

Treatment of Parody
Main Topic

Carman KM
HO/CITB/HKSARG
05/12/2013 10:49

Subject: S1073_Sam Ho (Hong Kong International Screen Association Limited)
Category:

Originator	Reviewers	Review Options	
Carman KM HO/CITB/HKSARG G		Type of review:	One reviewer at a time
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		Notify originator after:	final reviewer

For your action: IFACT-GC Submission on the "Treatment of Parody under the Copyright Regime Consultation Paper"

to: co_consultation@cedb.gov.hk

15/11/2013 16:22

From:

To: <co_consultation@cedb.gov.hk>

Dear Sirs,

I attach our submission regarding the captioned subject for your kind attention.

Best regards.

Sam Ho

Managing Director and General Manager
Hong Kong International Screen Association Limited
International Federation Against Copyright Theft - Greater China Limited Affiliated with
Motion Picture Association International, under license from the Motion Picture
Association, Los Angeles, CA.

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November 15, 2013

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,

IFACT-GC Submission on the "Treatment of Parody under the Copyright Regime Consultation Paper"

The International Federation Against Copyright Theft (Greater China) Limited (IFACT-GC) is a trade association representing 35 international producers and distributors of theatrical motion pictures, home video entertainment, comics, animation and television programming.

Although the IFACT-GC has previously expressed concern about perceived insufficiencies in the 2011 Bill, we were nonetheless generally supportive of it and remain keen to see those proposals enacted.

In response to the current consultation, the IFACT-GC invites the Bureau to note the following:

1) The IFACT-GC considers that it would be a mistake to contemplate any sort of blanket exemption from liability for "parody", "satire", "caricature" or "pastiche". International conventions such as Berne and TRIPS provide a minimum level of protection to copyright owners under the "three-step test". It is difficult to see how a blanket exemption could comply with that test and (i) be confined to a special case; (ii) not conflict with a normal exploitation of the copyright owner's works; and (iii) not unreasonably prejudice the legitimate interests of rights owners. Also, there is no "right" of parody in any jurisdiction, and international practice regarding exceptions in such regard is varied.

2) IFACT-GC prefers Option 1 as the best among the three options presented. As a secondary alternative, the IFACT-GC would not object to a variant of option 3 for a carefully crafted exception for parody that (a) is limited to true parodies of the work in question which comments on the work itself, and (b) does not supplant or have an adverse effect on the copyright owner's markets or potential markets. The taking of a work to parody another work should not fall within that exception. The moral rights in the relevant works, if any, should be maintained notwithstanding any special treatment of parody under the copyright regime.

3) The IFACT-GC is aware that a fourth option, not included in the current consultation document, has been proposed by 'netizens' and other online users. This option seeks to follow the approach to parody recently introduced in Canada. At this stage, without seeing the full details of what is proposed, the IFACT-GC considers that a fair dealing exception based on the Canadian approach would be premature. The Act only came into law in June 2012 so it will be unclear exactly what the scope of "non-commercial purposes" (s. 29.21(1)(a)) or "a substantial adverse effect, financial or otherwise" (s. 29.21(1)(d)) might be for some time to come. The Act also introduces a new concept that any new work should not be "a substitute for the existing one" (s. 29.21(1)(d)). Clearly while these uncertainties exist, users and copyright owners of existing works will be forced to turn to the courts to seek judicial interpretation of these terms. If 'netizens' are seeking clarity on which parodies might attract civil or criminal liability, the IFACT-GC considers that the approach put forward in this 'fourth option' defeats that purpose.

The treatment of parody under the copyright regime was not a subject that the 2011 Bill sought to address and it is disappointing that attention has been diverted to this unrelated issue.

The IFACT-GC is hopeful that this consultation process can now be swiftly concluded so that attention can be returned to the very real concerns expressed by rights owners for the past eight years about the need for the Copyright Ordinance to properly address online infringement.

We thank the Administration for the opportunity for us to provide the comments and we are available to assist in any further manner that might be requested.

Best regards.

Yours faithfully,



Sam Ho

Managing Director