

Title: Copyright exception For Parody IA No: BIS 1057 Lead department or agency: IPO Other departments or agencies:	Impact Assessment (IA)
	Date: 13/12/12*
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: matthew.cope@ipo.gov.uk	

Summary: Intervention and Options	RPC Opinion: Green
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0m	£0m	Yes
			Out - Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

Comedy and satire often involve imitation and use of the works of others, through parody, caricature and pastiche. While technology now gives people many more opportunities to express themselves in new ways copyright law restricts people's ability to parody the works of others, and thus may limit freedom of expression and creativity. Comedy is economically important in the UK and an important part of our culture and public discourse. The Hargreaves Review recommended introducing an exception to copyright for the purpose of parody, to remove unnecessary regulation and free up creators of parody, to support freedom of expression and economic growth in creative sectors.

What are the policy objectives and the intended effects?

To introduce an exception into copyright law allowing works of parody. This will encourage creativity and foster innovation in new works, by enabling parody works to be created without fear of infringing the copyright in the underlying work or works. It will remove the need to clear some uses of content with copyright owners before parodying their works, so making it easier and more affordable to create legal parodies. This will benefit those who create them, including broadcasters, entertainers, and the wider public. The aim is to introduce such an exception without reducing the incentives to creators provided by copyright protection or affecting their moral rights.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Option 0 - Do nothing, use of copyright works for parody purposes without permission will remain illegal.
- Option 1 - Introduce a fair dealing exception for parody, caricature and pastiche.
- Option 2 - Introduce an unlimited exception for parody, caricature and pastiche.

Option 1 is our preferred option as achieves the policy objectives whilst minimising the potential harm to copyright owners of original works.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2020					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/a	Non-traded: n/a

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: ---- Younger of Leckie ----- Date: 23 March 14 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce a Fair Dealing Exception for Parody, Caricature and Pastiche

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

We have not found it possible to accurately monetise the costs of the proposal beyond the initial assumptions made in the Hargreaves report.

Other key non-monetised costs by 'main affected groups'

Owners of copyright in works which are the subject of a parody will lose their ability to control all uses of their work and the ability to license use for parody to the extent that such use is allowed under the exception. The parody may create competition for the original work and may potentially impact on sales of that work or negative reputational effects, but research carried out on behalf of the IPO suggests that the large majority of parodies are likely to have the opposite, i.e. a positive, effect.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to fully monetise the benefits beyond the initial assumptions made in the Hargreaves Report at this stage but an illustrative level of benefits has been identified on page 5.

Other key non-monetised benefits by 'main affected groups'

Creators of parody, including comedians and the wider public, will benefit from having more opportunities for freedom of expression. The public will also benefit from the entertainment and social comment provided by parody, caricature and pastiche. Parody may also benefit copyright owners if they experience more sales from greater publicity of their work due to enhanced reputation. Educational initiatives will benefit if students are able to make parody works as part of the learning process.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

There is a risk of unintended consequences arising from abuse of this exception if widely defined so as to permit uses that stretch the meaning of parody. The possibility of this is limited in this option due to its restriction to "fair dealing".

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	Zero net cost

Evidence Base (for summary sheets)

Problem under consideration;

As the cost of creating and editing creative works has decreased and new opportunities for sharing content on the internet have arisen, the potential for creating new material based on the creative works of others, such as film, music and pictures, has grown. Parody (A literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule) has long been important to British culture, public discourse and freedom of expression. Much user-generated content on sites such as YouTube makes use of parody and may infringe UK copyright law.

There is also a growing entertainment market worldwide, as programmes can reach wider audiences. Syndicated comedy programmes such as the *Daily Show with Jon Stewart* (made in the US where fair use of copyright material for parody is permitted) often use creative content for the purpose of parody, in particular for political commentary. In contrast, British creators of parody works will need to clear the use of copyright content that they wish to base a parody on. This is often a difficult and time-consuming process. Alternatively, they could take a legal risk and issue the parody without rights clearance. There will be costs associated with legal advice when assessing this risk, and potentially costs of legal action. If the risks are judged to be too high and rights clearance too difficult, time-consuming or expensive, a parody work will not be released, may not be fully exploited or creators may simply not make parody works in the first place.

