

Treatment of Parody

Main Topic

Sherry YIP/CITB/HKSARG

今天 12:36

Subject: S2364_鮑德禮
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It is doubtful whether any 'reform' is required, but if reform there must be, it should be for the purpose of eliminating any assertion that parody, satire, are capable of offending the copyright regime, rather than the 'limiting' process of establishing a 'fair use' exception. We can start with footnote 24 of Treatment of Parody under the Copyright Regime, which reads:

But there have been conflicting decisions in the US on parodies over similar facts, as in the cases of Columbia Pictures Industries Inc v Miramax Films Corp and Leibovitz v Paramount Pictures Corporation.

This is not quite correct. Columbia Pictures Industries Inc v Miramax Films Corp involved a copy of the Men In Black poster by Michael Moore, (with the tagline: "PROTECTING THE EARTH FROM THE SCUM OF CORPORATE AMERICA.") for the purpose of promoting his own movie. The Court decided that Moore's poster was a knock-off rather than a parody:

'39. Rather than commenting on or criticizing Plaintiffs' ads, Defendants' ads seek to use Plaintiffs' ads as a vehicle to entice viewers to see "The Big One" in the same manner as Plaintiffs used their own ads to entice viewers to see "Men In Black." In such circumstances, Defendants have not created a transformative work which alters the original with new expression, meaning or message.'

In Leibovitz v Paramount Pictures Corporation, a pose of Demi Moore in a advanced state of pregnancy was mimicked by a pose of the (middle-aged male) actor Leslie Nielsen to publicise a comedy movie as "DUE THIS MARCH."

'On balance, the strong parodic nature of the ad tips the first factor significantly toward fair use, even after making some discount for the fact that it promotes a commercial product. "[L]ess indulgence," id. at 585, 114 S.Ct. at 1174, does not mean no indulgence at all. This is not a case like Steinberg v. Columbia Pictures Industries, Inc., 663 F.Supp. 706 (S.D.N.Y.1987), where a copyrighted drawing was appropriated solely to advertise a movie, without any pretense of making a comment upon the original, see id. at 715.'

The whole point about the protection of parody is that its purpose is never to protect the tender sensitivities of the copyright holder of the original work - quite the reverse. A substantial, or at least recognisable, degree of copying is intrinsic to the concept of parody itself. Hence the claim:

those who oppose a special treatment of parody consider that -

...

(d) a special parody treatment might conflict with certain moral rights of creators, e.g. right to be attributed and right to preserve the integrity of their works.

is misconceived. It could hardly be put better than in CAMPBELL v. ACUFF-ROSE MUSIC, INC.,

"We do not, of course, suggest that a parody may not harm the market at all, but when a lethal parody, like a scathing theater review, kills demand for the original, it does not produce a harm cognizable under the Copyright Act. Because "parody may quite legitimately aim at garroting the original, destroying it commercially as well as artistically," B. Kaplan, *An Unhurried View of Copyright 69* (1967), the role of the courts is to distinguish between "[b]iting criticism [that merely] suppresses demand [and] copyright infringement[, which] usurps it."

