

Summary Report

by Ari LAAKKONEN, Reporter General
Ralph NACK and Guillaume HENRY, Deputy Reporters General
Rafael ATAB, Johanna FLYTHSTRÖM, Linda LECOMTE and Lena SHEN
Assistants to the Reporter General

2024 – Study Question

Defence of parody in copyright

Introduction

This Study Question seeks to study whether third parties should be authorised, without permission from the author of an underlying work, to use such copyrighted work to create a “parody”, and under which conditions, without being liable for infringement. All types of copyright protected works are within the scope of this Study Question.

It was not within the scope of this Study Question as such to examine whether “satire” is similar to parody or not. However, on occasions it is necessary to contrast satire with parody to more accurately analyse the issues relating to parody.

The Reporter General has received Reports from the following Groups and Independent Members in alphabetical order: Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, China, Croatia, Denmark, Ecuador, Estonia, Finland, France, Germany, Hong Kong, Hungary, India, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, Netherlands, Paraguay, Peru, Philippines, Poland, Portugal, Russia, Singapore, Spain, Sweden, Switzerland, Türkiye, UAE, Ukraine, United Kingdom, United States, Uruguay.

42 Reports were received in total. The Reporter General Team thanks the Groups and Independent Members for their helpful and informative Reports. All Reports may be in AIPPI's library at www.aippi.org.

The Reports provide a comprehensive overview of national and regional laws, practices, and policies relating to the defence of parody in copyrights, set out in three parts:

- Part I – Current law and practice
- Part II – Policy considerations and proposals for improvements of your Group's current law
- Part III – Proposals for harmonisation.

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This Summary Report does not summarise Part I of the Reports received. Part I of any Report is the definitive source for an accurate description of the current state of the law in the jurisdiction in question.

This Summary Report has been prepared on the basis of a detailed review of all Reports (including Part I) but focuses on Parts II and III, given AIPPI's objective of proposing improvements to, and promoting the harmonisation of, existing laws. As it is a summary, if any question arises as to the exact position of a particular Group in relation to Parts II or III, please refer to the relevant Report directly.

In this Summary Report:

- references to Reports of or responses by one or more "Groups" may include references to Independent Members;
- where percentages of responses are given, they are rounded to the nearest 5%; and
- in Part IV below, some conclusions have been drawn in order to provide guidance to the Study Committee for this Study Question.

I. Current law and practice

For the replies to Questions **1) to 7)** set out in the Study Guidelines for this Study Question, reference is made to the full Reports. The Study Guidelines may be accessed in AIPPI's library at www.aippi.org.

II. Policy considerations and proposals for improvements of your Group's current law

8. Could your Group's current law or practice relating to parody defences to copyright claims be improved? If yes, please explain.

A large majority of the Groups that responded to this general question (38 Groups) answered YES (31 Groups, i.e. 80%), while only 8 Groups (20%) answered NO. Also, 2 Groups indicated some aspects of their current law which could be improved in the following question, however without explicitly marking yes to this question.

Among the Groups that answered YES to this question, Croatia mentioned that "*the requirement for benefiting from the exceptions of parody are not clear enough*", citing "*the interplay between parody exceptions and moral rights*".

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Some countries, which do not have clear provisions on this aspect, concur that improvements are possible. Argentina and Mexico, for instance, indicate that an improvement would be the very inclusion of parody as an exception, which is currently not the case. Uruguayan group also cites the absence of a statutory exception on parodies as a possible improvement.

In a similar fashion, China adds that “*clarifying the definition of parody and making parody a clear case of fair use*” would avoid “*having to go through disguised, roundabout interpretations*”. Russian group also advocates for “*a more precise legal definition of a parody, in order to differentiate it from (other) derivative works.*”

Both the Finnish and UK groups also indicate that improvements on the definition of parody would be welcome. The latter would particularly invite “*proper definitions of ‘parody’, ‘pastiche’ and ‘caricature’*”. Germany points out the difficulties with legal provisions on remuneration of parodies, both in the online and “off-line” worlds.

Also on the remuneration side, Peru indicates that an improvement would be the removal of “*the obligation established in article 49 of the PCL whereby the parodist must pay royalties to the author of the original work*”.