These risks and transaction costs can stifle the ability of creators to make new material, in particular if they need a quick turnaround or are working on a budget. As other countries (such as the US and many EU countries) permit parody works, UK creators are arguably disadvantaged in the global market for comedy.

Rationale for intervention;

The Government takes the view that copyright should only limit the use of creative works to the extent necessary for it to fulfil its central objective – the provision of incentives to creators, balanced against the interests of society as a whole. It should not unduly regulate businesses and consumers where their activity has little harm on commercial sales by copyright owners.

Permitting parody would reduce barriers to the creation of new content and create new opportunities for our comedy industry. It would enhance freedom of expression by the general public and be in tune with the expectations of users of online media. Permitting parody also provides educational benefits, enhancing future creativity and growth.

Policy objective;

The Government is looking to create a new exception to copyright that permits people to copy works for the purpose of parody, pastiche and caricature.

Description of options considered (including do nothing);

The options considered were:

Option 0 - Do nothing, works of parody will infringe copyright unless authorised.

Option 1 - A fair dealing exception for parody, caricature and pastiche.

Option 2 – An unlimited exception for parody, caricature and pastiche.

Option 1 is our chosen option as it meets our policy objective but limits any potential harm to the original authors.

Costs and Benefits

Option 0: No change to copyright law

Parody, caricature and pastiche would continue to be an infringement without the permission of the owners of the copyright in the underlying work. This would mean that creators of parody works will continue to need to get permission from copyright owners. When doing this they will experience the transaction costs associated with rights clearance and the costs of any licence fees. Alternatively they could take legal advice (another cost) and may decide to release their parody without agreement - with

the risk of court action and potential damages. If these costs and risks are judged to be too high, the parody work will often not be released.

An example of the problems parodists face (provided as part of the consultation responses) is the experience of an artist known as "Swede Mason" who created a remix using video clips from the BBC Masterchef program (Masterchef Synaesthesia). The remix transforms the original work to such a degree that there is no chance at all of confusion, or substitution with the original copyright work, however it remains restricted by copyright. In this particular case the remix became extremely popular (following publication on YouTube in defiance of copyright legislation) and led to the sale of t-shirts and the release of a commercial single which generated significant income for the original rights holder, for the parodist and for charity. When the work was initially brought to the attention of the underlying rights holder (the production company in this case, not the BBC who were themselves content with the parody use) their reaction was to raise a legal challenge to get the work removed. If the artist had not continued to publish the work in defiance of such challenges, (and in contravention of current copyright law) then a good deal of benefit for all parties would have been sacrificed.

As well as limiting opportunities for creators of parodies, incidents like this can have a negative impact on the public's trust of the copyright system, as it is seen as unnecessarily restrictive.

Option1: Introduce a fair dealing exception for parody, caricature and pastiche

A fair dealing exception for parody, caricature and pastiche will remove unnecessary restrictions on the activity of creators and reduce administrative costs, without causing any significant economic harm to original rights holders. The requirement that any parody use of a work be "fair dealing" is an additional restriction which ensures that the exception is not misused. In the case of a parody exception this means that the parody work should not be substitutable for the original work, nor damage the commercial exploitation of the original work.

In the case of YouTube videos for example, the use of an entire (and unchanged) musical track with an altered or replaced video would arguably give rise to a product that is substitutable for the original musical work alone. As a result, such a use is unlikely to be considered fair. Limiting the exception by fair dealing would allow a parody work to reference copyright works and build upon them as source material, but is likely to stop short of allowing parodists to take entire unchanged works.

The concept of fair dealing is relatively well developed in UK law, but further restrictions or considerations can be explicitly included into the legislation if necessary in order to ensure that the allowed uses do not unfairly affect the legitimate rights of the original copyright owner.

An exception will allow creators of new parody-style works to make a cost saving, as they will not necessarily have to identify, seek permission from, or pay royalties to copyright owners whose works form the basis of the new parodies. It will allow use of works for parody for non-commercial purposes (such as education) but also for commercial purposes, to the extent that such use is considered "fair".

