

Legislative Council Panel on Trade and Industry

Registration of Copyright Licensing Bodies Regulation

Introduction

This note outlines a voluntary registration scheme for copyright licensing bodies under the Copyright Ordinance. It also highlights the statutory mechanism provided for in the Ordinance to arbitrate disputes arising from royalties charged by copyright licensing bodies.

Background

2. Collective administration of copyright is an international trend. Instead of contacting individual copyright works owners, users of copyright works can conveniently obtain proper licences from such collective societies to use copyright works. Existing collective copyright licensing bodies have been operating successfully in Hong Kong. It is, however, considered that by providing a voluntary registration scheme, we could enhance transparency by ensuring that essential information such as scales of royalty charges will be available to the public. In addition, the scheme will provide official recognition of the registered copyright licensing bodies.

The Registration of Copyright Licensing Bodies

3. Under Section 146 of the Copyright Ordinance, the Director of Intellectual Property is the Registrar of Copyright Licensing Bodies (“Registrar”) who will establish and maintain a register of copyright licensing bodies. Under Section 149 of the Ordinance, the Registrar needs to be satisfied that the applicant is a fit and proper person prior to approving his application for registration, and that the scales of copyright royalty charges should be made available to the public by exhibiting them in registered offices and places of business conspicuously to the public,

and publishing in an English and a Chinese newspaper within 2 weeks after the issue of the certificate of registration. Section 150 also states that a registered licensing body which intends to levy royalty charges differing from the scales previously published will need to notify the Registrar at least one month before the new scales come into effect, or otherwise its registration will be cancelled.

4. The Registrar will also require that the licensing bodies file the necessary information essential for prospective copyright works users, such as the types of licences available, the types of works covered, and the nature of constitution of the bodies. These information will be made available free of charge for public inspection. Under Section 152, the Secretary for Trade and Industry will prescribe the Registration of Copyright Licensing Bodies Regulation for the better carrying out of this voluntary registration system. The proposed Registration of Copyright Licensing Bodies Regulation and applications forms for registration are at Annex A.

The Copyright Tribunal

5. There has been concern that copyright licensing bodies might abuse their influential position by charging a high level of royalty fees. In this connection, it should be noted that the Copyright Ordinance has already provided a statutory mechanism, the Copyright Tribunal, for arbitrating royalty disputes. The Copyright Tribunal is a quasi-judicial body appointed by the Chief Executive. Under Section 173 of the Copyright Ordinance, the jurisdiction of the Copyright Tribunal includes, amongst other things, the powers to determine disputes arising from licensing by the copyright licensing bodies under the licensing schemes. This is in line with the practices in other jurisdictions such as Australia, Canada and the UK.

6. The Tribunal consists of highly qualified persons appointed from a wide spectrum of the community to ensure that a balanced view is reached. Section 160 of the Copyright Ordinance stipulates that the Copyright Tribunal shall consist of a Chairman, a Deputy Chairman and seven members. It further requires that the Chairman and Deputy Chairman must be persons qualified for appointments as District Court judges (i.e. no less than five years' experience as a barrister or solicitor). The Tribunal has to exercise its jurisdiction in accordance with the rules

and practices of a civil court and any possible conflicts of interest have to be declared by its members. The membership list of the Tribunal is at Annex B.

Public Consultation

7. We will be circulating the draft Regulation and forms to existing copyright licensing bodies in Hong Kong as well as concerned copyright user groups and organisations to consult their views. Upon completion of the consultation exercise, the Regulation will be tabled at the Legislative Council as a subsidiary legislation.

Conclusion

8. The Copyright Ordinance is fully compliant with international conventions on the protection of copyright. The voluntary registration scheme for copyright licensing bodies under the Copyright Ordinance would further enhance the transparency of these organisations. The Copyright Tribunal provides an alternative and more economical means to arbitrate copyright royalty disputes than the courts.

Trade and Industry Bureau
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