

Digital Copyright Reform in Hong Kong



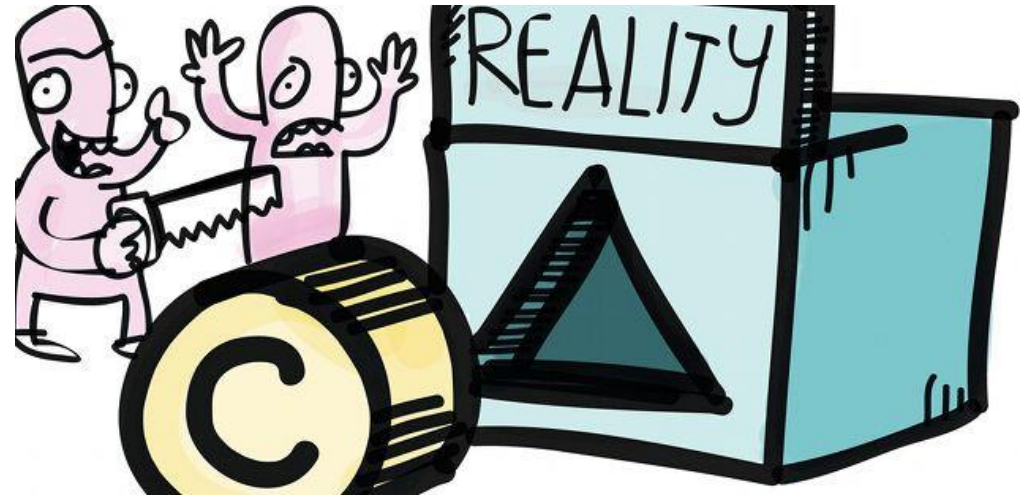
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21 December 2016

