

Lai, Amy PhD Candidate, University of British Columbia, “The Natural Right to Parody: Assessing the Parody/Satire Exceptions in Canadian Copyright Law”

Do the New Parody/Satire Exceptions in Canada’s Copyright Modernization Act adequately protect users’ right to freedom of expression while stimulating innovation in the creative sector? My paper, which will be taken from a condensed version of a chapter of my on-going dissertation, will consist of two parts. The first part will take a philosophical approach to the right to parody. By drawing upon John Locke and Emmanuel Kant, it will argue that not only copyright, but the right to create parodies out of copyrighted works is a natural, universal right. Moreover, by emphasizing the priority of speech rights over property rights, it will also argue that parodies should be broadly defined to include both “target” parodies and “weapon” parodies and encompass works that target the originals and those that comment on something or someone else. Accordingly, in considering whether a parodic work is fair and legal, the most determinative factor should be whether it competes with the original work by serving as its substitute in the market.

The second part of the paper will consist of legal analysis. It will assess the new parody/satire exceptions in Canada’s copyright law, which seems to indicate that satirical works will easily pass the fair dealing analysis in Canadian courts. To date there have been no cases testing this law, and such optimism is understandable. The paper will nonetheless argue that a broadened, adequately defined parody exception that includes both “target” and “weapon” parodies is preferable to the dual parody/satire exceptions. Because neither parody nor satire is defined in the statute, Canadian courts will likely reference American court decisions in defining them, considering that they have done so in ruling on numerous copyright claims. Yet American courts have adhered to a parody/satire dichotomy and usually do not consider works falling in the “satire” category to be fair use. Although parody and satire are both fair dealing exceptions, Canadian courts may be influenced by American decisions and treat “satire” as inferior to “parody”. At the second stage of the fair dealing analysis, courts therefore may determine that works that fall in the “satire” category but would not otherwise compete with the original work in the market do not pass the second stage of fair dealing analysis. Two of the fair dealing factors - amount of the use and alternatives to the use – may facilitate this reasoning. As a result, many valuable works will be suppressed. To lessen this risk and to safeguard the users’ right to freedom of expression, a broadened parody exception is preferable to the current parody/satire exceptions.