

**REGISTRATION OF
COPYRIGHT LICENSING BODIES
REGULATION**

Submission by

**Composers and Authors Society
of Hong Kong Limited**

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This Submission is made at the invitation of the LegCo Panel on Trade and Industry for its meeting on 6th March 2000.

Introduction

Composers and Authors Society of Hong Kong Limited ("CASH") was incorporated in 1977 as a company limited by guarantee and not having a share capital. CASH is a non-profit making company, which has almost 2000 members; its members are composers, lyric writers and music publishers in Hong Kong; through deeds of assignment it controls rights of its members in the local music repertoire; through reciprocal agreements with its sister societies and agents in 129 territories is also administers in Hong Kong rights in the international music repertoire; thus it provides collective management in Hong Kong for the rights of public performance and broadcasting in virtually the entire would repertoire of music.

CASH is a licensing body within Section 145 of the Copyright Ordinance.

General Comments

CASH is and has always been a staunch advocate of the Copyright Ordinance including the provisions which it contains for Registration of Licensing Bodies.

CASH welcomes the initiative now to be taken for implementation of these provisions by the Director of Intellectual Property as Registrar of Copyright Licensing Bodies, upon the issue of appropriate Regulations by the Secretary for Trade and Industry.

CASH supports the adoption of a registration system on the following grounds:

- (a) it demonstrates the will of the Legislature and the Government to recognise formally the functions of properly conducted collective licensing bodies;
- (b) it will enhance the status of those licensing bodies that are registered;
- (c) it will increase the transparency of those licensing bodies in the eyes of the general public;
- (d) it will facilitate licensing activities in the marketplace; and
- (e) it will increase public awareness of the protection of the rights of copyright owners under the Copyright Ordinance and the means whereby royalties are collected.

Specific Comments

1. *S.148(2) "An application must be accompanied by (a) the appropriate prescribed fee"*

Submission

As this is a voluntary registration system, for which no supervisory or onerous administrative obligations are imposed upon the Registrar, the prescribed fee should be nominal.

2. *S.148(2) " (b) a statement in writing containing such particulars as may be specified by the Registrar..."*

Submission

The particulars to accompany the application must be clearly stated in the Regulations and should not be too complicated. These particulars might include copies of the Certificate of Incorporation, Business Registration Certificate (current), Memorandum and Articles of Association, List of directors and managers, Audited accounts for the previous (3) years, List of scales of copyright royalty charges applicable to general categories of users, and a brief Statement to describe the history of the collective licensing body and the business activities conducted.

3. *S.149(1) "The Registrar may approve an application for registration and enter the name of the applicant in the register if the Registrar is satisfied (a) that the applicant is a fit and proper person to be registered"*

Submission

In the absence of any statutory definition of "fit and proper person" in the Ordinance (or, as far as we are aware, in any other relevant Ordinance including the Interpretation and General Clauses Ordinance Cap. 1), the Registrar should reach a decision based on the application and accompanying documents (see 2.above); which documents should suffice to establish inter alia an appropriate system of collective copyright management, an appropriate track record and financial solvency.

4. *S.149(1) " (b) with respect to the future, with the availability to the public of information relating to the scales of copyright royalty charges by the applicant for different uses..."*

Submission

CASH already makes its scales of copyright royalty charges available to the public upon request under normal circumstances. However, it should be recognised that difficulties may arise where (i) a scale has been referred to the Copyright Tribunal for determination and a decision is still awaited; (ii) there is no applicable scale and a tailor-made licence has to be formulated because it relates to a unique event or to the unique activities of a specific user; or (iii) royalties have been negotiated with a specific user under a licence agreement which at the user's request contains legally binding confidentiality arrangements.

Accordingly, in the interests of practicality, we would urge that:

- (a) publication of the scales of copyright royalty charges should be limited to those scales which are applicable to general categories of users; and
 - (b) the licensing body should be permitted to observe legally binding confidentiality arrangements entered into at the request of a specific user in respect of royalty charges, particularly where there are no other users affected.
5. *S.149(1)(b)(iii) "by publishing the scales in an English language newspaper and a Chinese language newspaper..."*
S.151(5) "On a renewal of registration, the registrar shall issue to the licensing body a new certificate specifying the requirements with respect to - (a) the publication of scales of copyright royalty charges"

Submission

CASH has over 30 scales of copyright royalty charges in operation. If they were all to be published in a newspaper, it is likely that more than 1 full page would be required and the costs would be excessive; particularly if these procedures are to be duplicated annually upon renewal of registration. CASH, thus, does not support the idea of having scales of charges published in newspapers, due to the costs involved and short-lived circulation for one day.

A submission was made on the original Bill to the effect that, instead of publication of the scales in one English language and one Chinese language newspaper, a "notice" should be so published to announce the registration of the licensing body together with a brief introduction of the body. It should also be stated in the notice that all scales of copyright royalty charges applicable to general categories of users are available upon request either by normal mode of delivery or alternatively by inspection at the CASH office or at the place(s) designated by the Registrar or alternatively by access to the CASH web site.

It is regretted that this proposal was not adopted in the Ordinance.

However, even if such scales of charges are to be published in the 2 newspapers for the initial registration, we would strongly urge that for purposes of S.151(5)(a) this requirement be not duplicated for each renewal, but rather that for renewals a "notice" be published as proposed above to satisfy the public that the scales are readily available.

CASH is in the course of establishing a web site on the Internet, where relevant data including scales of charges will be readily available for drawdown.

6. *S.152 "The Secretary for Trade and Industry may by regulation-*

- (a) prescribe the fees for the application for registration and for renewal of registration; and*
- (b) provide for the better carrying into effect of this system of registration."*

Submission

As no draft Regulations have been published or provided, we have simply referred in our above submissions to the relevant Sections 146-153 in Division VIII of the Copyright Ordinance. However, we believe that Regulations are required to be issued under S.152 to prescribe the "**fees**" (see submission 1 above), and provide for "**statement in writing**" to accompany the application (see submission 2 above), "**fit and proper person**" (see submission 3 above) and "**publication**" of scales of copyright royalty charges upon first application and renewals (see submissions 4 and 5 above).

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