Finally, Ukraine mentions that “*Legislation and/or practice should clearly establish the boundaries between parody as a form of free use and a derivative work created as a result of the illegal use of an original work*”.

9. Could any of the following aspects of your Group’s current law relating to parody defences be improved? Please explain:

(a) Definition of Parody or of other similar exceptions;

60% of the Groups mentioned that improvements should be made in the definition of Parody.

In this regard, the Hungarian Group outlines that such a provision could “*diminish the danger of legal uncertainty that may arise in the course of fundamental rights assessment in relation to the direct application of the copyright exceptions*”. Israel also considers that “*there is a need to add a specific citation in the Article for ‘Parody’ in order to protect freedom of speech*”.

The Swedish group, however, considers that “*the current definition of parody (originating from the CJEU’s judgment in Deckmyn) is generally sufficiently flexible to account for different forms of expression*”.

Japanese group outlines that improvements are important, so as to “*depart from*

the Two-Requirement Theory established by the Supreme Courts decision in relation to the provisions for a quotation”.

In addition, German Group mentions that *“in order to comply with the three-step-test and to justify that parodies and caricatures are not to be remunerated, the concept of parody should be subject to stricter standards (...). However, it is important that the right to freedom of expression and the right to freedom of the arts must still be respected”.*

On the other hand, the Swiss group underscores that the absence of a legal definition *“has the advantage of allowing a broader and more flexible interpretation of the scope of this copyright exception”.*

(b) Requirements for benefiting from such exceptions;

The Groups were divided on this question, and only half of them (50%) agreed that there should be improvements related to the requirements for benefiting for an exception.

The Estonian group, for instance, indicated that *“the three step test leaves quite a lot of room for interpretation”*, but that *“it is also difficult to put down more concrete rules as they should cover a wide range of possible situations”.*

Denmark adds that investigating the intent of the author/creator *“seems inappropriate and practically impossible to control”*, indicating that *“this ought not have an influence on whether or not the parody is original”.*

According to the UK Group, the absence of detailed caselaw on what amounts to “fair dealing” in the context of the parody defence makes it *“hard to predict where a particular judge will draw the line as to what counts as fair dealing for the purpose of parody”.*

Finally, Brazilian group highlights that *“requirements for benefiting from such exceptions could potentially be enhanced for better clarity regarding the existence or not of the non-commercial criteria”.*

(c) The interplay between parody exceptions and moral rights;

55% of the Groups considered that there was room for improving the interplay between parody exceptions and moral rights.

The Portuguese Group mentions that *“parody should not affect the reputation or honour of the author of the ‘original work’, nor should it constitute a means that undermines the integrity of the original work”.* The Belgian Group agrees that *“one could contemplate to prohibit authors to invoke their moral right to integrity to*

oppose parodic uses, to the extent the parody is not prejudicial to their honour and reputation.”

Bulgarian Group, on its turn, outlines that there is still little guidance in their caselaw *“on how the newly introduced caricature, parody and pastiche exception can be reconciled with the right of attribution and right of integrity”*.

Notwithstanding, according to the Canadian Group, *“economic rights are distinguished from moral rights throughout the provisions of the Copyright Act, such that there is believed to be no interplay between the parody exception and moral rights”*. France also underscores that *“the parody exception on moral rights should be clarified to specify that when the parody exception applies, there is no infringement of moral rights”*.

(d) The types of work that may benefit from such exceptions;

Only 20% of the groups indicated that the improvements should occur in the definition of the types works that should benefit from such exceptions.

Supporting such scenario, the Swiss group outlines that *“it would not be desirable to limit the benefit of these exceptions to certain types of works”* and Latvia Group adds that *“parody should treat all types of work equally”*.

However, German group shows concern about the inclusion of digital content under current law, which applies such limitation to “published works”. According to the group, improvements on current law could be the inclusion of *“more specific provisions for works published in digital media such as software, games, and multimedia works”*.

10. In your Group’s view, what policy objective (such as free speech, or another objective) would a defence of parody promote and help accomplish? Does the policy objective drive the types of expression that should be allowed under a parody defence?