An example of a parody work that was used in an earlier version of this impact assessment and other documents relating to the consultation is the spoof song "Newport State of Mind". As several respondents to the consultation stated, this work is not a clean example of a parody work because although the lyrics of the song and accompanying video were parodied, the underlying music track and arrangement were unchanged. A parody exception might then offer some room to allow the new lyrics and video (to the extent that they were close enough to the original to infringe copyright) but it would probably not offer any protection for the wholesale copying of the musical work (referred to as the synchronisation right). This would be consistent with the stipulation that a fair dealing exception should not compromise the ordinary commercial exploitation of a work, and so in turn would comply with the Berne three step test. In other jurisdictions that have a parody exception there are limitations such as that it must comprise a substantial transformation or modification of a copyright work (France), add something new altering the first expression (USA), or only copy to the extent necessary to achieve the parody (fair use, USA). If a UK parody exception were drawn with similar limits, then literal copying of an entire work, in most circumstances, would not fall within scope.

The case for such an approach to fall outside of the exception is even more clear cut when videos consisting of an entirely unchanged soundtrack (i.e. unchanged lyrics and music) accompanying a replacement video are considered. Clearly such a work, while possibly humorous if enjoyed as intended, could also act as a substitute for the original sound recording if a user merely listens to the audio and does not view the video (the converse situation would also be problematic). As such, it is considered that

a fair dealing parody exception, taking into account the three step test which applies to all exceptions allowed for by the Information Society Directive, would not allow such works to be made and distributed.

While such a restriction may prevent some genuine parody works from being created and exploited, it is considered that this would allow many of the parody uses that are desirable and realise the benefits outlined below, but without unfairly infringing on the rights of the original creator.

Fully quantifying the costs and benefits has not been possible. As noted by some submissions to the consultation it is difficult to estimate the size of the comedy industry, the amount of that market which is parody based or the global market for this type of material. There are many uncertainties around the degree to which parody is culture or country specific, or how much it has the potential to be exploited across borders.

We have therefore taken a two pronged approach. We have considered the evidence submitted to the consultation in order to identify, as far as we can, where costs and benefits will arise. We have also commissioned research from Bournemouth University researchers into the effect of existing YouTube parody music videos, to give us some insight, qualitatively if not quantitatively, into what the effect of a parody exception will be. The outcome of this approach is that, while we may not be able to put exact figures on the costs and benefits expected, we can say how they should stand relative to each other. This research only looks at the data for music videos; however we do not believe that the conclusions would vary for other types of parody content. In the consultation responses there were no suggestions that the costs and benefits would vary for different types of media content. To make a more accurate determination (if possible at all) would require very extensive research that we do not believe would be proportionate in relation to the likely costs and benefits identified.

A literature review by Rogers, Tomalin and Corrigan¹ into the economic impact of consumer copyright exceptions identified four potential effects of a parody exception on the sales of original works:

- 1) lost sales due to confusion with an original work,
- 2), lost sales due to negative reputational effects on the original,
- 3) increased sales due to greater publicity and awareness for the original
- 4) increased sales due to positive reputational effects on the original .

In addition to this we must consider the cost of any lost licence fees, the benefit in reduction of administrative overhead for parodists and the other benefits, both cultural and economic, of allowing limited use of works for parody purposes.

Costs: As a result of the introduction of the exception it has been suggested that the owners of the copyright in original works may experience lost sales due to confusion with an original work and lost sales due to negative reputational effects on the original work. However by introducing the exception with a fair dealing limitation we believe these potential costs will not arise because by definition the copying of a work which leads to a substitutable product (or one that damages the normal commercial exploitation of the original work) would not be "fair". The research carried out by Bournemouth University also found that there is no demonstrable harm to the popularity (and by inference reputation) of original works arising from spoof or parody videos.

