s comments on various issues raised in the Consultation:-

(1) Whether application of criminal sanction should be clarified under the existing copyright regime in view of the current use of parody?

Neither the Bill nor the existing law targets parody, but we welcome clarification of the application of criminal sanction of copyright infringement under the existing law in light of treatment of parody. It will clarify the scope of criminal liability and alleviate any concerns about criminal liability for non-commercial dissemination of parody works. Such clarification will bring about greater certainty in the law. We therefore support Option 1.

(2) Whether a new criminal exemption or copyright exception for parody or other similar purposes should be introduced into the Copyright Ordinance?

Copyright Exception

There are a number of copyright exceptions or permitted acts under the existing copyright legal framework. Further, parody works incorporating an idea or insubstantial part of the underlying work will not constitute any infringement. The Consultation does not seem to have presented sufficient evidence for the introduction of a new exception for parody.

Criminal Exemption

When considering whether a criminal exemption or copyright exception for parody should be introduced, the Government must ensure compliance with Article 61 of the TRIPS



Agreement and the Three-Step Test established under Article 13 of the TRIPS Agreement and Article 16 of the WPPT. The least Article 61 requires is criminal procedures and penalties for copyright piracy of a commercial scale. While we believe that chances are rare for criminal prosecution to be brought against copyright infringement on the ground of parody, there is no reason why criminal remedies be singled out if a parody were to supplant the legitimate market of a work. A criminal exemption for parody will swipe the fundamental requirement of dealing of a work to be fair, which is likely to fail the Three-Step Test. HKRIA therefore does not accept a criminal exemption specifically for parody under Option 2.

Fair Dealing Exception

Rather, HKRIA does not object to a fair dealing exception for parody (not including satire, pastiche or caricature) subject to certain qualifying conditions to strike a balance between the interests of users and rights holders. In this regard, there should be a statutory definition for parody ensuring legal certainty and guiding the court as well as users and rights holders. To elaborate further on the fair dealing exception, it should be a parody commenting on the underlying work that carries humorous/critical intent with acknowledgement directly/indirectly to the source of the original work. It is non-commercial and its distribution is not for the purpose of any trade or business. There should not be adverse effect on the market of the original underlying work to the copyright owner and the use of the underlying works should only be of necessary amount. The parody is a distinctive original work but not a straightforward lift the underlying work.

(3) Whether moral rights should be maintained notwithstanding any special treatment of parody in the copyright regime?

Our view is that moral rights for authors, directors and performers should be remained irrespective of any special treatment of parody in the copyright regime since it is the respect for the creators and performers.