

香港特別行政區政府  
商務及經濟發展局  
工商及旅遊科

香港添馬添美道二號  
政府總部西翼二十三樓



COMMERCE, INDUSTRY AND TOURISM BRANCH  
**COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU**  
GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

23/F, WEST WING  
CENTRAL GOVERNMENT OFFICES  
2 TIM MEI AVENUE  
TAMAR, HONG KONG

Tel : 3655 5440  
Fax : 2147 3065

12 December 2014

Ms Annette Lam  
Clerk to Panel  
Panel on Commerce and Industry  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Fax No.: 2978 7569)

Dear Ms Lam,

### **Consultation on a new set of Copyright Tribunal Rules**

The Administration is carrying out a consultation exercise between 9 December 2014 and 9 February 2015 to collect views on a new set of Copyright Tribunal Rules to modernize the practice and procedures of the Copyright Tribunal. Attached please find the relevant information paper.

The Tribunal is an independent, quasi-judicial body established under section 169 of the Copyright Ordinance (Cap. 528) to hear and resolve specific types of disputes relating to the use or licensing of copyright works. The proposed new Rules seek to make proceedings before the Tribunal as flexible, convenient and cost-effective as possible in accordance with contemporary dispute resolution practices. Given the technical nature of the exercise, we propose that the paper be circulated to Members for reference and would be happy to answer any enquiries and attend a meeting if Members consider a discussion necessary.

Please feel free to contact the undersigned at 3655 5440 as may be needed.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Joy Wong', written over the printed name.

( Ms Joy Wong )  
for Secretary for Commerce and Economic Development

## **For information**

**9 December 2014**

### **Legislative Council Panel on Commerce and Industry**

#### **Consultation on a new set of Copyright Tribunal Rules**

### **Purpose**

This paper informs Members of the launch of a two-month consultation exercise on 9 December 2014 on a proposal to provide for a new set of Copyright Tribunal Rules to modernize the practice and procedures of the Copyright Tribunal (the Tribunal). A copy of the consultation paper is attached for Members' reference.

### **Background**

2. The Tribunal is an independent, quasi-judicial body established under section 169 of the Copyright Ordinance (Cap. 528) (the Ordinance) to hear and resolve specific types of disputes relating to the use or licensing of copyright works. Sections 173 and 233 set out the types of cases that the Tribunal has power to hear and determine. They include-

- (a) disputes relating to a licensing scheme in operation or a licensing scheme proposed to be operated by a licensing body, or the refusal of grant of a licence in connection with a licensing scheme (sections 155 to 160);
- (b) disputes relating to a licence proposed to be granted by a licensing body or a licence due to expire (sections 162 to 166);
- (c) determining the award to employees for using his/her work outside reasonable contemplation (section 14);
- (d) giving consent on behalf of owners of right of reproduction of a performance or on behalf of owners of the performers' rental right (sections 213 and 213A); and

(e) other applications.

3. Section 174(1) of the Ordinance empowers the Chief Justice to make rules for regulating the proceedings before the Tribunal. Pending the making of such new rules, the rules in force immediately preceding the commencement of the Ordinance has remained in force, as now set out in Cap. 528C. Insofar as these rules are not inconsistent with the Ordinance, they continue to have effect, subject to necessary modifications and adaptations.

4. The Administration has been working to provide a new set of concise and user-friendly rules to modernize the practice and procedures of the Tribunal as the existing rules under Cap. 528C are outdated in some aspects. For instance, they do not correlate with some current provisions in the Ordinance (which has undergone several amendment exercises since 2001)<sup>1</sup>. Taking into account the implementation of the Civil Justice Reform in 2009<sup>2</sup>, the Administration launched a consultation exercise in August 2009, inviting views on the drafting approach and direction of the new rules. Owing to its technical nature, mainly stakeholders including copyright licensing bodies, professional bodies and a member of the Tribunal responded to the consultation.

5. Apart from the views gathered during the consultation exercise, we have also taken into account the latest local and overseas dispute resolution practices and developments in drafting the new rules, in particular the reform of the law of arbitration and enactment of the new Arbitration Ordinance (Cap. 609) in Hong Kong in 2010, as well as the review of the United Kingdom Copyright Tribunal Rules 1989 and subsequent enactment of the new Copyright Tribunal Rules 2010. All things considered, a new set of rules has been drafted (the Draft Rules, Annex B to the consultation paper attached) for further consultation. In the process, we have consulted the Judiciary and taken into account its comments in finalizing the draft.

---

<sup>1</sup> For instance, the jurisdiction of the Tribunal as expanded by the Ordinance and the Copyright (Amendment) Ordinance 2007. Further, currently there is no Chinese version for Cap. 528C.

<sup>2</sup> The Civil Justice Reform was launched and implemented by the Judiciary in November 2001 and April 2009 respectively to modernize the practice and procedures of dispute resolution before the courts. Given that the Tribunal needs to provide a forum for just and effective resolution of disputes, we see merits for incorporating the fundamental value and rationale of dispute resolution recognized by the Civil Justice Reform into the practice and procedures of the Tribunal.

## **Objectives and Scope**

6. The objectives of drawing up the Draft Rules are to maintain the fairness of the proceedings before the Tribunal on the one hand, and to make the proceedings as flexible, convenient and cost-effective as possible in accordance with contemporary dispute resolution practices on the other. The Draft Rules mainly deal with the operational procedures of the Tribunal and do not touch on issues concerning the Tribunal's jurisdiction (which is governed by the Ordinance).

## **Key Principles**

7. The following principles have been adopted in formulating the Draft Rules -

- (a) applying the principles of the Civil Justice Reform as the fundamental value of dispute resolution before the Tribunal;
- (b) standardizing procedures and application forms for all types of applications or references before the Tribunal;
- (c) exercising active case management;
- (d) promoting the use of alternative dispute resolution;
- (e) empowering a single member of the Tribunal to exercise certain adjudication powers;
- (f) using practice directions to regulate the proceedings as appropriate; and
- (g) prescribing a set of self-contained rules with all links and cross-references to the Arbitration Ordinance delinked.

## **Consultation**

8. A two-month consultation exercise is being conducted during the period from 9 December 2014 to 9 February 2015 to invite views from stakeholders on the Draft Rules.

## **Way Forward**

9. We will carefully study the comments received and revise the Draft Rules as necessary. The Draft Rules will then be finalized for submission to the Chief Justice for consideration. Subject to the making of the new set of the Copyright Tribunal Rules by the Chief Justice pursuant to section 174(1) of the Ordinance, we plan to introduce the subsidiary legislation into the Legislative Council for negative vetting in 2015.