41 Groups responded to this question, most of which citing, at least to a certain extent, freedom of speech and of expression as the main policy objective. Some groups have also cited the promotion of culture and of artistic creations.

The Indian group, for instance, outlines that *“the policy objectives would be free speech as well as to promote creativity as copyright should not be used indirectly as a means to curb free speech”*.

According to the Chinese group, *“the parody defence provides the public with more creative elements”*, being *“conducive to achieving freedom of speech and*

expression, freedom of literary and artistic criticism, and the objectives of the PRC Copyright Law to encourage the creation and dissemination of works and to promote the flourishing of culture”.

The US group cites that *“parody is a valuable tool for social critique, political commentary, and cultural engagement by allowing creators to use familiar cultural symbols, tropes, and references to communicate ideas, challenge norms, and provoke thought in an accessible and engaging manner”*, while Australia adds that *“parody and satire exceptions promote and help accomplish greater social commentary”*.

The Brazilian group however mentions that *“this defence must be balanced with the fundamental right to respect for honour, intimacy, image, and privacy”*, to ensure that *“while parody is protected as a form of expression, it does not undermine the dignity and rights of individuals”*.

Other policies have also been cited by different groups. Israel reminds the need for supporting *“Innovation, Public Discourse, Protection of Political Speech and Cultural Criticism”*. Finland further agrees that *“a parody defence also fosters creativity and innovation”*, while Croatia Group adds that it *“helps accomplishing the democratization of society”*.

11. Are there any police considerations and/or proposals for improvement to your Group’s current law falling within the scope of this Study Question?

Only 36 Groups responded to such question. However, the majority (70%) indicated that there would not be any other police considerations to be taken into account.

The Spanish group supports the elimination of the current statutory concept of *“pastiche”* from their Law, or its integration to other limits to copyright. The Chinese group also advocates for more attention to the *“balance of interests between the original author and the author of the parody and the public”*. In a similar fashion, the UK Group would support better clarity on *“the interaction between moral rights and the parody exception”*, explaining that *“the less grey area that is created by the current unclarity of the exceptions, the more people can operate in the area (i.e. the more parodic works can be created)”*.

III. Proposals for harmonisation

12. Do you believe that there should be harmonisation in relation to exceptions and defences based on parody?

A large majority of the Groups (35 Groups i.e., 85%) answered YES to this question, while 6 Group answered NO. One group preferred not to respond.

Among the groups that answered YES to this question, Hungarian Group outlined that harmonization “*seems to be necessary due to the fact that parodies are very frequently used in the context of the internet on various content sharing platform*”. Similar reasons are mentioned by other jurisdictions, such as Ecuador and Italy.

The UAE Group supports harmonization but seeking a “*lowest common denominator approach*”. Japan also indicates that “*The level of harmonization should be kept to the minimum in order not to undermine the cultural diversity in the world*”.

Some countries however expressed some concerns about harmonization. Korea, for instance, cited “*the difference of the cultural background*” of each jurisdiction. Similar concerns are shared, at least to some extent, by other jurisdictions, such as Chile. Switzerland also mentions that such a defence is typically “*based on constitutional principles, whose interpretation is highly jurisdiction-specific*”.

Finally, some jurisdictions which cite more well-established caselaw or detailed statutes addressing parodies do not seem to be inclined to agree that harmonization would be needed.

13. Should there exist exceptions or limitations to copyright protection for the purpose of parody or any other similar exceptions (e.g. satire, caricature, pastiche)?

The groups agreed, almost unanimously, that there should be exceptions or limitations to copyrights for the purpose of parody or any other similar exceptions, except for a single group.

The Dutch Group, for instance, explains that it “*enriches the societal debate, but it also enables the creation of interesting works*”, whilst also enabling “*authors to express their opinion about existing works*”. Turkish group also believes that, with such exceptions, “*creators are encouraged to engage in innovative and creative activities without fear of legal repercussions*”.

The Polish group also adds that, the existing “*general exception for quotation does not seem sufficient to cover all forms of use of works protected by copyright that fall within the category of parody, pastiche or caricature*”.