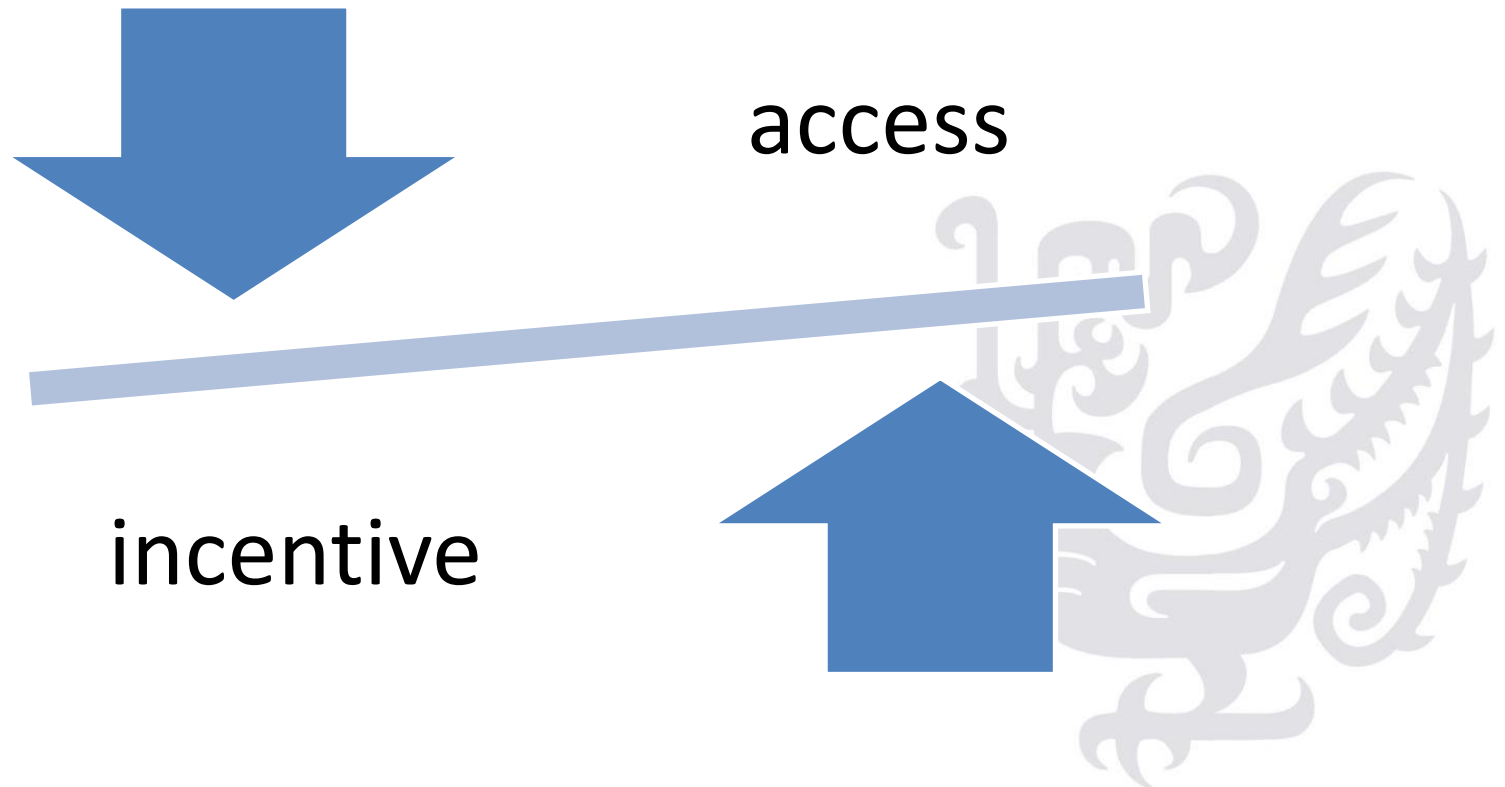
✓ Introduction



- Copyright Reform in Hong Kong
- Limitations and Exceptions



Balance of Interests in Copyright System

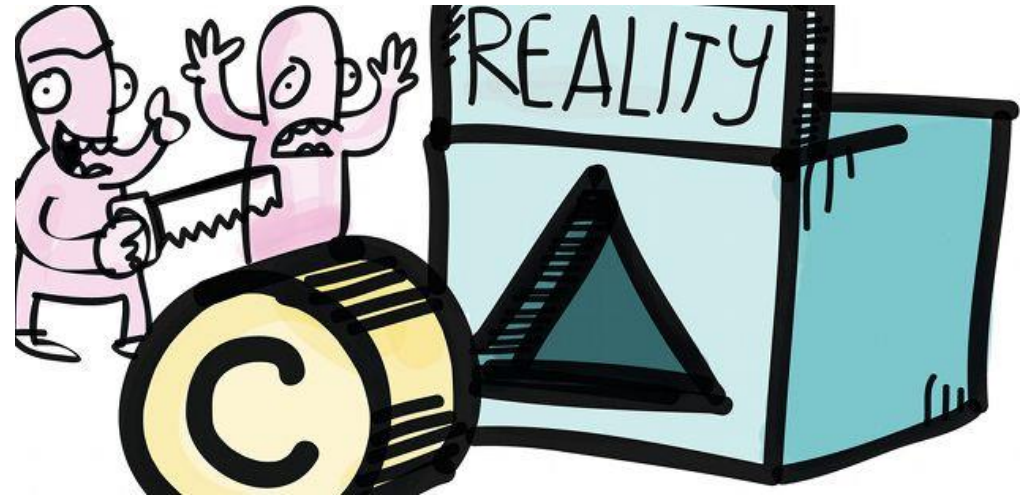


Policy Goal of Copyright Law

- A statutory creation designed
 - Primarily to enhance the public interest
 - Secondarily to confer a reward upon authors



- Introduction



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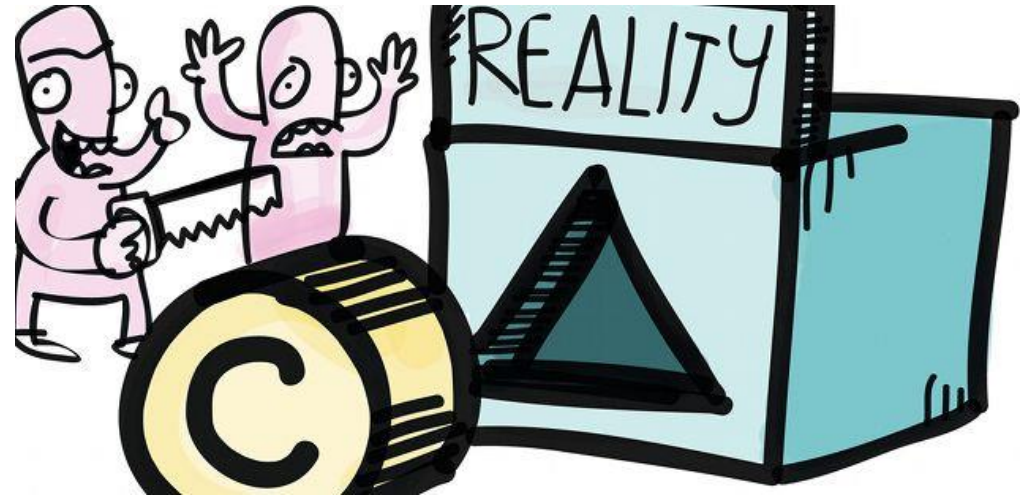
- Limitations and Exceptions