## **Advice sought**

10. Members are invited to note the launch of the consultation exercise.

Commerce, Industry and Tourism Branch  
Commerce and Economic Development Bureau  
9 December 2014

# **CONSULTATION PAPER ON DRAFT COPYRIGHT TRIBUNAL RULES**

## **I. INTRODUCTION**

1. The Copyright Tribunal (the Tribunal) is an independent, quasi-judicial body established under section 169 of the Copyright Ordinance (the Ordinance) to hear and resolve specific types of disputes relating to the use or licensing of copyright works. Sections 173 and 233 set out the types of cases that the Tribunal has power to hear and determine. They include-

- (a) disputes relating to a licensing scheme in operation or a licensing scheme proposed to be operated by a licensing body, or the refusal of grant of a licence in connection with a licensing scheme (sections 155 to 160);
- (b) disputes relating to a licence proposed to be granted by a licensing body or a licence due to expire (sections 162 to 166);
- (c) determining the award to employees for using his/her work outside reasonable contemplation (section 14);
- (d) giving consent on behalf of owners of right of reproduction of a performance or on behalf of owners of the performers' rental right (sections 213 and 213A); and
- (e) other applications.

2. Under section 174(1) of the Ordinance, the Chief Justice is empowered to make rules for regulating proceedings before the Tribunal. The Ordinance also provides that, until such rules are made, the previous Copyright Tribunal Rules (Cap. 528C) immediately in force preceding the commencement of the Ordinance shall continue to apply, insofar as they are not inconsistent with the Ordinance and subject to such necessary modifications and adaptations.

3. The Government is committed to providing a new set of concise and

user-friendly rules to modernize the practice and procedures of the Tribunal. Indeed, preparations for the drafting of the new rules began soon after the enactment of the Ordinance. However, it was subsequently considered desirable for the new rules to take into account the Civil Justice Reform in Hong Kong and amendments to the Ordinance which might affect the jurisdiction and exercise of power of the Tribunal.

4. Further to the passage of the Copyright (Amendment) Bill 2007 and the implementation of the Civil Justice Reform in Hong Kong in April 2009, the Government launched a consultation exercise in August 2009, inviting views on the drafting approach and direction for the new rules. Various stakeholders including copyright licensing bodies, professional bodies as well as a member of the Tribunal responded to the consultation. The stakeholders' main submissions on the Government's proposals are summarized in **Annex A**.

5. The Government has considered such views as well as the latest local and overseas dispute resolution practices and developments. In particular, the following developments have a direct bearing on the formulation of the new rules, namely the reform of the law of arbitration and enactment of the new Arbitration Ordinance (Cap. 609) in Hong Kong in 2010, as well as the review of the United Kingdom (UK) Copyright Tribunal Rules 1989 and subsequent enactment of the new Copyright Tribunal Rules 2010.

6. It is against such background that the new rules, as shown in **Annex B** (the Draft Rules), are drafted for further consultation. In the process, we have consulted the Judiciary and taken into account its comments in finalizing the draft. To make proceedings before the Tribunal as flexible, convenient and cost-effective as possible in accordance with contemporary dispute resolution practices, the following principles are adopted in formulating the Draft Rules-

- (a) Applying the principles of the Civil Justice Reform as the fundamental value of dispute resolution before the Tribunal;
- (b) Standardizing procedures and application forms for all types of applications / references before the Tribunal;
- (c) Exercising active case management;

- (d) Promoting use of alternative dispute resolution;
- (e) Empowering a single member of the Tribunal to exercise certain adjudication powers;
- (f) Using practice directions to regulate proceedings as appropriate; and
- (g) Prescribing a set of self-contained rules to de-link all direct links / cross-references to the Arbitration Ordinance.

These principles will be discussed in further detail with respect to the specific provisions of the Draft Rules in the ensuing paragraphs.

7. Finally, the various services provided for under the Draft Rules are subject to payment of fees set at a level to achieve full cost recovery. The exact amount will be determined by a costing exercise underway and set out in the final version of the rules to be made.

8. We now invite comments on these Draft Rules. The consultation closes on 9 February 2015. Following this consultation, the Government will evaluate the submissions received and consider if further revisions to the Draft Rules are required. The revised Draft Rules will then be submitted to the Chief Justice for further consideration and eventually tabled before the Legislative Council for negative vetting.

## **II. PRINCIPLES OF THE CIVIL JUSTICE REFORM**

9. The Tribunal provides a forum for just resolution of disputes under an adversarial system akin to the courts in our judicial system. We find strong merits in having the recognized value and rationale of judicial resolution built into the Tribunal's revised practice and procedures. In this regard, the Draft Rules expressly set out the following underlying objectives of the Civil Justice Reform-

- (a) To maximize the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Tribunal;

- (b) To ensure that each case is dealt with as expeditiously as is reasonably practicable;
- (c) To promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) To ensure fairness between the parties;
- (e) To facilitate the settlement of disputes; and
- (f) To ensure that the resources of the Tribunal are distributed fairly.

10. Given that the proceedings before the Tribunal are intended to be less formal than court proceedings, we believe that it is not appropriate for the Draft Rules to follow entirely the practice and procedure of the courts. The main aspects of the Civil Justice Reform that are adopted in the Draft Rules relate to active case management, use of statements of truth to verify the claims of the parties and encouraging the use of mediation as a means of dispute resolution.

#### *The Draft Rules*

11. The underlying objectives of the Draft Rules are set out in Rule 3. The Draft Rules expressly provide that the Tribunal must seek to give effect to such underlying objectives when it exercises any of its powers or interprets any of the rules (Rule 4). Meanwhile, the parties and their representatives must also assist the Tribunal to further the underlying objectives of the rules (Rule 5).

12. In addition, the following aspects of the Civil Justice Reform have been included in the Draft Rules-

- (a) The Tribunal will be given powers to further the underlying objectives by actively managing cases (Part 5). Please see the discussion in Part IV below.
- (b) To promote early identification of relevant issues in proceedings and discourage frivolous claims and abuse of the Tribunal's procedures, the

Draft Rules require use of statements of truth to verify the claims of the parties-

- The Tribunal may strike out an application if the statement of facts contained therein is not verified by a statement of truth signed by the originator or its representative (Rule 7). The same applies to a statement of facts in a response or request for leave to intervene (Rules 14 and 20).
  - The Tribunal may direct that a witness statement or expert report that is not verified by a statement of truth by its maker be inadmissible as evidence in the proceedings (Rule 34).
  - If a party has made a false statement in a statement of facts, witness statement or expert report verified by a statement of truth without an honest belief in its truth, the Tribunal may order the party to pay the costs of another party for the whole or part of the proceedings (Rule 39).
- (c) The Tribunal will be empowered to exercise its active case management powers to encourage and facilitate use of mediation in appropriate cases (Part 6). Please see the discussion in Part V below.