***The Bournemouth Study** – Researchers at the University of Bournemouth, UK, were commissioned by the IPO to carry out a comparative review of the treatment of parodies in seven copyright jurisdictions and a review of parody music content on YouTube to determine whether or not the existence of parody content causes economic harm to the underlying copyright works.*

The YouTube study focused on 343 original copyright music videos, which had supported the creation of 8,299 parody videos. Of these, a subset of 1,845 parodies were further examined to determine characteristics such as, target of critique, production values, amount of copyright material re-used etc. The overall viewing figures for the parody videos and original videos were analysed over time, such that the effect of the parody video on the popularity of the original work could be determined. Although a large number of the videos tagged or labelled as parodies did include some amount of literal copying (and so may not fall within scope of a fair dealing

¹ Rogers, Mark, Joshua Tomalin and Ray Corrigan. 2009. *The economic impact of consumer copyright exceptions: A literature review*. London: Consumer Focus.

exception) nearly 20% of such videos contained only non-literal copying, so falling within the most narrow definition of parody quite neatly.

The conclusion of the study (which will be published in full once the peer review process is complete later in 2012), is that the presence of parody content on YouTube does not interfere with the ability of copyright owners to exploit music video content on that platform. An evaluation of potential substitution and dilution effects found that in neither case was there compelling evidence that the parody is damaging to the original in terms of the copyright owner's ability to attract and monetise an audience for their original copyright work on the online platform.

The study also finds qualitatively, that UK content was less frequently parodied online than equivalent US content. The researchers suggest that this is evidence of the legal framework in the US being more open to reinterpretation and remix of work by fans.

The potential for any lost sales due to negative reputational effects are also likely to be limited as a creator's moral rights in copyright law to object to derogatory treatment of their work will be unaffected by this exception. The right to attribution should also persist to the extent that is practical. This could comprise reference in the credits of videos, or any other suitable mechanism. Although there may be some occasions where attribution is either not practical or not desirable, we do not believe this will often arise, as the purpose of a parody relies on recognition of the work (and hence the creator) that is the source of the parody. If so little of a work is taken, or a work is so transformed, that the underlying work is not apparent, then the end result is unlikely to comprise a parody.

It has also been submitted that an exception will lead to a loss of license fees to the original copyright holder who owns underlying works, such as musical recordings. Where a whole work (such as a musical track) is used in a parody it is often the case that the original copyright owner will currently allow a parody to occur for appropriate remuneration. Following the exception however such licensing would still be possible, as it is unlikely that the taking of an entire work, where such works are usually available for licence, would be considered fair dealing. There may be costs where a parodist who may previously have licensed the use of a whole work instead chooses to work with a smaller portion in a way (perhaps transformatively) that is considered to be fair dealing, but it is not possible to ascertain the extent of cases this might apply to. Respondents to the consultation have claimed that synchronisation rights for parody works already make up around £11m of income for UK music publishers per annum but these are costs for parodists so a parody exception would result in a transfer and would not affect Gross Value Added. As outlined above however, a fair dealing exception would not allow any use which competes with a normal commercial exploitation of works, and so such income should not be affected to any significant degree.

There may be a cost to copyright owners who already licence small portions of works for parody purposes, for example there are several archives who submitted their views to the consultation who assert that such licensing is a substantial revenue stream for their businesses. Submissions to the consultation did not however provide sufficient evidence to quantify the size of the market, the current number of licence applications or the average amount of remuneration and so we cannot accurately estimate the size of these costs. One respondent, ITN Source, put the income from their licensing of clips for parody at tens of thousands per year, out of an annual revenue of around £13m, but for the reasons outlined above, it is not clear how many of these licensed uses would be allowed without license through a fair dealing parody exception.

Benefits

Economic Benefits to New Creators of Parody

PwC (2010, *Global Entertainment and Media Outlook 2010-14*) estimates that the global market for entertainment is approaching \$2 trillion, so even any small increase in the share for the UK economy could be quite significant. The Hargreaves Review assumed that comedy entertainment makes up 1% of the entertainment market, and suggested that a parody exception would allow a UK firm to capture an additional 1% of that global comedy market. For purely illustrative purposes, if in this case the exception could, for example, add between 0.01 per cent of the total entertainment market, but perhaps up to 0.05 per cent if global successes were to occur then this could translate into additional growth of between £130m per annum to £650m per annum.