The Swiss group considers that such exceptions “*take into account a parodist’s freedom of speech and/or artistic expression, thus giving effect to fundamental human rights*”, and Israelian group believes that “*parody, especially re political speech, should be clearly recognized*”.

On the other hand, the Japanese group points out that, while such exceptions should exist, “*the question of to what extent the parodies should be permitted should be dealt with in conformity with cultures of individual countries*”, adding that “*if a uniform standard of permissibility were imposed on every jurisdiction, the cultural diversity could be undermine*”.

14. Should parodies comply with the three-step test provided for in article 9(2) of the Berne Convention in order to benefit from the exception?

A significant majority of the groups (90%) believe that parodies should comply with the three-step tests under Berne Convention.

The Ecuadorian group believes that such test “*is a very good standard for all the countries*” and that any use which does not qualify should be considered “*a direct bad-faith use of copyrights*”.

The Swedish Group adds that “*as a matter of principle all exceptions and limitations (dealing with the right of reproduction) should comply with the three-step test in the Berne Convention.*”

Furthermore, the Spanish group supports the importance of such test, explaining that “*parody, as an exception to copyright, is tremendously destructive by nature*”, so that the “*so-called ‘three-step test’ limits the limit*”.

While agreeing with the adoption of the “three-step test”, the Belgian Group defends that, “*given the pivotal importance of freedom of expression (...), the three-step test should indeed not be used as means to limit the freedom of parodists in a manner that goes beyond what is necessary in a democratic society*”.

On the other hand, the Australian Group considers that “*the three-step test is unduly restrictive*”, even though the groups agree that “*the application of the exception should consider the legitimate interests of the copyright owner to benefit from their work, and whether the parody or satire interferes with the exploitation of*

the original work".

In addition, the Italian Group would be "*in favour of considering parody as falling entirely outside the scope of protection of the parodied work*", so that "*the three steps test does not play any role*". However, the Italian Group understands that, if the test is to be applied, one should take "*specific consideration of the relevance of parody as an expression of fundamental freedoms*".

15. Should there be any other special conditions or requirements for a parodist to benefit from this exception?

A large majority of the Groups (85%) cited at least one special condition or requirement for a parody to benefit from this exception. While 15% of the Groups disagreed, one of them indicated that potentially there could be exceptions, though without further elaborating on the topic.

a) Parody should constitute an expression of humour or mockery;

A total of 21 Groups (50%) indicated that humour or mockery should be considered a requirement for parodies.

According to the Swedish Group, humour and/or mockery in some ways are "*inherent to the concept of parody*", but such a requirement "*may seem impertinent for specific forms of expression, for example pastiche*".

While the Swiss group agrees with such requirement, they consider that "*the bar should generally be low*", when assessing this. The Mexican group also outlines that these "*are highly subjective concepts*", advocating that "*if humour is not to be found prima facie, courts should be flexible and consider each case on its own merits and context*".

The Finnish group also advocates that "*what is considered humorous, or mocking is very culturally specific and should be left to the judiciaries to interpret*". Mitigating such requirement to allow "*a margin of appreciation depending on culture, territory etc.*" is also defended by the Belgian Group.

Also, the Japanese group considers that "*the purpose or intention of a parody should be one of the important factors to be considered*" but adds that "*an expression of humour or mockery should not be an absolute requirement for the permissibility of parodies*".

The Dutch Group adds that a "*parody can also be used for expressing criticism or conveying an argument*" and considered that "*the ECJ was too restrictive in the Deckmyn case when it held that a parody should constitute an expression of humour or mockery*".

b) Parody should be transformative or add some significant new creation to the original work;

This was the only special condition to have secured a certain majority. 25 Groups (60%) agreed that a parody should be transformative, though some groups indicated that the assessment of the transformative nature should not be excessive or too stringent, considering that a parody will be built upon a pre-existing work.

The Argentine Group outlines that a “*parody should not lead to any risk of confusion with the original work*”. Swiss group agrees with such conclusion, reinforcing that the parody “*must therefore add certain transformative elements*”.