### **III. STANDARDIZED PROCEDURES AND FORMS**

13. The Tribunal has jurisdiction to entertain various types of applications/references. Instead of having different procedures and application forms for individual applications/references, the Draft Rules set down one standardized set of procedures and forms fit for all types of applications/references. It will streamline the procedure thereby making the Tribunal more accessible to users, particularly unrepresented litigants.

14. The Draft Rules provide standard forms for making an application, a response and a request for leave to intervene respectively. The standard forms devised are simple and precise. The items on each form are generally neutral and applicable to different types of proceedings and scenarios. On the other

hand, to assist the parties to consider the specific particulars to be included in the “statement of facts” of each form, the Tribunal may consider providing further guidance by way of practice directions or other publications, as appropriate.

### *The Draft Rules*

15. Part 2 of the Draft Rules sets out the procedure for commencement of the proceedings which is applicable to all types of applications/references. For instance-

- (a) an application must be served on the Secretary of the Tribunal (the Secretary) in the form set out in Schedule 1 and be accompanied by a prescribed fee (see Rule 6); and
- (b) the statement of facts provided in the application form must be verified by a statement of truth signed by the originator or its representative (see Rule 7).

16. Further, part 3 of the Draft Rules sets out the procedure where the respondent wishes to serve a response to an application. For instance-

- (a) a response must be served on the Secretary within a prescribed time period in the form set out in Schedule 2 (see Rule 13); and
- (b) the statement of facts provided in the response form must be verified by a statement of truth signed by the respondent or its representative (see Rule 14).

17. Finally, part 4 of the Draft Rules sets out the procedure for the making of a request for leave to intervene in the proceedings. For instance-

- (a) a request for leave to intervene must be served on the Secretary within a prescribed time period in the form set out in Schedule 3 and be accompanied by a prescribed fee (see Rule 19); and
- (b) the statement of facts provided in the request form must be verified by a statement of truth signed by the intervener or its representative (see

Rule 20).

#### **IV. ACTIVE CASE MANAGEMENT**

18. While the powers given to the Tribunal might not be as extensive as those given to the courts due to the former's confined jurisdiction, the active case management principle adopted by the Civil Justice Reform should be equally applicable to proceedings before the Tribunal. We proposed adopting the following measures of active case management by reference to the Civil Justice Reform so as to attain the Tribunal's underlying objectives in adjudication-

- (a) Requiring use of statements of truth to verify the facts pleaded and evidence adduced by the parties;
- (b) Empowering the Tribunal to convene case management conferences and pre-hearing reviews to give necessary/appropriate directions on conduct of proceedings; and
- (c) Empowering the Tribunal to remedy or sanction against non-compliance with rules or the Tribunal's orders/directions, including issuing directions to rectify defective documents, rejecting an application in whole or in part and making cost-sanctions.

#### *The Draft Rules*

19. The main provisions regarding case management can be found in Part 5 of the Draft Rules. Pursuant to Rule 25, the Tribunal must further the underlying objectives by actively managing cases. The rule then provides a list of what "active case management" includes.

20. Under Rule 26, the Tribunal will be empowered to make specified orders or directions, as well as any other orders or directions it thinks fit to secure the just, expeditious and economical conduct of the proceedings. This power can be exercised at any stage of the proceedings, whether on the Tribunal's own initiative or at the request of a party to the proceedings.

21. Other relevant provisions include, for instance, rules empowering the Tribunal to direct rectification of a defective application, reject an application, deal with requests for amendment or withdrawal of an application (Rules 9, 10, 11, and 12), make awards on different issues (Rule 27), give directions in relation to the giving of evidence (Rules 31 to 34), and make orders, including costs orders, in cases where a party has contravened a requirement of an order or direction made by the Tribunal (Rules 28 and 39).

## **V. ALTERNATIVE DISPUTE RESOLUTION**

22. The Civil Justice Reform advocated use of mediation as a mode of alternative dispute resolution to expedite dispute resolution. We believe that mediation can be a potential means of facilitating quick and cost-effective settlement in appropriate cases. Hence, in line with the modern practice in civil proceedings, the Tribunal will encourage and facilitate the use of mediation in appropriate cases. For instance, the Tribunal may appoint a mediator for the parties upon their joint request and stay the proceedings pending the outcome of mediation.

23. However, it is not our policy intent to make mediation compulsory for every proceeding before the Tribunal as we note that mediation may not be appropriate for resolving some disputes. The Draft Rules therefore provide that the Tribunal may encourage and facilitate use of mediation in appropriate cases only. Moreover, no cost sanction will be imposed should the parties fail to mediate. These tally with the Tribunal's role in facilitating settlement of disputes, being one of the underlying objectives of the Draft Rules.

### *The Draft Rules*

24. Under Rule 30, parties who wish to engage in mediation should make a first attempt to reach agreement on the appointment of a mediator. Meanwhile, the Tribunal may appoint a mediator if the parties fail to reach an agreement and make a joint request to the Tribunal for appointment.

25. In order to avoid any perception that a party may be forced into mediation by threats of cost sanctions, the refusal or failure of a party to attempt

mediation has not been prescribed as one of the “special circumstances” under which the Tribunal may make costs orders (under Rule 39).

## **VI. SINGLE MEMBER IN ADJUDICATION**

26. Section 172(1A) of the Ordinance enables a single member of the Tribunal to hear and determine specified proceedings. The intent is to dispense with the need to empanel a fully constituted Tribunal of at least three members under section 172(1), thereby allowing more flexible and efficient disposal of certain proceedings. To achieve this objective, the Draft Rules contain a provision that all interlocutory applications may generally be heard singly under section 172(1A). The presiding single member will also be empowered to exercise active case management.

27. It should be noted that interlocutory applications may be heard and determined singly by the Chairman, the Deputy Chairman or a suitably qualified ordinary member appointed by the Chairman, who must be qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336). This, however, is not meant to diminish the power of the fully constituted Tribunal to hear all proceedings in general. In other words, a fully constituted Tribunal continues to retain its power to hear interlocutory applications either on its own initiative or upon request by the parties, as the case may be.