- Public consultations on digital copyright
 - December 2006
 - April 2008
 - July 2013
- Copyright (Amendment) Bills introduced to the Legislative Council
 - June 2011
 - June 2014



- Introduction



- Copyright Reform in Hong Kong

- ✓ Limitations and Exceptions



Limitations or Exceptions

✓ International Treaties

- Fair Use and Fair Dealing
- Current Hong Kong Copyright Ordinance
- Legislative Proposals



Limitations or Exceptions to Copyright

- Art. 9(2), Berne Convention

- It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in **certain special cases**, provided that such reproduction does **not conflict with a normal exploitation of the work** and does **not unreasonably prejudice the legitimate interests of the author**.

- Art. 13, TRIPs Agreement

- Members shall confine limitations or exceptions to exclusive rights to **certain special cases** which do **not conflict with a normal exploitation of the work** and do **not unreasonably prejudice the legitimate interests of the right holder**.



- s.37(3)

- In determining whether an act specified in this Division may be done in relation to a copyright work notwithstanding the subsistence of copyright, the primary consideration is that the act does **not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.**



Limitations or Exceptions

- International Treaties
- ✓ Fair Use and Fair Dealing
- Current Hong Kong Copyright Ordinance
- Legislative Proposals



Exceptions or Limitations

- The U.S. Approach (The General Non-Exclusive Fair Use Regime)
 - 17 U.S. §107: In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
 - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - (2) the nature of the copyrighted work;
 - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (4) the effect of the use upon the potential market for or value of the copyrighted work.
 - The H.K./U.K. Approach (The Statutory Exemption Regime)