In order to accurately estimate the benefits it would be necessary to calculate not only the size of the market but also the probability of achieving a global hit, as in this case a straight average is not appropriate to estimate a “best” value. If, for example, we were to assume that there is a 1 in 20 chance of generating a global hit in any given year, which implies only one global hit from British satire using this new material every twenty years. However it is not possible for us to accurately measure this assumption given that we do not know the total size of the market and could only produce a rough list of parodies that we assume constitutes a global hit. By way of illustration the additional value of a global hit is £520m (£650m-£130m) and multiplied by 1/20 this equals an additional expected income of £26m per annum. The best estimate would then be £26m plus the lower bound £130m, equalling £156m per annum.

It has been suggested by some responses to the consultation that the market in parody may not be global, but rather more limited by language or culture. It is true there are language and cultural barriers, but the UK is part of the largest media language globally and has been successful in exporting comedy, if less prominent than parody. However in the absence of any better evidence, it seems that the conservative estimate of 1 hit in 20 years would go some way to compensate for limitations on market size. In reality of course the size of the market for creative material is already very large for English speaking products (not only in territories that have English as their first language, but also increasingly in other countries).

In a further attempt to demonstrate the potential size of the market we identified that of the 520,085 DVDs sold on the US Amazon site 5.8% of those were comedy and 1.15% of the comedy DVDs were Parody or Spoof therefore giving that 0.07% of the DVD market in the United States can be roughly contributed to parody. Whilst this is only for the DVD sector it does suggest that Hargreaves assumption that parody works could add between 0.01 and 0.05% to the market may be a reasonable estimate (assuming of course that the overall market in entertainment is split between comedy, parody and other types along roughly similar proportions to the DVD market).

One respondent to the consultation queried the benefit of a parody exception suggesting that there was no notable increase in the comedy output of France following the introduction of a similar exception. The submission however did not provide any evidence to back up this assertion, and there are confounding factors in that the international market for French language content is perhaps smaller than that for English. This, combined with what is widely considered to be a stricter moral rights regime in France, is perhaps limiting some potential parody uses.

The same respondent also pointed out that since Australia introduced a parody exception in 2006 the value of their TV exports has in fact decreased. While this may of course be true, it must be remembered that many factors affect the success of exports from different countries, and it would be unwise to assume that the Australian experience precludes any value arising from their parody exception. Other responses to the consultation have also pointed out that since the introduction of an exception in Australian law, there have been no cases of misuse with parody works unfairly free-riding on the success of the original work (Australia’s exception is also a “fair dealing” exception, limiting the economic harm that can be caused to the underlying rights holder), and that the exception has been largely accepted without problems.

Administrative Benefits

The main economic beneficiaries will be entertainers and comedians, the producers of comedy and entertainment shows, and broadcasters. Satirical shows such as for example the BBC’s *Have I Got News For You* and Channel Four’s *Ten O’clock Live* will be able to make savings and respond more quickly to events as they will no longer be faced with the need to clear rights for this purpose. Channel 4 responded to the consultation to confirm that the producers of these programs would benefit from the proposed exception, as they would be able to react more quickly, and face fewer burdens in clearing rights.

In their response to the consultation, the BBC stated that use of works for parody purposes has become even more problematic with recent European court decisions (the Infopaq case) which have potentially reduced the amount of copying that is considered necessary to form an infringement in the first place. They further state that whereas previously a risk may have been taken to broadcast a parody on a one off basis, the requirement for content to now be available over the longer term through on demand services, means that greater legal certainty is required before any potentially infringing usage is contemplated.

From discussions with relevant stakeholders we know that given the complexity of negotiations, clearance is often sought by legal professionals as it cannot be done as an administrative task. Taking ASHE² 2011 figures for hourly earnings of legal professionals (£22.65) with a 16% uplift³ to account for overheads, the admin cost associated with clearing a work for parody is estimated to be £26.30 per hour. Even relatively simple clearances therefore could cost £50 to £100.

In order to estimate total benefits to creators that are expected to arise from the removal of these costs, we would need to estimate the number of clearances sought for parody works every year. Unfortunately we have identified no reliable way to estimate this and no further information was provided in response to our consultation.

