

Joshua Williams Memorial Prize Essay 2006

Does the Parasitic Nature of Parody Justify Special Protection Under New Zealand's Copyright Regime?

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Parody has been subject to a variety of different definitions throughout its lengthy history. The social context in which parody is used, and the medium of its expression both determine and contribute to the uncertainty regarding its definition.¹ In contemporary usage the term designates a form of literary or artistic satire distinguishable from other kinds of satire by its imitative mode and its internal dependence on the devices and conventions of its satiric target.² Parody is an effective means through which we are able to critically assess societal values. However, its imitative mode often exposes the parodist to liability under a range of different intellectual property regimes. This paper focuses specifically on the inherent conflict between parody and copyright law.

Section 14 of the Copyright Act 1994 (NZ) defines copyright as a property right that exists in original works. The Act further provides that this right is infringed if one copies either the whole or a substantial part of a protected work.³

The leading test for establishing infringement by copying in New Zealand was set out in *Wham-O MFG Co v Lincoln Industries*.⁴ To satisfy the test the plaintiff must establish that:

- i) The reproduction is either of the entire work or of a substantial part;
- ii) There is sufficient objective similarity between the infringing work and the copyright work, or a substantial part thereof;
- iii) A causal connection exists between the copyright work and the infringing work.⁵

In determining whether a substantial part of the prior work has been reproduced the Courts focus on the quality, rather than the quantity, of the reproduction. Even if the part reproduced by the defendant is quantitatively small, it may still amount to infringement if the part is qualitatively important to the work as a whole.⁶

Copyright may also be infringed where there has been excessive or unfair use of

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¹ Simon Dentith, *Parody, the New Critical Idiom* (Routledge, 2000) 193.

² Pavel Petr, David Roberts and Philip Thompson, *Comic Relations: Studies in the Comic, Satire and Parody* (Verlag Peter Lang GmbH, 1985) 195.

³ Copyright Act 1994, s 29(2)(a).

⁴ *Wham-O MFG Co v Lincoln Industries* [1984] 1 NZLR 641 (CA).

⁵ *Ibid*, 666.

⁶ *Bleiman v News Media (Auckland) Ltd* [1994] 2 NZLR 673, 678 (CA).