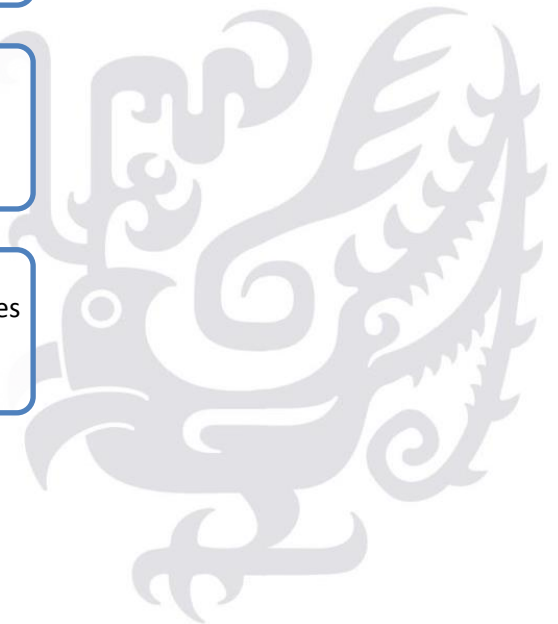
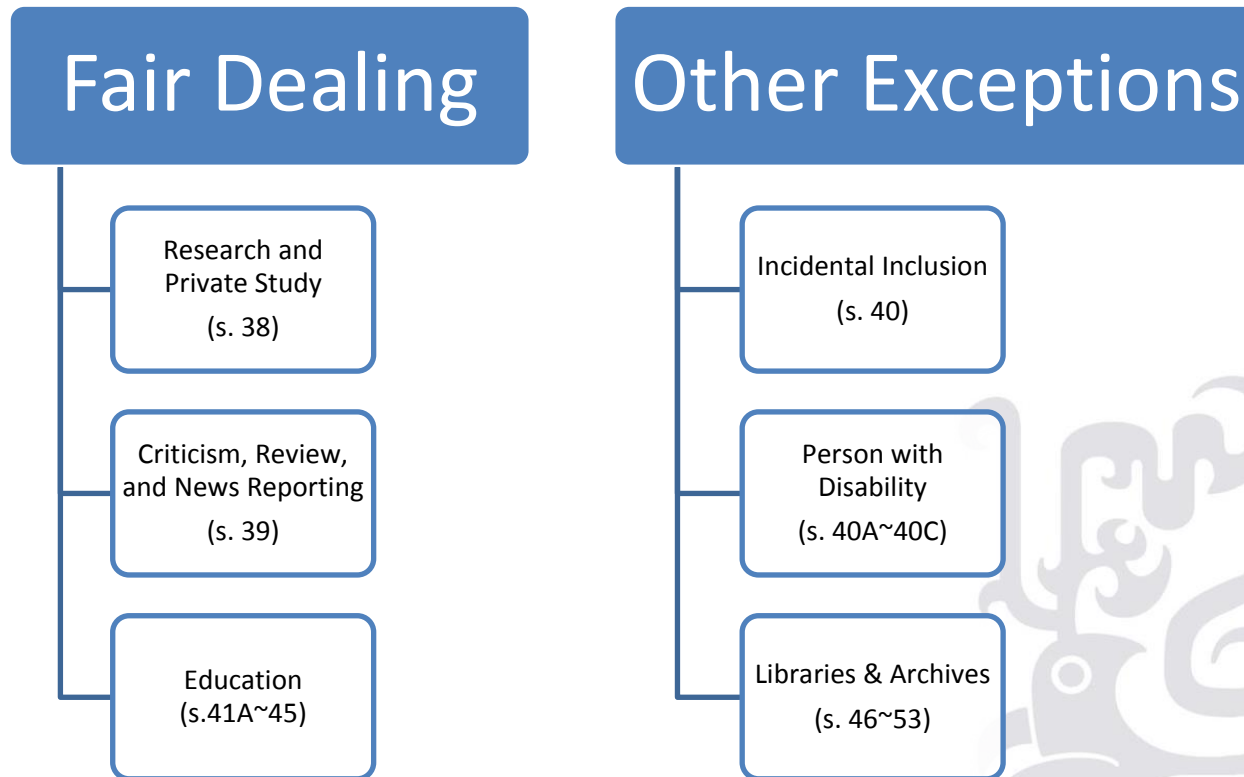
Limitations or Exceptions

- International Treaties
- Fair Use and Fair Dealing
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Exceptions or Limitations

- The H.K./U.K. Approach(The Statutory Exemption Regime)
- H.K. Copyright Ordinance:



Limitations or Exceptions

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- Background:

- Introducing a new right of communication to the public:

- Covering all modes of electronic transmission
 - Featuring both criminal and civil liabilities