### *The Draft Rules*

28. Rule 36 provides that all proceedings not involving the final determination of an application may be heard and determined by a person specified in section 172(1A) of the Ordinance.

## **VII. PRACTICE DIRECTIONS**

29. Under the Draft Rules, the Tribunal is given power to issue practice directions from time to time to regulate its administrative matters. This will give the Tribunal flexibility in devising and revising certain administrative guidelines

for the parties to follow, having regard to its experience in adjudicating cases.

30. It is not our policy intent to make the use of practice directions mandatory under the Draft Rules. Rather, the Tribunal can exercise its power to use practice directions to regulate its practice and procedure as the Tribunal see fits. The practice direction to be issued will be confined solely to prescribing administrative guidelines of how certain provisions of the Draft Rules will operate in practice. In other words, it will be complementary to the Draft Rules rather than providing another distinct set of procedural rules. Such administrative guidelines can provide useful guidance to the parties when conducting cases.

#### *The Draft Rules*

31. Rule 29 provides that the Tribunal may regulate its own procedure and issue guidelines setting out the practice and procedure.

### **VIII. SELF-CONTAINED RULES**

32. The Copyright Tribunal Rules as currently in force refer to and apply certain provisions of the Arbitration Ordinance to regulate proceedings before the Tribunal. Section 174(2) of the Ordinance echoes this approach. However, the major drawback of this approach is that users need to cross-refer to another piece of legislation, which may be amended from time to time in future. To overcome this drawback, the Draft Rules have been designed to be self-contained and do not have direct links or cross-references to the Arbitration Ordinance. Instead, there are express provisions addressing different aspects that may arise in proceedings.

#### *The Draft Rules*

33. The Draft Rules contain provisions that empower the Tribunal to give directions on issues like preservation of evidence by parties, disclosure of documents between parties and payment of security for costs (Rule 26), award on different issues (Rule 27), correct and clarify its decisions (Rule 42). The Draft Rules also cover the Tribunal's power regarding evidence (Rules 31 to 34) and enforcement of the Tribunal's decisions (Rule 45).

## **IX. RESPONDING TO THIS CONSULTATION**

34. We now invite views on the Draft Rules. Please send your views to us on or before 9 February 2015 in one of the following ways-

By mail: Director of Intellectual Property  
Intellectual Property Department  
25th Floor, Wu Chung House,  
213 Queen's Road East,  
Wanchai,  
Hong Kong

E-mail: [co\\_ctr@ipd.gov.hk](mailto:co_ctr@ipd.gov.hk)

Fax: 2574 9102

An e-copy of this document is available at the following websites-

<http://www.ipd.gov.hk/>

<http://www.ct.gov.hk/>

A statement of personal data collection is available at **Annex C**.

Intellectual Property Department  
9 December 2014

**STAKEHOLDERS' MAIN SUBMISSIONS IN THE CONSULTATION IN 2009**

Part 1 – Submissions on the Government's proposals

<b>Proposals</b>	<b>Stakeholder Submissions</b>
Overall	<p>A. The <b>Hong Kong Bar Association</b> agreed with the principles set out in the consultation paper and had no comments thereon.</p> <p>B. The <b>Law Society of Hong Kong</b> (Law Society) welcomed the Government's commitment to providing a new set of concise and user-friendly rules to modernize the practice and procedures of the Copyright Tribunal (Tribunal). It considered that the UK experience should be monitored closely in the course of drafting the Copyright Tribunal Rules (CTRs) whilst taking into account local requirements and resources.</p> <p>C. <b>Asian Patent Attorneys Association Hong Kong Group</b> (APAA) agreed with the majority of the proposals in the consultation paper.</p> <p>D. The <b>International Federation of the Phonographic Industry Asian Regional Office</b> (IFPI Regional) supported the stated aim of the consultation to establish efficient, cost-effective and flexible procedural rules for the Tribunal. It considered that the removal of unnecessary and burdensome procedural requirements, and adoption of an efficient and enhanced adjudication process, would benefit the local licensing market and all stakeholders involved.</p> <p>E. The <b>Hong Kong Recording Industry Alliance Limited</b> (HKRIA) expressed its full support for any new rules that would make the Tribunal's practice and procedures more flexible and cost effective.</p> <p>F. <b>A member of the Tribunal</b> considered that the proposals were agreeable.</p>
Principles of civil justice reform (CJR)	<p>A. The <b>Law Society</b> –</p> <ul style="list-style-type: none"><li>• Considered that the general objectives of the CJR (for example, to facilitate the settlement of disputes) might in principle be beneficial. However, in practice, the CJR could discourage the use of the Tribunal, by adding to up front costs whilst at the same time limiting cost recovery or imposing cost sanctions on those seeking to litigate rather than</li></ul>

Proposals	Stakeholder Submissions
	<p>settle proceedings.</p> <ul style="list-style-type: none"> <li>Expressed concerns that active case management in some respects (for example, the imposition of cost sanctions in respect of defective documents) might discourage the use of the Tribunal and make it less user-friendly.</li> <li>On the other hand, it noted that it would be attractive to have a user-friendly form of case management which, for example, encouraged cases to be decided on paper.</li> <li>Noted that the effect of s.175(1) and (2) of the Copyright Ordinance (the Ordinance) should be taken into account when considering the proposed power of the Tribunal to impose cost sanctions following the CJR. In addition, the possibility of not awarding costs where the parties were unrepresented or where the case was small in nature should be considered.</li> </ul> <p>B. The <b>Hong Kong Institute of Trade Mark Practitioners (HKITMP)</b> –</p> <ul style="list-style-type: none"> <li>Agreed with, <i>inter alia</i>, the proposal to adopt the CJR underlying objectives which would be beneficial. However, it believed that the Government should not follow too closely the actual civil procedure rules as set out in the White Book<sup>1</sup>, otherwise it could well operate contrary to the Government’s intention to encourage the use of the Tribunal.</li> <li>Supported the proposed measures of active case management provided that there was flexibility in the approach that might be adopted by the Tribunal.</li> <li>Agreed with the proposed specific measures, i.e. requiring statements of truth, convening case management conferences and pre-hearing reviews, empowering the Tribunal to impose sanctions to facilitate the speedy disposal of cases and discourage parties from hiding or lying about facts or using delay tactics.</li> </ul> <p>C. The <b>Composers and Authors Society of Hong Kong Limited (CASH)</b> –</p> <ul style="list-style-type: none"> <li>Agreed that the Tribunal proceedings should be conducted in a more expeditious and cost-effective manner if the underlying objectives of the CJR were adopted in the new rules.</li> <li>Considered that it would be time and cost effective to deal with interlocutory matters in case management conferences and pre-hearing reviews as proposed.</li> <li>Noted that, for better case management, it would be sensible to empower the Tribunal to give directions, reject applications or impose cost sanctions, where appropriate, in interlocutory hearings.</li> </ul>

