

Legal Regulation & Education: Doing the Right Thing?

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The Current Position of Parody under the Copyright Regime: The Hong Kong Perspective

The fact that rapid and advance changes in information technology have increased the challenges faced by copyright owners seeking to safeguard their legitimate interest cannot be denied. In order to strike a balance between the legitimate interests of copyright owners and users of the Internet and the general public, the Legislative Council in Hong Kong tabled the Copyright (Amendment) Bill 2011 ('the Bill') in June 2011 to update the Copyright Ordinance (Cap. 528). Amongst other things, the Bill sought to introduce a technology-neutral communication right which will endure the test of rapid advances in technology and will obviate the need to change the law every time a new communicate mode emerges. The bill also aims to provide better cooperation between copyright owners and online service providers to curb online copyright infringement and to facilitate new modes of uses copyright works such as e-learning and media shifting. However, parody was not a subject which was addressed in the Bill. Nevertheless, during the examination of the Bill in the Legislative Council, the community in Hong Kong had expressed wide-ranging views on parody for (amongst others) two main reasons. First, the introduction of a "communication" right (Section 28A) by the Bill has been regarded by some as a further restriction on freedom of expression. Second, in view of the proposed wording of the Bill, dissemination of parodies on the Internet may attract both civil and criminal liability. Although after thorough scrutiny, the Legislative Council Bills Committee, supported the passage of the Bill with suitable amendments, it requested the Administration to separately consult the public on parody in the arena of copyright. Due to other pressing matters which the Legislative Council had to transact, the Bill did not resume Second Reading Debate and lapsed upon expiration of the previous term of the Legislative Council in July 2012.

This paper will critically examine the strength and weaknesses of the views of the public on parody in the current Hong Kong copyright regime. It will also compare the current position in Hong Kong with other jurisdictions such as the United Kingdom and Australia and will consider whether there is a pressing need for a separate parody defence in Hong Kong.