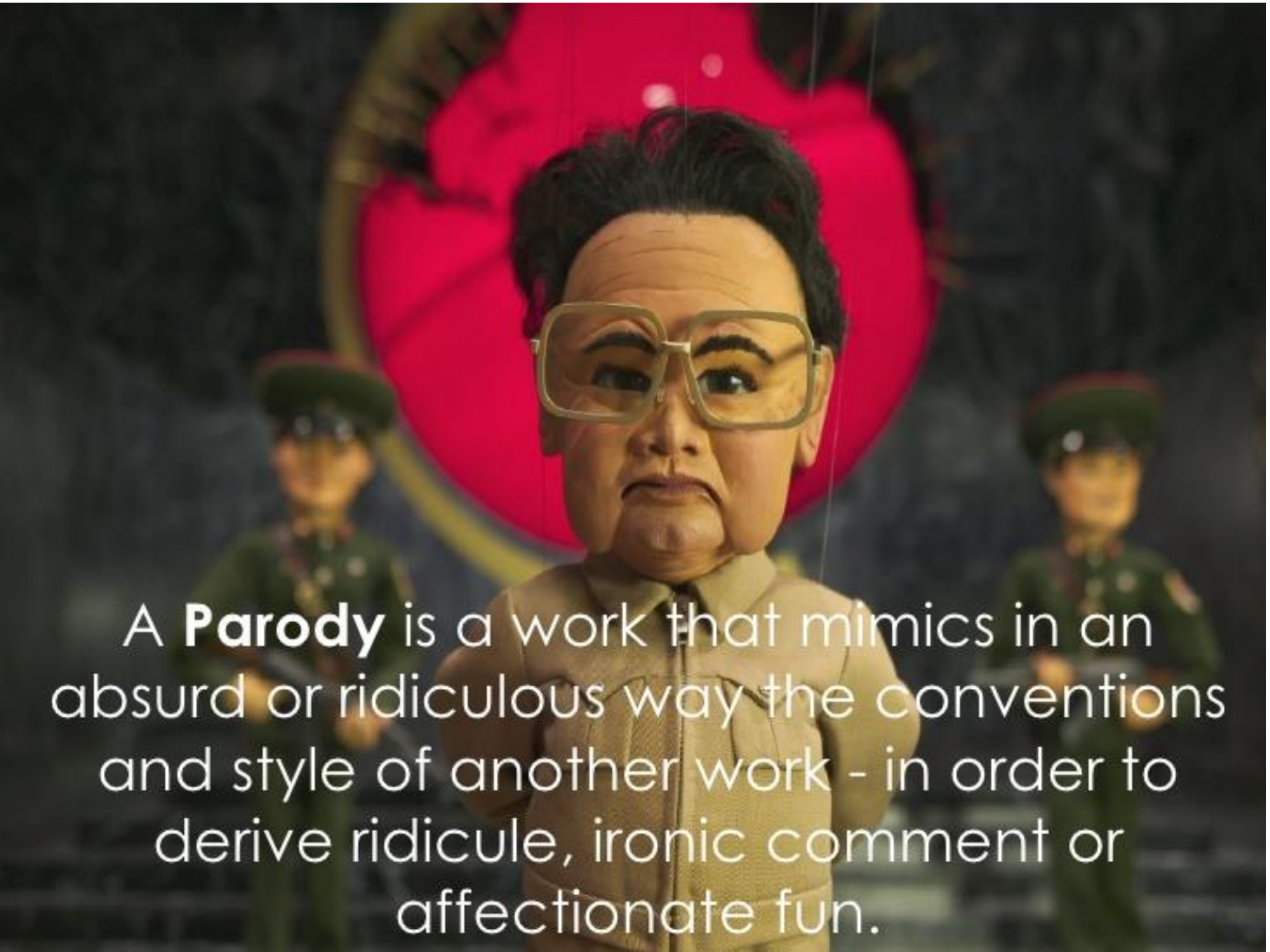
Legislative Proposals

✓ Parody

• UGC

• Fair Use





A **Parody** is a work that mimics in an absurd or ridiculous way the conventions and style of another work - in order to derive ridicule, ironic comment or affectionate fun.

Limitations or Exceptions

- Copyright (Amendment) Bill 2011
 - Parodies, satires, etc.

- Copyright (Amendment) Bill 2011
 - Parody, satire, caricature, and pastiche
 - Quotation
 - Commenting on current events



Parody

- Definition

- HKIPD: Parody is used as a collective term to refer to a wide scope of works, such as “parody”, “satire”, “caricature” or “pastiche.”
- An imitation of an existing copyright work for humorous or satirical effect
- No definition in international treaties and national legislations
- [Example](#)
 - Combining existing news photos or movie posters with pictures of political figures
 - Providing new lyrics to popular songs
 - Editing a short clips from a TV drama or movie to relate to a current event

- Tension between the parodist and copyright owner
 - Because the use is satire and ridicule, some copyright owners will not license their work for this purpose



Parody

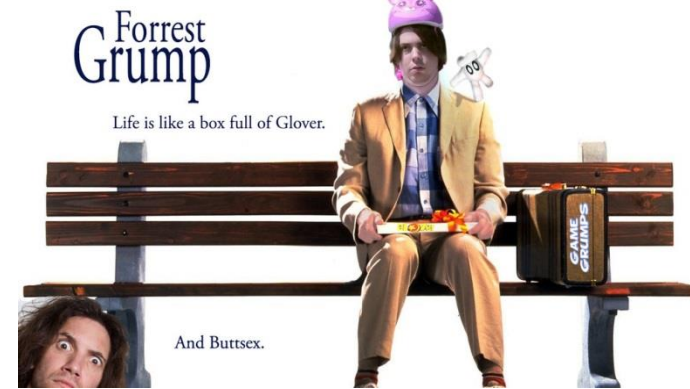
- Treatment of Parody

- Art. 5, E.C. Copyright in the Information Society Directive

- 3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:
 - (k) use for the purpose of caricature, parody or pastiche

- National Law

- Fair Use Case Law: U.S.
 - (*Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994))
 - Fair Dealing Statute: Australia (2006), Canada (2012), U.K. (2014)