The Portuguese group supports the concept developed by CJEU, according to which “*parody must ‘being noticeably different from’ in relation to the existing work*”, as this would be “*preferable to the demand that parody be transformative, which does not have a well-defined conceptual basis in the continental law tradition*”. French group clarifies that while a parody should include changes, a “*judge must determine the quantum of these changes*”.

The Polish group, on its turn, advocates that “*parody should relate to the original work, show visible differences from that work, but it does not necessarily have to make a creative contribution to the original work*”.

On the other hand, the German group believes that “*this requirement would add a threshold detrimental to the principles of free speech and freedom of art*”.

c) Parody should have a critical intent;

19 Groups (45%) defended that a parody should have a critical intent, though not necessarily of the target work itself.

According to the Finnish Group, while “*critical intent could be seen as a factor speaking in favour of justified exception*” for parodies, they understand that “*mere purpose of entertainment and amusement should be sufficient, provided that it comments on the work or social matters*”.

The Mexican Group understands that “*non-critical parodies should be protected under a broader realm of freedom of expression and right to information*”.

d) Parody should be directed at the original work (instead of targeting at society or other aspects unrelated to the original work)?

7 Groups (15%) understood that a requirement for recognizing parody as a valid defence should be its targeting at the original work.

The Estonian Group argues that “we also find that a parody does not have to be directed solely at the original work: creators should be able to exercise their right to freedom of speech and be free to criticize the society or other aspects unrelated to the original work”.

The Japanese Group also believes that “*if this requirement were adopted, a weapon parody (i.e., a parody that uses (borrows) the original work to criticize or comment on something else, instead of criticizing or commenting on the original work itself) would not be permitted at all*”, which, in their view, would not be reasonable.

The Dutch Group further considers that “*a broad interpretation of parody is desirable since parodies can be used in different ways*”.

According to the US Group, however, a “*parody need not be exclusively directed to the original work, but it must at least comment on the original work to some degree. By contrast, a satire may target society or other unrelated topics*”.

e) Parody should be non-commercial;

While only one Group included this as a special condition for a protectable parody, there were other Groups supporting the idea that this could be one of many factors to be considered when assessing a parody case.

In this regard, Australian Group mentions that “*parody and satire may be used in a commercial setting, such as in part of a comedy show. However, the purpose should not be solely commercial, such as selling imitation products and should not affect the commercial interests of the original copyright owner*”.

According to the Belgian Group, although they tend “*to dismiss the non-commercial character as a standalone condition for a parody defence*”, they considered that such aspect would already be factored in when applying three-step test provided for in Berne Convention, a point that has been also made by the German group.

The Polish group also mentions that “*parody does not have to be non-commercial*”, but it “*must fulfil the three-step test from the Berne Convention. The group therefore clarifies that if there is a commercial nature, the parody cannot infringe the normal use of the work or prejudice the legitimate interests of the author*”.

f) Parody should not disparage or discredit the original work;

A total of 23 groups (55%) mentioned the absence of disparagement as a condition for parody. However, 9 Groups among these indicated that this should only be considered to a certain extent, in view of the very nature of a parody.

While agreeing with such requirement, the French Group explains that it should apply *“provided that an intention to harm is demonstrated”*.

According to the Finnish Group, *“there is a thin line between critical expression that discusses the motives of the original work and expression that is seen as disparaging or discrediting.”*

The Japanese group, on its turn, mentions that *“a targeted parody (i.e., a parody that uses the original work to criticize or comment on the original work itself) may often disparage or discredit the original work, but the permissibility of a targeted parody should not be denied because of this fact”*.

The UK group outlines that *“all parodies will likely produce some disparagement of the original work (especially when viewed subjectively by the original work’s author)”*, but, in their view, *“there should be space for parody to exist, even if this leads to some disparagement of original work”*.

g) Other - please explain.

Certain groups described other potential factors to be considered when assessing parody as a valid defence.

For instance, the German group mentions that *“the use of a work in a parody should be free”*, so that *“neither the parodist nor any intermediary that may profit from the parody should be obliged to pay a remuneration to the author of the original work”*.

The Brazilian group adds, in a general comment, that *“imposing many additional requirements might take away the acceptable flexibility that a broad interpretation of the current requirements provides”*.