<sup>1</sup> i.e. the Hong Kong Civil Procedure

Proposals	Stakeholder Submissions
	<p data-bbox="524 268 797 300"><b>D. IFPI Regional –</b></p> <ul data-bbox="577 339 2139 786" style="list-style-type: none"> <li>• Supported the proposal that any new rules on tribunal adjudication be set in accordance with the underlying objectives of the CJR.</li> <li>• Supported the proposed introduction of the principles of active management.</li> <li>• Proposed the introduction of additional measures and safeguards that would ensure that the proceedings would not be abused as a tactic to avoid or delay payment to rights holders and protect the legitimate interests of parties to the proceedings. For instance, the Tribunal should be empowered to – <ul data-bbox="638 563 2139 786" style="list-style-type: none"> <li>○ order potential licensees to pay the full licence fees or deposit them with the Tribunal as a condition for hearing the case;</li> <li>○ order the user to stop using the content until the resolution of the dispute; and</li> <li>○ reject an application in whole or in part at any stage in the proceedings after giving the parties an opportunity to be heard if the Tribunal was satisfied with certain specified circumstances, for example, the application was an abuse of the Tribunal’s process.</li> </ul> </li> </ul> <p data-bbox="524 826 2139 890"><b>E. A member of the Tribunal</b> considered that the CTRs should empower the Tribunal to make the hearings much simpler and user-friendly.</p>
Standardized procedure and form	<p data-bbox="524 938 824 970"><b>A. The Law Society –</b></p> <ul data-bbox="577 1010 2139 1337" style="list-style-type: none"> <li>• Considered that the proposal on one standardized procedure and form for all types of applications/references might not work in practice given the range of matters that could be heard by the Tribunal. It noted that the form would likely become more cumbersome, particularly for the unrepresented parties, to complete.</li> <li>• Queried whether it was indeed necessary to specify the forms or the procedures (other than in general terms) in the CTRs rather than use practice directions.</li> <li>• Suggested that, if the intention was to have a “standard form” of originating motion for commencing the action and standard formats for various procedures (such as those currently used in the High Court), any proposed forms should not go beyond the bare structure prescribed for such forms in the High Court, and should otherwise be kept as simple as possible.</li> </ul>

Proposals	Stakeholder Submissions
	<p data-bbox="526 236 694 260"><b>B. APAA –</b></p> <ul data-bbox="577 308 2143 526" style="list-style-type: none"> <li data-bbox="577 308 2143 411">• Considered that it would be difficult to draft and use one standard form. This might in fact increase the complexity given the different nature of proceedings which the Tribunal could hear and determine, and the facts and legal issues in each kind of proceedings could be substantially different from others.</li> <li data-bbox="577 419 2143 483">• Recommended that the CTRs should not specify the forms to be used and the Tribunal should have discretion to make provision for appropriate forms to be used based on its experience in handling cases.</li> <li data-bbox="577 491 1848 526">• However, it did not see any major issue with the proposed adoption of one standard procedure.</li> </ul> <p data-bbox="526 566 2143 635"><b>C.</b> The <b>HKITMP</b> supported a system which was as simple and straight forward as possible provided that this would not be unnecessarily restrictive or restrain the presentation of any particular type of application/reference.</p> <p data-bbox="526 675 2143 778"><b>D. CASH</b> considered that it would indeed be easier and less confusing to select from choices in a standard form fit for all types of applications/references and that standardized procedures would be more user-friendly to the legal profession and the Tribunal.</p> <p data-bbox="526 826 795 850"><b>E. IFPI Regional –</b></p> <ul data-bbox="577 898 2143 1372" style="list-style-type: none"> <li data-bbox="577 898 2143 962">• Supported the principle of standardised procedures for all applications, as proposed in the paper, with minimum complexities for the parties.</li> <li data-bbox="577 970 2143 1074">• Urged the introduction of a specific procedural rule relating to the burden of proof in disputes concerning proposed licences or tariffs (i.e. the applicant should prove that the licence terms or tariff were unreasonable) in order to prevent bad-faith applications and unnecessary delays in the adjudication of genuine matters put before the Tribunal.</li> <li data-bbox="577 1082 2143 1372">• In order to tackle the tactical use of proceedings by prospective licensees for delaying or avoiding payment of royalties, it proposed that a duty be imposed on the applicants to state detailed grounds in the statement of case, which should include: <ul data-bbox="656 1193 2143 1372" style="list-style-type: none"> <li data-bbox="656 1193 1451 1225">○ a concise statement of facts on which the applicant relied;</li> <li data-bbox="656 1233 1518 1265">○ the statutory provision under which the application was sought;</li> <li data-bbox="656 1273 2143 1337">○ where appropriate, the terms of payment, the licence or the licensing scheme, which the applicant considered to be reasonable, with reasons supporting such position;</li> <li data-bbox="656 1345 1014 1372">○ the remedy sought; and</li> </ul> </li> </ul>

Proposals	Stakeholder Submissions
	<ul style="list-style-type: none"> <li>○ a statement of truth.</li> </ul>
Alternative dispute resolution – mediation	<p>A. The <b>Law Society</b> –</p> <ul style="list-style-type: none"> <li>• Considered that the Tribunal should itself be a forum where disputes could be easily and inexpensively resolved rather than encourage possibly time consuming and expensive ADR.</li> <li>• Suggested that the Tribunal should be constituted in a way that allowed it to act less formally and encouraged parties to use it rather than seek redress elsewhere.</li> </ul> <p>B. The <b>HKITMP</b> –</p> <p><i>Views in support of ADR</i></p> <ul style="list-style-type: none"> <li>• Considered that mediation should be encouraged as some parties might need an independent third party (like a judge or tribunal officer) to tell them that they should consider mediation/settlement and explain to them the benefits before they would rationally consider such an option. Hence the proposal to empower the Tribunal to encourage mediation and appoint mediators where parties agreed to mediate was agreeable.</li> <li>• It would be good to have a procedural step for settlement consideration as encouraged by the Tribunal officer at an early stage before substantial costs were incurred.</li> </ul> <p><i>Views against ADR</i></p> <ul style="list-style-type: none"> <li>• Believed that the parties would attempt to resolve disputes amicably without recourse to the courts or any tribunal, irrespective of whether there was any encouragement from the Tribunal. Hence it would not be necessary for the CTRs to expressly empower the Tribunal to encourage and facilitate use of mediation in appropriate cases.</li> <li>• Considered that the Tribunal should not be empowered to require ADR.</li> <li>• However, some members noted that it would be worthwhile to include a procedural step for settlement consideration after the initial pleadings, with a short window (say 4 weeks) before the next procedural step.</li> </ul>

