

Institution: Bournemouth University		
Unit of Assessment: 18		
Title of case study: Implementing a parody exception in the UK; shaping policy and innovating the creative sector		
Period when the underpinning research was undertaken: 2010-2016		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Professor Dinusha Mendis	Professor of Intellectual Property & Innovation Law	2011 – current
Dr Kris Erickson	Senior Lecturer in Media Regulation	2010-2013
Professor Martin Kretschmer	Professor of Intellectual Property Law	1999-2012
Period when the claimed impact occurred: October 2014 – 2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words) <p>In 2014, the UK Government adopted a parody exception as a direct result of a commissioned study for the UK Intellectual Property Office (IPO) by Bournemouth University (BU) researchers. Six years on, the exception has benefitted a range of stakeholders including artists, film and documentary makers, legal practitioners and wider society:</p> <ul style="list-style-type: none"> • Parody artists' careers have been enhanced by the legalisation of their work, leading to income generation through large commissions and broad exposure; • The number of parody legal disputes has drastically reduced; • The creative sector has been able to commission parodies, allowing more innovation and freedom of expression; • Charities have used parodies within fundraising campaigns, generating income for worthwhile causes. 		
2. Underpinning research (indicative maximum 500 words) <p>The 'Hargreaves Review' of Intellectual Property (IP) (2011) brought various issues to the forefront including the issue of copyright and parody. Conducted by Professor Hargreaves, the Review identified that "video parody is today becoming part and parcel of the interactions of private citizens, often via social networking sites, and encourages literacy in multimedia expression in ways that are increasingly essential to the skills base of the economy" (para 5.35, p. 50). The Report concluded by establishing that "the failure to adopt these exceptions, despite the previous Government's acceptance of it five years ago ... is a clear demonstration of the failure of the copyright framework to adapt. The Government must ensure that this failure is remedied" (para 5.38, p. 50).</p> <p>Against this background, the UK IPO commissioned BU researchers with expertise in copyright law (Mendis and Kretschmer) and empirical methods (Erickson) to conduct a study supporting the Government consultation of the Hargreaves Review on the implementation of a parody exception. The research, led by Erickson together with co-investigators Kretschmer and Mendis,</p>		

resulted in three reports for the UK Government reflecting a legal [R1] and empirical [R2] analysis to assess the economic effects of parody [R3].

The legal part of the research [R1] involved a comparative analysis of the treatment of parodies in seven jurisdictions including the position in the UK [R1, R4, R5] against that of France, Germany, Netherlands, Australia, Canada and the USA [R1]. Drawing on the parody laws of these jurisdictions, the researchers identified the underlying principles developed by legislators and the judiciary for assessing permitted and not permitted parodic uses of copyright works. These were then synthesised into nine policy criteria, of which criterion 3, 7 and 9 are reflected in the wording of the current legislation under the umbrella of 'fair dealing' [R1, E2].

Alongside the legal study, BU researchers undertook a comparative study of commercial music videos and amateur parodies on YouTube, selected for its status as the leading online video platform at the time [R2]. The researchers sampled 8,299 pieces of user-generated content relating to top-100 charting music singles in the UK for the year 2011 to determine whether economic effects were caused by the presence of parody. Through this method, the study assessed the economic impact that commercial rights holders would experience if their work could be freely parodied under copyright law [R2].

Combining the two studies [R1, R2], BU researchers recommended the introduction of a parody exception, arguing that it would offer small but measurable economic benefits to both rights holders and parodists [R3]. In support of their recommendation, the researchers concluded that parody and remix are significant online consumer activities and established that there is a lack of evidence of economic harm to rights holders through either substitution or reputational damage [R3]. These findings from the empirical study were cited in the impact assessment ([UKIPO](#), 2012) carried out by the Government in moving ahead with a parody exception which came into force on 1 October 2014.

3. References to the research (indicative maximum of six references)

R1, R2, R3 and R4 were rigorously peer reviewed and assessed by the UK Intellectual Property Office prior to publication whilst R5 is published in a rigorously peer-reviewed, internationally recognised legal journal.

R1. Mendis, D. and Kretschmer, M., (2013). *'The Treatment of Parodies under Copyright Law in Seven Jurisdictions: A Comparative Review of the Underlying Principles'* (London: IPO). Available at: <https://www.gov.uk/government/publications/parody-and-pastiche> (92 pages)

R2. Erickson K., (2013). *'Evaluating the Impact of Parody and the Exploitation of Copyright Works: An Empirical Study of Music Video Content on YouTube'* (London: IPO). Available at: <https://www.gov.uk/government/publications/parody-and-pastiche> (48 pages)

R3. Erickson, K., Mendis, D. and Kretschmer, M., (2013). *'Copyright and the Economic Effects of Parody: An Empirical Study of Music Videos on the YouTube Platform and an Assessment of the Regulatory Options'* (London: IPO). Available at: <https://www.gov.uk/government/publications/parody-and-pastiche> (36 pages)

R4. Erickson, K., Heald, P., Homberg, F., Kretschmer, M. and Mendis, D., (2015). *'Copyright and the Value of the Public Domain'* (London: IPO). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561543/Copyright-and-the-public-domain.pdf (84 pages)

R5. Mendis, D., (2010). *'Back to the Drawing Board: Pods, Blogs and Fair Dealing — Making Sense of Copyright Exceptions in an Online World'* 32 (11) European Intellectual Property Review, pp. 582-591.

4. Details of the impact (indicative maximum 750 words)

Impact on copyright policy

Based on legal and empirical research [R1-3], BU researchers recommended the introduction of a parody exception and further recommended that the exception be as wide as possible, to allow both commercial and non-commercial parody, whilst allowing different forms of expression. These recommendations made to the UK IPO were taken on board when shaping new legislation [E1], leading to the introduction of new regulations in March 2014 [E2a] and a new parody exception in October 2014 [E2b]. The UKIPO state *“the research by the BU team was instrumental in paving the way towards the implementation of a parody exception”* [E1].