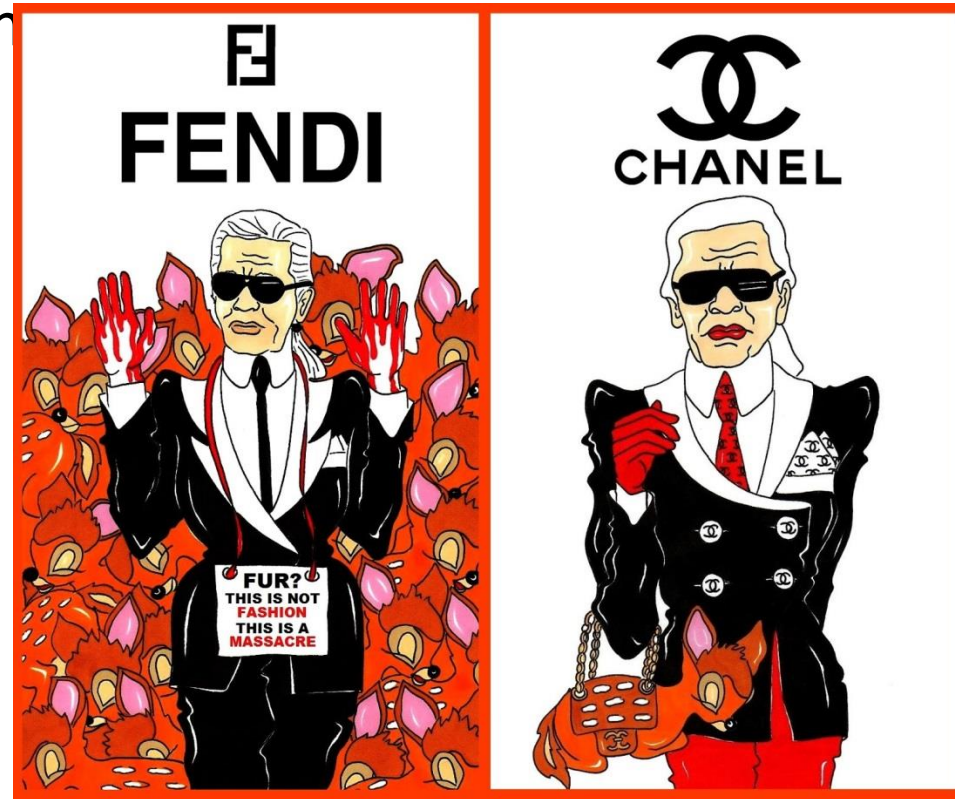


Parody

- Court of Justice in European Union (CJEU)---*Deckmyn and Vrijheidsfonds VZW v. Vandersteen*, C-201/13:

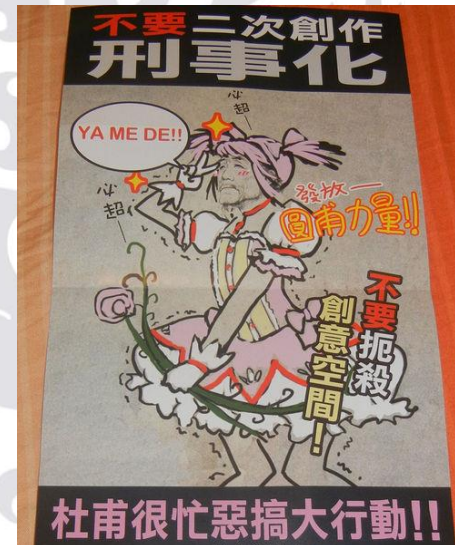
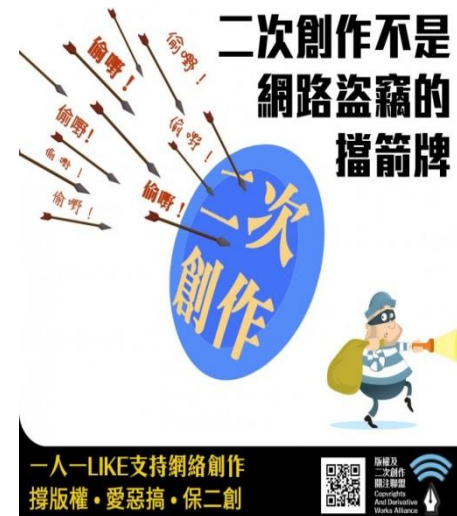
— Parody as an exemption shall