Proposals	Stakeholder Submissions
	<p data-bbox="526 231 683 263"><b>C. CASH–</b></p> <ul data-bbox="577 308 2145 635" style="list-style-type: none"> <li>• Considered that there should be safeguards against the appointment of a mediator or a reference to mediation by the Tribunal in inappropriate cases.</li> <li>• Noted that mediators might not have the expertise to deal with very complicated issues. Further, the costs could be substantial and the mediators might also ask for deposit (and further deposit) for costs.</li> <li>• Noted that a mediator would have no power to impose a settlement and if the stay of the Tribunal proceedings had to be uplifted eventually because the mediation was unsuccessful, the additional time and costs for mediation would inevitably be wasted.</li> <li>• Suggested that the Tribunal should appoint a mediator or make a reference to mediation only in appropriate cases and with informed consent from the parties.</li> </ul> <p data-bbox="526 678 2145 782"><b>D. IFPI Regional</b> indicated that it neither supported nor objected the use of mediation to expedite dispute resolution but noted that any resort to mediation or other forms of dispute resolution as an alternative to tribunal adjudication should not be compulsory and should require the consent of both parties.</p>
Single member in adjudication	<p data-bbox="526 826 817 858"><b>A. The Law Society–</b></p> <ul data-bbox="577 901 2145 1005" style="list-style-type: none"> <li>• Suggested that, to allow flexibility, the CTRs should permit all interlocutory applications that could be heard singly to be heard by more than one Tribunal member, for example where there was a challenge to the Tribunal’s jurisdiction.</li> <li>• Considered that only a legally qualified member should adjudicate singly.</li> </ul> <p data-bbox="526 1048 795 1080"><b>B. The HKITMP –</b></p> <ul data-bbox="577 1123 2145 1307" style="list-style-type: none"> <li>• Considered that Tribunal members who were empowered to sit and adjudicate singly should be legally qualified and experienced in copyright matters.</li> <li>• Noted that there might be interlocutory matters which should ideally be dealt with by more than one Tribunal member. Accordingly, the CTRs should empower a single member to order a particular matter to be heard by a multiple member panel or allow the parties to apply for replacement of a single adjudicator by a multiple member panel.</li> </ul> <p data-bbox="526 1350 2145 1374"><b>C. CASH</b> agreed that it would be more efficient for interlocutory applications to be heard singly, provided that more</p>

Proposals	Stakeholder Submissions
	<p>complicated applications for discovery and the filing of statements of truth should be heard by a person in the legal profession.</p> <p>D. <b>IFPI Regional</b> supported the grant of powers to a single tribunal member to decide on interlocutory applications.</p> <p>E. <b>A member of the Tribunal</b> considered that the single member of the Tribunal exercising certain adjudication powers should be legally qualified.</p>
Use of practice directions (PDs)	<p>A. The <b>Law Society</b> had no objection in principle to the use of PDs (which might address issues such as the use of appropriate forms, general procedures as well as the rights of audience) for regulating proceedings. However, it suggested that there should be prior consultation before promulgation.</p> <p>B. The <b>HKITMP</b> –</p> <p><i>View against the use of PDs</i></p> <ul style="list-style-type: none"> <li>• Considered that the Government should avoid the need for PDs by ensuring that the CTRs would be as fully encompassing as they needed to be.</li> <li>• Under the current system, where the procedural principles were missing or not explicitly provided for in particular circumstances, the Tribunal panels and the parties would have regard to the manner in which such matters were dealt with in the High Court. It considered that there was no reason as to why such practice should not continue.</li> </ul> <p><i>View in support of the use of PDs</i></p> <ul style="list-style-type: none"> <li>• Noted that inevitably, there would be situations not addressed by the CTRs and it would be better to empower the Tribunal to issue PDs where appropriate, so that those involved would not be forced to follow the White Book (which might involve more complicated procedures).</li> </ul> <p>C. <b>CASH</b> considered that a set of PDs tailor-made for Tribunal proceedings would give parties useful guidance on administrative matters.</p>

Proposals	Stakeholder Submissions
	D. <b>IFPI Regional</b> had no objection to the grant of new powers to the Tribunal to issue PDs to regulate administrative measures.
Self-contained rules	<p>A. The <b>Law Society</b> –</p> <ul style="list-style-type: none"> <li>• Agreed with the approach of making the CTRs self-contained and suggested that any relevant procedures (for example, as to security for costs) should be included.</li> <li>• Indicated its preference for rules allowing the Tribunal to take a less formal approach than the Court in relation to proceedings before it, more akin to arbitration proceedings. For instance, it welcomed the provision of a rule or practice direction, similar to s. 2F of the Arbitration Ordinance (Cap. 341) (now repealed), to the effect that the relevant provisions of the Legal Practitioners Ordinance (Cap. 159) would not apply in proceedings before the Tribunal, as in arbitration proceedings, without any special leave of the Hong Kong Bar or otherwise.</li> </ul> <p>B. The <b>HKITMP</b> endorsed the proposed de-linking of the CTRs from the Arbitration Ordinance (Cap. 341).</p> <p>C. <b>CASH</b> considered that a set of self-contained rules with tailor-made provisions reflecting practices and procedures of arbitration applicable to proceedings before the Tribunal would be more user-friendly.</p> <p>D. <b>IFPI Regional</b> supported the clarification of arbitration rules relating to the Tribunal and the introduction of a set of self-contained rules as proposed.</p>

## Part 2 – Other concerns

Other concerns	Stakeholder Submissions
Introducing “small application procedure”	<p>A. The <b>Law Society</b> suggested that the Government should consider introducing a “small application procedure” which would be on paper without any hearing and each party would bear its own costs as a matter of routine (as proposed in the UK).</p> <p>B. The <b>HKITMP</b> suggested that the Government should consider the use of a small applications “fast track” system for cases of low financial value in order to improve accessibility for small businesses and individuals (as proposed in the UK). In any case, the Tribunal should have the powers to fast track and simplify low value cases should the CJR underlying objectives (proportionality) and case management flexibility be adopted.</p>
Expansion of Tribunal’s jurisdiction	<p>A. The <b>Law Society</b> suggested giving serious consideration to the expansion of the Tribunal’s role to cover a wider range of intellectual property disputes beyond its current jurisdiction although this issue was outside the terms of the consultation exercise.</p> <p>B. <b>CASH</b> proposed that amendments should be made to the Ordinance in the near future for enabling the licensing bodies to initiate applications or references.</p>

