

## **“Newport State Of Mind”, old Parody issues**

**A parody of Jay-Z’s “New York State Of Mind” celebrating life in Newport has been removed from YouTube after a complaint from EMI Music Publishing.**

They say that imitation is the sincerest form of flattery, but apparently hip hop artist and entrepreneur Jay-Z doesn’t agree. A spoof of the rapper’s huge international hit “Empire State Of Mind” has now been taken down by YouTube at the request of his publishers after a complaint of copyright infringement.

The parody “Newport State Of Mind”, by director MJ Delaney, was viewed over two million times in two weeks by visitors to YouTube and celebrates life in the city. It was successful enough for Welsh rap act Goldie Lookin’ Chain to record their own version, “You’re Not From Newport”, after claiming that Delaney’s video suffered from a lack of local knowledge. Their version may still be online but Delaney’s has been quickly removed, scotching plans to release it as a single.

Copyright is infringed when a “substantial part” of the original “work” is either copied in its entirety or used to create another without permission from the Copyright owner. In this case, there are three or four works which Delaney could have infringed in putting together the parody – the “Empire State Of Mind” Video, the sound recording of the song itself, its lyrics and its music. Dependent upon how the original copyright work has been used, then a number of defences are available to alleged infringers, one of which is parody.

Parody is, however, a notoriously difficult defence to run. Any parody of an existing song will infringe the copyright in the original if it makes “substantial” use and unless it falls within the “fair dealing” provisions of the Copyrights, Designs and Patents Act 1988. These allow the use of copyright works for certain specific purposes, the most obvious in this case being for

the purpose criticism or review, provided that the part of the work used (and theoretically the parody) contains a “sufficient acknowledgement” referring to the original.

The general rule is that the more of the original copyright work which the parody uses, the harder it is to argue that it doesn't infringe. “Newport State Of Mind” uses a virtually identical melody to Jay-Z's original even though the lyrics are very different, and it's probably this line of attack which EMI have used to get the video removed. Had the tune been more different, then it may have been easier to defend.

This is the essential legal problem with parodies – they need to be close enough to the original to be recognised by their audience as a parody in the first place, which means that they will almost inevitably infringe copyright. Even though some cases have argued that parodies contain enough original thought and creativity to be recognised as “works” in their own right, the position is nowhere near clear enough for this particular parody to be worth the risk.

YouTube will have had to act quickly to avoid any action being taken against them (they've only recently been involved in a very high-profile copyright dispute with Viacom in the US). According to the Electronic Commerce (EC Directive) Regulations 2002, third party video websites will escape liability for copyright infringement provided that they have no actual knowledge that the content in question infringes and that they act “expeditiously” to remove it. If not, they may be held liable along with the actual infringer. The usual approach is to remove the content first and investigate infringement claims later, eliminating the risk as far as possible.

A popular parody is likely to make its way around the web extremely quickly, and although most sites will (and should) operate effective “take down” procedures; the chances are that some copies will still remain available. It'll be very interesting to see if EMI take any further action in this case; if there is a real need to clamp down on infringement such as when copies of entire albums or films are made available through torrent sites without permission, then urgent action to deter further infringement will almost certainly be necessary to avoid damaging any ongoing revenue streams generated by the original.

In this case, however, Jay-Z's fans and the general public may simply not agree that his complaint is justified morally (even though it is legally) and his reputation may suffer, as Prince found out when he threatened copyright infringement proceedings against a number of “Fan Sites” in 2007. Of course, had Delaney sought permission from Jay-Z before posting

the video online, he would have had a defence to an infringement claim and possibly even support from an international superstar.

Although Parody has been due for reform for well over 20 years, which was on the agenda in the wake of the Gowers Review of Intellectual Property in 2006, the only way to be sure of avoiding an infringement claim is to get permission from the original artist. Similarly, the only way for platforms and websites to be sure that they aren't drawn into such a claim is to remove any potentially infringing content as quickly as possible. Until the position changes, parody markers will have to play by the rules, even if they believe them to be a bad joke. The punchline could be a damages claim which far outweighs any attention or revenue which they generate.

**Photo shows Manchester-based Intellectual Property and Digital Media lawyer at HBJ Gateley Wareing, Steve Kuncewicz.**

## **Ends**

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