



IFPI Comments on a Parody Exception in Hong Kong

November 2011

EXECUTIVE SUMMARY

The introduction of a new exception for parody and satire in Hong Kong requires careful consideration and analysis of any benefits from the exception as well as any possible negative impact. Any carve out from the scope of existing rights should be appropriately defined and comply with the three-step test.

AN EXCEPTION SHOULD BE CONSIDERED IN A PUBLIC CONSULTATION

The creation of a new exception to the scope of existing rights should be considered in a public consultation which involves a thorough analysis of any potential gains against any likely negative outcomes. This process cannot be an expedited one and a parody exception cannot be rushed through the legislative process. Outside Hong Kong, different approaches were adopted to the issue of parody. While some countries have specific exceptions for parodies, others cover parodies under other existing exceptions and some do not have any provision covering parodies at all. The decision whether to create a specific exception should be based on the legal framework as well as any existing case law. Hong Kong would do well if it were to carefully analyse the scope of parody exceptions in other countries; examine the experience of these countries; and, most importantly, analyse any evidence showing a demonstrable need for a change to existing law in Hong Kong.

A NEW EXCEPTION SHOULD BE BASED ON SOLID EVIDENCE

The introduction of any new exception should be based on solid evidence showing the benefits of such an exception. The analysis supporting a new exception should clearly show a demonstrable need in the local market. A new carve out from existing rights may reduce legal certainty and create confusion with respect to the type of permitted acts. As a result, it could also increase litigation and add to the costs of doing business in Hong Kong. It is therefore important that a new parody exception

be carefully considered in light of evidence showing its likely impact on the local market and its existing practices.



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