**CONSULTATION DRAFT OF  
COPYRIGHT TRIBUNAL RULES  
(DRAFT RULES)**

# Copyright Tribunal Rules

## Contents

Rule	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Commencement .....	1
2. Interpretation.....	1
3. Underlying objectives .....	2
4. Application by Tribunal of underlying objectives .....	3
5. Duty of parties and their representatives.....	3
<b>Part 2</b>	
<b>Commencement of Proceedings</b>	
6. Commencement of proceedings .....	4
7. Statement of truth in application .....	4
8. Duties of Secretary on receipt of application .....	5
9. Defective application .....	5
10. Power to reject .....	6
11. Amendment of application.....	6
12. Withdrawal of application.....	7

Rule	Page
------	------

**Part 3**

**Response to Application**

13.	Response .....	8
14.	Statement of truth in response.....	8
15.	Duties of Secretary on receipt of response.....	9
16.	Defective response .....	10
17.	Amendment of response .....	10

**Part 4**

**Publication of application and Intervention**

18.	Publication of application .....	11
19.	Request for leave to intervene.....	12
20.	Statement of truth in request for leave to intervene .....	13
21.	Duties of Secretary on receipt of request .....	14
22.	Defective request for leave to intervene.....	14
23.	Amendment of request for leave to intervene .....	14
24.	Decision of Tribunal .....	15

**Part 5**

**Case Management**

25.	Active case management.....	16
26.	Power to give orders or directions .....	17

---

Rule	Page
27. Awards on different issues .....	19
28. Failure to comply with orders or directions .....	20
29. Power to issue guidelines etc. ....	20

**Part 6**

**Mediation**

30. Mediation .....	21
---------------------	----

**Part 7**

**Evidence**

31. Powers relating to evidence .....	22
32. Expert evidence.....	23
33. Summoning of witnesses and orders to answer questions or produce documents .....	23
34. Witness statement and expert report to be verified by statement of truth .....	24

**Part 8**

**Hearing**

35. Right to be heard.....	25
36. Interlocutory proceedings .....	26
37. Hearing to be in public.....	26

Rule	Page
------	------

## **Part 9**

### **Decisions of Tribunal**

38.	Delivery of decisions .....	27
39.	Order for costs .....	27
40.	Publication of decision .....	28
41.	Effective date of order .....	29
42.	Power to correct and clarify .....	29

## **Part 10**

### **Appeal and Suspension**

43.	Bringing of appeal .....	31
44.	Suspension of decision .....	31

## **Part 11**

### **Supplementary**

45.	Enforcement of Tribunal's decisions .....	33
46.	Representation and rights of audience .....	33
47.	Address for service .....	34
48.	Service of documents on Secretary .....	34
49.	Service of documents on other persons .....	34
50.	Effective day of service .....	35
51.	Dispensation of service .....	35

---

Rule	Page
52. Right of parties or other persons to inspect, etc. documents .....	36
53. Use of language in Tribunal .....	36
54. Translation of document to be used in Tribunal .....	37
55. Fees .....	37
56. Time .....	37
57. Office hours .....	38

## **Part 12**

### **Repeal and Transitional Provision**

58. Copyright Tribunal Rules repealed .....	40
59. Transitional provision .....	40
Schedule 1 Application Form.....	41
Schedule 2 Response Form .....	45
Schedule 3 Request Form for Leave to Intervene .....	48
Schedule 4 Fees.....	51

## Copyright Tribunal Rules

(Made by the Chief Justice under sections 174 and 175 of the Copyright Ordinance (Cap. 528))

### Part 1

#### Preliminary

1. **Commencement**

These Rules come into operation on .

2. **Interpretation**

In these Rules—

**application** (申請、申請書) means an application under rule 6;

**Chairperson** (主席) means—

- (a) a chairman within the meaning of section 172(1)(a) of the Ordinance; or
- (b) a person appointed to act as chairman under section 172(4)(a) of the Ordinance;

**Court** (法庭) means the Court of First Instance;

**intervener** (介入人) means a person or organization that has requested under rule 19(1) for leave to intervene in proceedings;

**originator** (原訴人) means a person or organization that has made an application to the Tribunal;

**party** (一方、各方) means a party to proceedings, and includes an intervener;

**prescribed fee** (訂明費用), in relation to a matter, means the fee specified for that matter in Part 1 of Schedule 4;

**proceedings** (法律程序) means any proceedings before the Tribunal;

**representative** (代表), in relation to a party, means—

- (a) a person appointed to act as agent for the party under rule 46(1);
- (b) a barrister or solicitor representing the party; or
- (c) a person allowed by the Tribunal to appear on behalf of the party at any hearing before it;

**respondent** (答辯人) means a person or organization that has been named as a respondent in an application;

**response** (答辯書) means a response to an application under rule 13;

**Secretary** (秘書) means the Secretary of the Tribunal;

**statement of facts** (事實陳述) means a statement mentioned in rule 6(2)(b)(i), 13(2)(b)(i) or 19(2)(b)(i);

**Tribunal** (審裁處) means the Copyright Tribunal established under section 169(1) of the Ordinance.

### 3. Underlying objectives

The underlying objectives of these Rules are—

- (a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings;
- (b) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) to ensure fairness between the parties;
- (e) to facilitate settlement of disputes; and

- (f) to ensure that the resources of the Tribunal are distributed fairly.

**4. Application by Tribunal of underlying objectives**

- (1) The Tribunal must seek to give effect to the underlying objectives of these Rules when it exercises any of its powers or interprets any of these Rules.
- (2) In giving effect to the underlying objectives of these Rules, the Tribunal must always recognize that the primary aim in exercising its powers is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

**5. Duty of parties and their representatives**

The parties to any proceedings and their representatives must assist the Tribunal to further the underlying objectives of these Rules.