Also, the Mexican Group considers that *“the parody regime should be broad and flexible to the extent that free speech, criticism, and creative freedom are protected ex ante and ex post fact”*. The group also believes that *“parodies should not attempt to misappropriate copyright (or neighbouring rights), create confusion with the original work and/or its author, free-ride on the reputation of the work and/or its author, or serve as a tool for unfair competition in any way”*.

16. Should freedom of speech principles (or any other policy objective) play any roles when assessing lawfulness of a Parody?

The Groups almost unanimously mentioned that freedom of speech principles should play a role in assessing a parody case. Only the Singaporean Group partially disagreed with such approach, rather advocating for a “*multifactorial approach*” when “*assessing whether a use was fair dealing for the purpose of parody or satire*”, which would ultimately also “*accommodate*” freedom of speech principles as a factor.

The Ukrainian group also mentions that, while “*the principles of freedom of expression should play a significant role in assessing the legality of parodies*”, it is “*important to consider whether the right to freedom of speech, expression, and opinion is upheld, on the one hand, and to avoid undermining human dignity, discrimination, or defamation on the other.*” According to the group “*parodies, as a form of creative expression, may include satirical or controversial elements, but they should not be a cause for personal denigration, rights violations, or reinforcement of negative stereotypes.*”

17. Should all types of works be subject to parody exceptions?

The majority of the Groups also understood that all types of works should be subject to parody exceptions (90%).

In this regard, the German Group explains that “*limiting the parody exception to only some works is not conducive to artistic freedom and development and would also discriminate against other works that are still covered by the exception*”, adding that “*every form of artistic creation deserves the same level of protection and must therefore be subject to the same exceptions*”.

The US Group also believes that “*there does not appear to be any reason to exclude categorically specific types of work*”, even though, in their opinion, “*as a practical matter parody may have limited applicability for certain subject matter (e.g., boat hull design, software code, architectural drawings)*”.

The Luxembourg Group, however, disclaims that “*databases are unlikely to amount to a parody in current practice, and therefore there is no need to include such works within the parody exception*”. The Finnish Group also believes that “*software for example, is unlikely to be subject to parody because of the transformative criteria - with or without any specific work type exclusions*”. The Paraguayan Group also cites that “*software and database should not be subject to parody exceptions*”.

The Chinese Group further indicates that some “*types of works (such as maps) are difficult or inappropriate to parody due to their own nature*”. A similar opinion has been shared by the Spanish group, which understands that “*for example, projects, plans, models and designs of architectural and engineering works; graphs, maps and designs relating to topography, geography and, in general, science; or computer programs, would hardly be parodiable*”.

According to the UAE Group, some works should be left outside the scope of parody, including, for instance, “*religious texts, publications of foreign nations, official government media, texts and speeches, and any work adversely depicting any public figure*”.

No Group appears to have identified movies/cinematographic works, which can be commercially very valuable, as being outside the parody exception – movies such as *Hot Shots!*¹ which parodies the movie *Top Gun*. However, where movies involve a parody of a public figure, then the position of the UAE Group would appear to be against allowing movies with parodies, unlike the other Groups which have expressed no view on this point.

18. Should there be any exceptions or limitations to moral rights associated with parodies? If YES, please explain.

The majority of the groups (60%) indicated that limitations or exceptions to moral rights associated with parodies, while 30% disagreed with this point. However, 10% of the groups preferred not to respond.

The Australian Group considers that “*moral rights, in particular, the right of integrity should not overlap with the parody or satire defence. If an act in relation to a work amounts to a parody or satire then it should not infringe the moral right of an author, in particular, the right of integrity*”.

The Spanish Group adds that “*it is unfeasible to create a parody without affecting the integrity of the parodied work*”.

The Swedish Group, however, outlines that, whilst there should be limits to moral rights, “*it is very difficult to formulate legislation that captures the complexity of this balancing act*”, so that “*the question of the extent to which moral rights can be used to stop parodical uses is more suitable to be answered in national case law, respecting every country’s own values and history*”. India group also believes that “*exceptions or limitations should be in consonance with the national view on moral rights*”

¹ See https://en.wikipedia.org/wiki/Hot_Shots!. The film is said to have grossed \$180m worldwide, and according to Rotten Tomatoes, “hits most of its parodic targets with aplomb.”