Benefits to Copyright Owners of Original Work

The report by Rogers et al⁴ also identified two potential benefits to the original copyright owners from the parody exception in the form of increased sales due to greater publicity, awareness and positive reputational effects on their original work. A parody may make an original work more visible to the public and heighten interest in that work. Fan tributes such as the above mentioned Masterchef spoof can also act as advertising for the content on which they are based. The report cites “Is this the way to Amarillo” as a recent example of a comedy cover version that heightened interest in the original. In 2002, the Tony Christie song “Is This The Way to Amarillo” was sung in a comedic style by two characters in a popular TV series (as with Newport State of Mind, this is not strictly a parody, as the music track and lyrics were unchanged, but the reputational effects for cover versions are likely act by the same mechanism as for parody works). When the 1971 recording was reissued in 2005 due to public demand, it was the biggest selling single of that year. Similarly they use the example of the court ruling that 2Live Crew’s parody of Roy Orbison’s “Pretty Woman” did not impact the commercial success or viability of the original given its difference from the original and its differing context and audience.

Benefits to public

The wider public will also benefit from increased legal clarity and opportunities for freedom of expression when creating parody for non-commercial reasons. Several respondents to the consultation mentioned the ability to parody adverts as an important tool to critique the behaviour of large corporations. There is a clearly a strong argument that such freedom of expression justifies a limited parody exception here.

As ‘consumers’ of creativity, society at large is likely to benefit from the availability of a greater range of new creative works, greater public access to new works and the creation of a greater value in the economy as a whole if more works are created and subsequently exploited. Greater freedom for expression can also enrich our culture and public discourse.

Responses to the consultation were also received from small creators and websites which showcase the work of parodists. It is claimed that the freedom to parody with less restriction will encourage new creators to produce work, and enable established creators to hone their skills. Examples were given of several creators who started their careers making unauthorised parodies and YouTube spoofs, before moving into commercial work in advertising and film making. Clearly this is a mechanism which would be encouraged by a parody exception.

Responses from the educational sector also highlighted the benefit of parody to students, who are able to learn while creating parodies in an educational setting.

Option2—Introduce an unlimited exception for parody, caricature and pastiche.

This Option is similar to Option 1, but does not include the limitation to acts of fair dealing. A fair dealing limitation acts as a safeguard against abuse of this exception and damage to copyright owners caused by it.

Without the restrictions placed on the use of works for parody by the requirement that such use also comprise fair dealing, it is likely that more substantial parts of works may be copied. It is also likely that commercial uses more closely competing with the exploitation of the original work may be allowed. These factors combined mean that the potential for an unlimited exception to cause economic harm to

² <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-256648>

³ http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/labour_costs/main_tables

⁴ Rogers, Mark, Joshua Tomalin and Ray Corrigan. 2009. *The economic impact of consumer copyright exceptions: A literature review*. London: Consumer Focus.

the rights holder in the underlying works is far greater than the equivalent risk from a limited fair dealing exception.

Benefits:

We would expect the benefits from this option to be greater than Option 1 as there will be more scope for works of parody to be created under the exception. A wider exception could also result in less confusion from potential parodists as to whether their planned parody would or would not fall within the scope of an exception as outlined in Option 1. This could result in lower transaction costs for those producing parodies and so result in a larger number of parodies being produced. Option 2 might also permit a wider range of copying as it would no longer be restricted by the concept of fair dealing so it might permit the copying of a whole part of a complex work. An example could be the copying of a sound track to a video and the parody merely consisting of a parody of the visual aspects of the performance.

Costs:

This option would result in the costs described for Option 1 surrounding lost sales to original copyright owners, as already outlined above. However, in the absence of the limitation of fair dealing there is scope for these to be substantially greater. Potential parodies could bring themselves very close to the original work and so compete directly with sales of that work. This could result in lost sales to the original creator either through confusion or because the work is so close as to replace the existing work. There is also more scope for the parody to detract from the reputation or special nature of the original work again with the potential to result in lost sales to the original creator. There is also the possibility that the work could be used in a way in which the original artist did not intend or which reflected badly on the original artist and this could impact on their “moral” rights. In the example set out above concerning the direct copying of an aspect of a more complex work eg the sound track of a video there is scope for direct substitution. Someone wishing to listen to the original sound recording could use the parody of the music video, for example available freely on the web, and not watch the video but merely listen to the recording. This again could result in lost sales to the copyright owner.

