



Submission
To the Panel on Commerce and Industry, Legislative Council
on the Treatment of Parody under the Copyright Regime

We, the Composers and Authors Society of Hong Kong, would like to express our views on the subject of the Treatment of Parody under the copyright regime.

1. Parody often rides on a copyrighted work of an author/creator who is the primary owner of the work. He or she has exclusive rights on its use.
2. A copyrighted work is a personal property the use of which should require prior consent of the copyright owner. It is not only a matter of respect but the use is protected by national laws and international treaties.
3. However, we acknowledge the fact that the public is getting more interested to use parody of popular works from music, movie clips and posters, news photos etc. to express their feelings and views on certain social and political subjects of their concerns within the community.
4. The advancement of technology and proliferation of the internet also make it very easy for anyone who has no technical background in computer to produce parody works and distribute them to the general public.
5. In view of the social and cultural needs of our society, we recognize the necessity to strike a balance between the interests of copyright owners and the freedom of expression of the public.
6. Since there is no uniform definition of parody (“parody”, “satire”, “caricature” and “pastiche” collectively termed as parody) in the international community and none of those jurisdictions with parody exemption (Australia and Canada) provides one, we are of the same view that no definition should be provided in the new law. To come up with a legal definition for parody would require another lengthy debate which could lead to further delay of the legislation process for the entire Copyright (Amendment) Bill. Ordinary dictionary meanings of those words would suffice.
7. Option 2 of the Consultation Paper for Parody calls for an introduction of a criminal exemption. In general, we do not object that criminal exemption be provided for the mere purpose of parody, as long as the exemption meets all international obligations and treaties in which Hong Kong is a member or signing party. The distribution of parody works should also not, under any circumstances, be associated with any commercial exploitation (including but not limited to “monetization” on YouTube).

8. Option 3 provides for a fair dealing exception which expands the liberalization of the market but further impedes creators' control of their own property. Under this option, civil liability is also relieved from the distribution of parody as long as the act is considered fair by the court. However, many creators still desire to be approached for approval when their works are being exploited in a parody. They do not want their rights for civil action to be deprived of. There may be some other creators who take the view that they welcome their works to be used freely for parody purposes. Taking into account of their difference in opinions, this option does not seem to be able to achieve the aim.
9. In order to strike a balance among the stakeholders' interests, the Panel might consider the idea of having an official and open platform where those creators who want to give their works out for free for parody purposes might register those works for free parody use while other copyright owners who do not want their works to be exploited can still reserve their right.
10. In circumstances where free parody use is allowed, we consider that moral rights of the writers should be maintained. It is a matter of respect to the creators themselves.
11. To summarize our positions on parody, we are ready to support the introduction of a criminal exemption for parody while at the same time ask that creators' stance and moral right be respected, supplemented by an official platform to allow for free parody purpose.

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