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Furthermore, the Swiss Group believes that, with the exception of the right for integrity of the work, “*other moral rights (i.e., the right to oppose a personality right-infringing distortion of the work, right to first publication, right to be named an author) should not be limited*”.

The Mexican Group agrees that parodies “*must not be used to disparage the work and/or its author by way of defamation*”, but that “*a parody defence should not be subject to the condition that the original work is not altered, because parodies will – by definition – alter the underlying works*”. Notwithstanding, according to the group, “*the right of attribution should be respected in any case*”.

The Belgian Group, on its turn, considers that “*harmonisation with respect to moral rights deserves a full-fledged study question on its own*”.

19. Please comment on any additional issues concerning exceptions and limitations to copyright protection related to parody you consider relevant to this Study Question.

The interplay between parody and moral rights has been cited by some groups, such as Hungarian Group. The UAE Group also shares some concerns relating to the need for attention to “*the diverse social and cultural sensitivities when parodying a work (or the extent that a work or subject should be satirised)*”.

Finally, the US Group observes that “*U.S. law distinguishes between parody (which must target the original) and satire (which often targets other topics). In general, parody is more likely to qualify as fair use.*”

20. Please indicate which industry sector views provided by in-house counsels are included in your Group’s answers to Part III.

Most of the Groups indicated that they did not receive any particular views from the industry. A few groups mentioned that members of the Academy (Universities, in particular) have contributed to the responses submitted.

Four Groups mentioned having collected the views of the relevant industries, citing music industry, content creators, as well as media and entertainment sectors.

The Portuguese Group has however included separate opinions from two members of the industry, particularly from collection societies. Two main aspects mentioned were the need for the parody to be transformative – and not a mere copy of the original work, and the concern about misinformation, in case of the news sector.

IV. Conclusions

The responses submitted by the Groups indicate that the majority (85%) considers that at least certain degree of harmonization is desirable. The groups have also almost unanimously agreed that a parody should be recognized as limitation to copyright protection and, therefore, be recognized as a defence in case of copyrights.

There has been no clear trend on the definition of parody, though responses seem to indicate a preference for dealing with the “parody defence” as a possibly broader concept encompassing different situations, such as satire, caricature or pastiche, even though different aspects may be more relevant in each case and in each jurisdiction.

The large majority of the Groups (90%) also considered that parodies should comply with the three-step test provided for in article 9(2) of the Berne Convention for being regarded as a valid defence against copyright infringement.

The Groups also indicated other potential special conditions or requirements for a parodist to benefit from this exception.

The need for a parody to be, at least to a certain extent, transformative, in a sense that it could be identified as a separate work from the original one, has been cited by the majority of the groups as a special condition (60%).

Another factor that was cited by more than half of the groups was the need for the parody not to completely discredit or disparage the original work. However, there has been some dispute on to what extent such condition should apply, considering the underlying policies for protecting a parody, particularly issues relating to freedom of speech.

None of the other factors has been cited as a necessary special condition, though humour or mockery has been indicated as a special requirement at least for parodies that target the original work by half of the Groups (50%).

It is important to note, however, that many groups commented on the potential for adopting these criteria as merely factors for assessing the protection of a parody, instead of taking them as mandatory conditions or requirements. Indeed, some concern has been raised about a possible harmonization that would limit too much the interpretation of the case by each jurisdiction, without allowing room for weighting in local cultural aspects that might be relevant.

Furthermore, freedom of speech has been identified as a key factor in providing protection to parodists, according to the almost unanimous opinion of the Groups.

85% of the Groups also agreed that all types of works should be, in principle,



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subject to parody exceptions, though a majority also indicated that there should be exceptions or limitations to moral rights associated with parodies.

Finally, some concerns have been shared by some Groups when address harmonization. On one side, some Groups would favour a more general approach with minimum requirements, while other are concerned with the preservation of cultural specificities and diversity when recognizing parody as a valid defence in any case.