- Evoking an existing work while being noticeably different from it; and
- Constituting an expression of humour or mockery



Criticism

- Parody exception does not include all reasonable Internet use of copyright work
 - [Lenz v. Universal Music Corp.](#), 801 F.3d 1126 (2015)
 - Secondary creation
 - HKIPD:
 - “Secondary creation” is NOT a term used in copyright jurisprudence



Legislative Proposals

- Parody
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- Fair Use



UGC Exception

- “predominantly noncommercial user-generated content” exception
- Supporters:
 - Internet User Groups: Concern Group of Rights of Derivative Works, Keyboard Frontline, Copyright and Derivative Works Alliance, etc.



UGC Exception

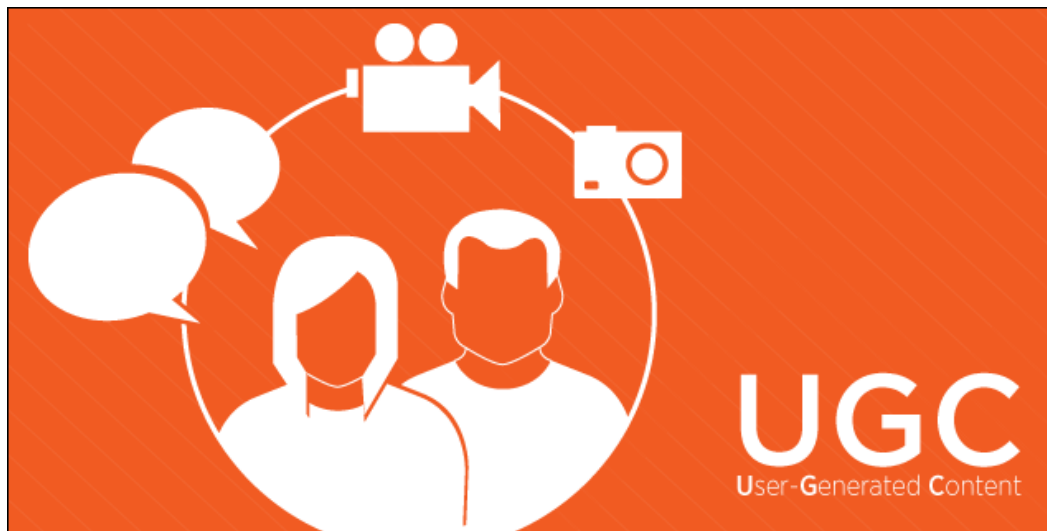
– Proposal:

- User Generated Content (UGC) is legally permitted if it
 - is not for commercial use
 - is not a substitute of the existing copyright materials
 - does not cause harm or negatively impact on the existing or potential market and reputation on the existing materials as long as the existing materials were legitimately acquired;
 - sufficient acknowledgement



UGC Exception

- Criticism
 - Lack of consultation
 - Scope of the exception is too broad
 - Lack of comparative law experience (only Canada)



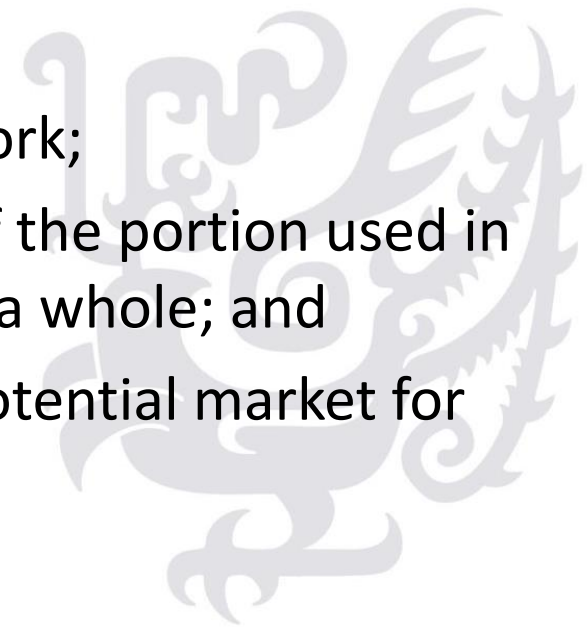
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Fair Use

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Fair Use

- Advantage
 - Flexibility
- Disadvantage
 - Uncertainty





THANK YOU FOR YOUR ATTENTION