In view of the fact that our policy intent is to introduce an exception without reducing the incentives to creators provided by copyright protection or affecting their moral rights we believe that option 2 presents significantly higher risks and our chosen option is Option 1 – a fair dealing exception for parody, caricature and pastiche.

Risks and assumptions;

Legal constraints

The EU Infosoc Directive subjects all exceptions to the “three-step test”. This test requires that exceptions (1) are only provided in certain special cases which (2) do not conflict with a normal exploitation of a work and (3) do not unreasonably prejudice the legitimate interests of rights holders. It limits the potential negative impact on copyright owners caused by exceptions to copyright.

The three step test from the Infosoc Directive is itself underpinned by the requirements of the Berne Convention which require the UK to take the same considerations into account when providing limitations to copyright protection.

The UK also provides “moral rights” for creators of copyright works. These rights include the right to identification as author of a work and the right to object to derogatory treatment of a work. The latter of these rights will limit the potential for harm to copyright owners caused by this exception. The former right will remain essentially unchanged by the introduction of an exception, but there may be limits to the extent that attribution to the original author is feasible or desirable in the case of some parody works. Although moral rights are required by Berne, it is argued that in limited cases it is permissible for them to be restricted where there are freedom of expression issues.

Economic assumptions

We assume that the introduction of a parody exception will encourage greater creativity and add value to the UK’s cultural and economic wellbeing. The UK has a rich history of parody and satire. A parody exception would reduce the costs of this type of creativity, which would provide a further incentive for parody makers.

Wider impacts;

It seems unlikely that proposals to introduce an exception for parody will have any significant implications for competition because it applies equally to all members of any one part of the supply chain. Submissions to the consultation showed that parody works are created by artists of all types, from amateur “user generated content” to complex and sophisticated works by professional creators.

The exception is intended to encourage the creation of new works of parody. Its impact on the creation of other types of works is likely to be minimal: it is unlikely that decisions to create, or support the creation of non-parody works are dependent on the likelihood of such a work later becoming the subject of parody.

In relation to race, disability and gender equality, we do not envisage that this proposal will have an impact. There is no intention of applying the proposal to different groups in different ways.

Direct Costs and Benefits to Business Calculations (following OIOO methodology)

Under the “One In, One Out” rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. Currently we are not able to quantify the costs and benefits of our chosen option however it is apparent that the benefits are greater than the costs and therefore we have counted this as a zero-cost out

Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

References:

- 1 “Digital Opportunity, A Review of Intellectual Property and Growth”, by Ian Hargreaves, May 2011
- 2 “Supporting document EE – economic impact of recommendations”, <http://www.ipo.gov.uk/ipreview-doc-ee.pdf>
- 3 The Copyright, Designs and Patents Act 1988 (as amended)
- 4 EU Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society
- 5 Rogers, Mark, Joshua Tomalin and Ray Corrigan. 2009. *The economic impact of consumer copyright exceptions: A literature review*. London: Consumer Focus.
<http://www.consumerfocus.org.uk/files/2010/11/The-economic-impact-of-consumer-copyright-exceptions-Rogers-Tomalin-Corrigan.pdf>
- 6 “Copyright and the Economic Effects of Parody: An empirical study of music video parody on the you tube platform” – Dr Kris Erickson, 2012, Awaiting publication

***Note:**

This Impact Assessment (IA), which is one of a series of IAs concerning copyright exceptions, was originally published in December 2012 alongside the policy statement "Modernising Copyright". It was republished to accompany the publication of the secondary legislation that implements the chosen options set out in the IAs. Since the original publication of the IAs the Government has engaged extensively with stakeholders both formally (through a technical review of the draft legislation) and informally. No new evidence has been provided that has led the Government to alter the overall numerical assessment of the costs and benefits contained within this IA.