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RESPONSE TO THE PUBLIC CONSULTATION ON
HOW SHOULD PARODY BE APPROPRIATELY TAKEN CARE OF UNDER THE
COPYRIGHT REGIME

Presented by the Music Publishers Association of Hong Kong Ltd. (MPA HK)

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音樂出版人協會
香港有限公司
MUSIC
PUBLISHERS
ASSOCIATION
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INTRODUCTION

Music Publishers Association of Hong Kong Ltd. (MPA HK) was established in 1981 by a group of music publishers who own and/or control a large number of music copyrights (both musical works and/or literary works.) which cover most of the local Cantonese songs, Mandarin songs as well as the international songs. MPA HK currently comprises 26 members as below:

1. AL-Songs Music Publishing Limited
2. Avex Hong Kong Limited
3. Better Music Publishing Limited
4. BMA Music Publishing Limited
5. Capital Artists Limited
6. Crown Music Publishing (HK) Limited
7. East Asia Music Publishing Limited
8. EEG Music Publishing Limited
9. EMI Music Publishing Hong Kong
10. Fujipacific Music (S.E. Asia) Limited
11. Gold Typhoon Entertainment Limited
12. Hugo Productions (HK) Limited
13. Man Chi Music Publishing Art Centre
14. Music Nation Publishing Company Limited
15. P & P Music
16. peermusic (S.E. Asia) Limited
17. Sony/ATV Music Publishing (Hong Kong)
18. Stars Shine Music Publishing Limited
19. Sun Entertainment Publishing Limited
20. Sun Fung Music Publishing Limited
21. Touch Music Publishing (HK) Ltd
22. Universal Music Publishing Limited
23. Universal Publishing Production Music Asia
24. Warner/Chappell Music, H.K. Limited
25. Wing Hang Music Publishing Company Limited
26. Worldstar Music International Limited

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MPA HK aims to protect the interest of its members and strives to strengthen the music publishing business in both the economic growth and the cultural development, as music plays an important role in various business and cultural sectors in our daily life. Besides, MPA members exploit the works of their songwriters to various commercial uses, and license such works so as to procure a proper remuneration to the songwriters for their copyright creation. This licensing for royalty remuneration is essential to sustain creativity.

RESPONSE TO THE PUBLIC CONSULTATION ON PARODY

MPA HK refers to the recent public consultation on “How should parody be appropriately taken care of under the copyright regime”, and would like to have its response in the followings:

1. With regard to the current topic of parody and/or commonly called “二次創作”, MPA HK express that MPA HK has no prejudice against any parties.
2. On the proposed criminal exemption on parodies, MPA HK’s view is that regardless of the exemption being criminal or not, making use of an extracted part of musical and/or literary work with other material constitutes an act of adaptation. In the copyright essence and in the general copyright licensing of music publishers, adaptation is more restrictive than a re-recording without any change. For example, if a person records a song without any change, the act of his/her re-recording does not fall into the proposed exemption. On the contrary, if a person adapts a song and/or mix-and-match several songs into another creation, then this new creation falls into the proposed exemption. If such an exemption is allowed, not only it will have a great impact on how music publishers exercise their rights, but also cause loop holes and gray area in the copyright licensing.
3. In addition, the proposed exemption may be in conflict with the moral right that the songwriter holds the integrity and the spirit of his/her copyright creation. For example, if a person creates a song with his/her belief, perception, religion or certain faith, the spirit in his/her copyright creation should be well respected.

4. On the level of the proposed exemption whether it be “more than trivial economic prejudice to the copyright owner”, in the digital world, it is difficult to judge on how the level of trivial to be. For example, a person can make use of a part of a song with his words in favour of or against certain social phenomenon together with a short slogan from a commercial product and so to claim it as a parody. It hence prevents the music publishers from properly licensing their works.

5. In respect of the copyright ownership under the proposed exemption, when a parody creation is made of parts of various songs, other copyrighted material and parts of new creation by the parody creator, naturally the parody creator would make claim on his part of his new creation. However, the proposed exemption allows him/her to combine his/her own creation with other copyrighted material, but does not set out on how the new copyright shares to be split and if those are agreed among all the concerned parties. Furthermore and for instance, when a parody creation was made of several pop songs with a set of partial lyrics written by the parody creator, in the first place his parody creation could be exempted. Later on, when that creation is going to be popular and will be commercially released, the parody creator needs to obtain the licences from the other copyright owners. However, in the first place that parody creation was already a potential infringing act, that would cause a problem on the copyright settlement and further argument on how the copyright ownership is to be taken.

6. In most cases, the licensing of adaptation, reproduction with other material (commonly known as “synchronization” in our industry, e.g., in a visual recording or in a commercial advertisement) requires the consent of the songwriters. Certain songwriters would welcome any commercial uses, some would judge on how the songs to be used but some may only prefer their songs being used in only one published use (e.g. released on one time recording). This told that music publishers respect the songwriters and cater for various need on how they would like their songs being exploited for more uses or being restricted for other uses.



CONCLUSION

In view of the above points, MPA HK feels that the proposed exemption is not beneficial for both the copyright owners and the parody creators. Besides, in many other countries, parody is still not clearly defined. MPA HK's view is that any copyright issue should be judged on a case-by-case study. The proposed exemption would cause many underlying arguments on how parody is defined, how moral right is in conflict, how trivial economic prejudice is considered and how the copyright ownership to be taken. In the past and to the best of MPA HK's knowledge, MPA HK members have not taken any action against the parody. Nonetheless, whether taking such action is subject to the discretion of the individual MPA member. The right to the claim should be reserved by copyright owners and should not be taken away.

On the side of the parody creators, MPA HK believes that the proposed exemption may not ease their worries. What the parody creators' worry is mainly on the fact that the Government can prosecute them without the authorization of the copyright owners. MPA HK hopes the Government should focus on this point and give more factual clarifications to the parody creators, as if several MPA HK members have been explaining to a number of parody creators on how and to whom the criminal proceedings are taken against.

On the international level, Hong Kong is bound by its obligations with certain copyright treaty and convention. MPA HK's view is that any exemption should be met with such international obligations. In taking several examples from other neighbouring Asian countries that Communication Right has been enacted years ago, no parody exemption has been granted.

With reference to the above point 6, MPA HK would suggest an alternate solution, based on how publishers exploit certain songwriters' works but on the other hand protect other songwriters' works. Our suggestion is to set up a platform for those songwriters or organizations who support to share their works or creation for parody uses. We understand on the side of parody, it may not be preferable to use songs in a selective manner, but we do need to tell that we must respect other people's willingness.