Impact on artists

At the time the research was carried out, it was expected that the introduction of a parody exception would benefit a range of stakeholders. This expectation was examined in October 2015, through a workshop hosted by Mendis at BU. Popular parodists and ‘YouTube sensation’, CassetteBoy, were invited speakers at the event and spoke of the positive impact on artists just one year since implementation [E3]. An article published in the local media shortly after the workshop further echoed this sentiment: *“We were infringing copyright for 20 years before the law changed, and never dreamt that our work would ever be legalised. The change in the law has had a huge impact on the work we’ve been able to do”* [E4].

By 2020, artists have not only carved out a career in this field, but the change in the law has acted as a springboard for them to carry out commissioned work for large, commercial companies such as: the *British Broadcasting Corporation (BBC)*, *Guardian*, *Channel 4* and *Netflix* to name a few, thereby reaching large audiences [E5, E6, E7]. As a result, work on parody has become the main source of income for many, including artists such as CassetteBoy and Charlie Shackleton [E5, E6, E7]. They highlighted that the policy changes enabled by BU research have directly benefitted their careers and allowed them to create works of parody without the fear of copyright infringement [E5, E6].

Decline in parody litigation and a change in perceptions and attitudes

Prior to the exception coming into force, parody legal disputes were apparent in the UK [R1, R4, R5]. However, the last parody case (to inform UK law) was the *Deckmyn* case, heard in the European Court of Justice (ECJ) in September 2014, referred to ECJ from the Brussels Court of Appeal (BCA). The case is noteworthy because, during the trial in the BCA in June 2013, the court referred expressly to the study [R1] published by Mendis and Kretschmer when considering its judgement [E8 p.20]. Since *Deckmyn*, there has been a complete decline in parody cases and complaints have been very rare [E7].

The reason for this appears to be twofold. A legal practitioner representing rights holders explained that the decline in parody cases *“could be because we are operating on common sense and collective experience, based on the parody exception we have. If rightsholders suddenly start over-policing everything, people would be more cautious, but personally I have not seen it happen”* [E9].

A parodist and film maker explained it as a change in attitudes and perceptions of rightsholders as well as society, by stating: *“I believe the research done by Bournemouth University has had a positive impact on my career and society as a whole. Personally, I have experienced a huge shift in the past five years in the way that this kind of work is perceived ... As a society, we now understand and have a bigger and healthier appetite for this type work”* [E6].

Benefit to the creative sector and society

The benefits to the creative sector and society are evident in several ways:

Firstly, large international organisations such as [text removed for publication] have used the exception effectively since its introduction in 2014 and have *“benefitted from it”* [E7]. Identifying *“the positive impact which the parody exception has had in the past few years”* [E7], [text

removed for publication] points to changes such as allowing more innovation and freedom of expression by its producers, particularly on [text removed for publication] [E7]. Furthermore, “clarity in the law”, has provided a much “clearer framework that production teams can now work within. This has been a clear benefit [text removed for publication]” [E7].

Secondly, 72.2% of users surveyed in 2020 either strongly agreed or agreed that “since the introduction of the parody exception, [they] have been able to create parody videos without fear of copyright infringement”, whilst 72.2% strongly agreed/agreed that “the existence of the parody exception has made the law much clearer, encouraging [them] to engage in and create parody videos” [E10].

Finally, since its coming into force, the exception has been used successfully by various charities (such as Comic Relief, GreenPeace and Water Aid) to raise money for worthwhile causes [E1].

5. Sources to corroborate the impact (indicative maximum of 10 references)

E1: Head of Research – Economics, Research and Evidence, UK Intellectual Property Office. (2020). Letter to Professor Dinusha Mendis, 4 November.

E2a: Legislation.gov.uk. (2014). *Draft Statutory Instrument, Copyright and Rights in Performances (Quotation and Parody) Regulations 2014*. Available at: <https://www.legislation.gov.uk/ukdsi/2014/9780111116029> (Accessed: 10 February 2021).

E2b: Legislation.gov.uk. (2014). Parody exception set out at *Section 30A of Copyright, Designs and Patents Act 1988 (as amended)*. Available at: <http://www.legislation.gov.uk/ukpga/1988/48/section/30A> (Accessed: 10 February 2021).

E3: CassetteBoy. (2015). *Interview with CassetteBoy*. Interviewed by Professor Dinusha Mendis. Available at: <https://www.youtube.com/watch?v=IB9V16hxTkw> (Accessed: 10 February 2021).

E4: Howard, L. (2015). *Cassette Boy: change in copyright law made our work legal*. Daily Echo. Bournemouth. Available at: <https://www.bournemouthecho.co.uk/news/14038704.cassette-boy-change-in-copyright-law-made-our-work-legal/> (Accessed: 10 February 2021).

E5: CassetteBoy. (2020). Letter to Professor Dinusha Mendis, 26 February.

E6: Parody artist. (2020). Letter to Professor Dinusha Mendis, 1 March.

E7: [Text removed for publication]. (2021). Letter to Professor Dinusha Mendis, 13 January. CONFIDENTIAL

E8: Specific reference to Bournemouth University's legal research on the last known parody case (Deckmyn) dealt with by the European Court of Justice referred to, by the Brussels Court of Appeal (2013)

E9: Solicitor, Reviewed & Cleared. (2020). Letter to Professor Dinusha Mendis, 29 February.

E10: Bournemouth University. (2020). Implementing a parody exception in the UK; shaping policy and innovating the creative sector - Key findings from a user survey.