

**Consultation Relating to
Treatment of Parody under the Copyright Regime
Views of the Hong Kong Bar Association**

1. The Hong Kong Bar Association (“HKBA”) has been invited to render its views on the Consultation Paper relating to the Treatment of Parody under the Copyright Regime (the “**Consultation Paper**”) published by the Government.
2. As noted in Para.4 of the Consultation Paper, with advances in technology, it has become easier for members of the public to express their views and commentary on current events by altering existing copyright works and disseminating them through the Internet. In Hong Kong, popular forms of this genre in recent years include (a) combining existing news photographs or movie posters with pictures of political figures; (b) providing new lyrics to popular songs; and (c) editing a short clip from a television drama or movie to relate to a current event (sometimes with new subtitles or dialogues).
3. Having considered the Consultation Paper (and in particular, the treatment of parody in other common law jurisdictions) as well as the particular situation in Hong Kong, HKBA is of the view that the best way of addressing the issue is by the introduction of a fair dealing exception for “*commenting on current events*”. Such exception could be introduced by way of amending the existing fair dealing provision in section 39(2) of the Copyright Ordinance (the “**Ordinance**”) along the following lines :-

“(2) Fair dealing with a work for the purpose of reporting [or commenting on] current events, if (subject to subsection (3)) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

(3) No acknowledgement is required in connection with the reporting [or commenting on] of current events by means of a sound recording, film, broadcast or cable programme.”

4. HKBA is of the view that the above proposal best addresses the issue for the following reasons :-
 - (a) The provision of an exception to the acts of infringement of copyright provided for under the Ordinance is based on a balancing of the rights and interests of copyright owners and the public interest.

- (b) The public interest in issue is the freedom of expression of the public, which already (together with other public interests) underlies the fair dealing exception provided for “*reporting current events*” under section 39(2) of the Ordinance.
 - (c) As commenting on current events is analogous or akin to “reporting current events”, it can and should be given the same treatment under the Ordinance.
 - (d) Providing for a fair dealing exception for “*commenting on current events*” is preferable to providing one for “parody or satire” (as has been done in Australia and Canada) or for “parody, caricature or pastiche” (as proposed in the United Kingdom). It has the advantage of providing for an exception which is easily understood and which would encompass the very types of use of copyright works already contemplated as well as possibly other forms of expression. Conversely, the provision of an exception for “parody or satire” or for “parody, caricature or pastiche” may give rise to difficulties of definition and understanding. The HKBA notes, for example, that no statutory definition of “parody” or “satire” has been provided for in the Australian or Canadian copyright legislation. However, the types of use of copyright works contemplated (as adverted to in Para.2 above) may not actually fall within the definitions of the terms “parody”, “satire”, “caricature” or “pastiche”¹.
 - (e) To create an exception specifically for parody and/or satire (irrespective of purpose) would have the undesired effect of exempting activities which do not have sufficient public interest justification.
 - (f) The proposed fair dealing exception strikes the correct balance between, protecting the public’s freedom of expression regarding commenting on current events on one hand, and the legitimate rights and interests of copyright owners on the other.
5. The proposal of HKBA differs from the suggestion under the third bullet point of Option 3 in Annex C to the Consultation Paper in that instead of introducing a new sub-section (1A), it is proposed that the existing sub-sections (2) and (3) be amended to include the exception for commenting on current events. HKBA is

¹ See the definitions provided in the Oxford English Dictionary as set out in Footnote 5 of the Consultation Paper.

of the view that this is the preferable approach because there appears to be no reason in principle why those who make use of a copyright work for the purposes of commenting on current events should be given different (and favourable) treatment to those who make use of a copyright work for the purposes of reporting current events.

6. Lastly, HKBA wishes to point out that s.30(3) of the UK *Copyright Designs and Patents Act 1988* (which corresponds to s.39(3) of the Ordinance) has been amended (as from 31 October 2003) to read as follows :-

“No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast² where this would be impossible for reasons of practicality or otherwise.”

In considering any amendment to the Ordinance, consideration should also be given to whether s.39(3) of the Ordinance should be similarly amended.

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Hong Kong Bar Association

² There is a new definition of “broadcast” under s.6 which includes all types of electronic transmissions except certain internet transmissions.