---

## Part 2

### Commencement of Proceedings

#### 6. Commencement of proceedings

- (1) Proceedings in relation to which the Tribunal has jurisdiction to hear and determine under section 173 or 233 of the Ordinance must be commenced by serving an application on the Secretary.
- (2) The application—
  - (a) must be in the form set out in Schedule 1;
  - (b) must—
    - (i) contain a concise statement of the facts in support of the application; and
    - (ii) specify the relief sought; and
  - (c) must be accompanied by—
    - (i) the prescribed fee for the application; and
    - (ii) if the application is made *inter partes*, the prescribed fee for the service of a copy of the application on the respondent.

#### 7. Statement of truth in application

- (1) A statement of facts contained in an application must be verified by a statement (*statement of truth*) that the originator believes the facts stated in the statement of facts are true.
- (2) The Tribunal may by order strike out an application if the statement of facts contained in it is not verified by a statement of truth.
- (3) The statement of truth must be signed by—

- (a) the originator; or
  - (b) the representative of the originator.
- (4) If a representative has signed the statement of truth on behalf of an originator, the Tribunal must treat the signature as the representative's statement that—
  - (a) the originator on whose behalf the representative has signed had authorized the representative to do so;
  - (b) before signing, the representative had explained to the originator that in signing the statement of truth the representative would be confirming the originator's belief that the facts stated in the statement of facts were true; and
  - (c) before signing, the representative had informed the originator of the possible consequences to the originator if it should subsequently appear that the originator did not have an honest belief in the truth of those facts.

## **8. Duties of Secretary on receipt of application**

- (1) If the Secretary receives an application served under rule 6(1), the Secretary must serve—
  - (a) an acknowledgement of receipt of the application on the originator; and
  - (b) a copy of the application on the respondent.
- (2) Subrule (1)(b) does not apply if—
  - (a) the Tribunal rejects the application under rule 10; or
  - (b) the application is made ex parte.

## **9. Defective application**

- (1) If the Tribunal considers that an application does not comply with any of the requirements under these Rules, or is

materially incomplete, or is lacking in clarity, it may give any directions that it thinks fit, including any directions it thinks necessary to ensure that those defects are remedied.

- (2) The Tribunal may, if it is satisfied that the efficient conduct of the proceedings so requires, instruct the Secretary to defer the service of a copy of the application on the respondent until the directions mentioned in subrule (1) have been complied with.

#### **10. Power to reject**

- (1) The Tribunal may, at any stage of the proceedings, reject an application if it is satisfied that—
  - (a) for a reference under section 155(1), 156(1)(b) or 157(1)(c) of the Ordinance by an originator, the originator is not reasonably representative of the class of persons that the originator claims to represent;
  - (b) for a reference under section 155(1) or 162(1) of the Ordinance, the reference is premature;
  - (c) the application discloses no reasonable ground for bringing the application; or
  - (d) the application is frivolous, vexatious or otherwise amounts to an abuse of the Tribunal's process.
- (2) If the Tribunal rejects an application under subrule (1), it may make any consequential order it thinks fit.

#### **11. Amendment of application**

- (1) An originator may amend an application only with the leave of the Tribunal.
- (2) A request for the leave mentioned in subrule (1)—
  - (a) must be made by serving on the Secretary a written notice of the request; and
  - (b) must be accompanied by—

- (i) the prescribed fee for the request; and
  - (ii) the prescribed fee for the service of a copy of the notice on the relevant parties.
- (3) If the Secretary receives a notice of the request served under subrule (2), the Secretary must serve a copy of the notice on the relevant parties.
- (4) If the Tribunal grants leave under subrule (1), it may do so on any terms it thinks fit.

## **12. Withdrawal of application**

- (1) An originator may withdraw an application only with the leave of the Tribunal.
  - (2) A request for the leave mentioned in subrule (1)—
    - (a) must be made by serving on the Secretary a written notice of the request; and
    - (b) must be accompanied by—
      - (i) the prescribed fee for the request; and
      - (ii) the prescribed fee for the service of a copy of the notice on the relevant parties.
  - (3) If the Secretary receives a notice of the request served under subrule (2), the Secretary must serve a copy of the notice on the relevant parties.
  - (4) If the Tribunal grants leave under subrule (1), it may do so on any terms it thinks fit.
-

## Part 3

### Response to Application

#### 13. Response

- (1) If a copy of an application is served on a respondent under rule 8(1)(b), the respondent may decide whether to serve on the Secretary a response.
- (2) If the respondent decides to serve a response under subrule (1), the response—
  - (a) must be in the form set out in Schedule 2;
  - (b) must—
    - (i) contain a concise statement of the facts in support of the response; and
    - (ii) specify the relief sought;
  - (c) must be accompanied by the prescribed fee for the service of a copy of the response on the originator; and
  - (d) must be served within 28 days after the application is served on the respondent or any other period that the Tribunal allows.
- (3) If the respondent does not serve a response within the period specified in subrule (2)(d), the Tribunal may treat the application as being uncontested by the respondent.

#### 14. Statement of truth in response

- (1) A statement of facts contained in a response must be verified by a statement (*statement of truth*) that the respondent believes the facts stated in the statement of facts are true.

- (2) The Tribunal may by order strike out a response if the statement of facts contained in it is not verified by a statement of truth.
- (3) The statement of truth must be signed by—
  - (a) the respondent; or
  - (b) the representative of the respondent.
- (4) If a representative has signed the statement of truth on behalf of the respondent, the Tribunal must treat the signature as the representative's statement that—
  - (a) the respondent on whose behalf the representative has signed had authorized the representative to do so;
  - (b) before signing, the representative had explained to the respondent that in signing the statement of truth the representative would be confirming the respondent's belief that the facts stated in the statement of facts were true; and
  - (c) before signing, the representative had informed the respondent of the possible consequences to the respondent if it should subsequently appear that the respondent did not have an honest belief in the truth of those facts.

## **15. Duties of Secretary on receipt of response**

If the Secretary receives a response served under rule 13(2), the Secretary must serve—

- (a) an acknowledgement of receipt of the response on the respondent; and
- (b) a copy of the response on the originator.

**16. Defective response**

- (1) If the Tribunal considers that a response does not comply with any of the requirements under these Rules, or is materially incomplete, or is lacking in clarity, it may give any directions that it thinks fit, including any directions it thinks necessary to ensure that those defects are remedied.
- (2) The Tribunal may, if it is satisfied that the efficient conduct of the proceedings so requires, instruct the Secretary to defer the service of a copy of the response on the originator until the directions mentioned in subrule (1) have been complied with.

**17. Amendment of response**

- (1) A respondent may amend a response only with the leave of the Tribunal.
  - (2) A request for the leave mentioned in subrule (1)—
    - (a) must be made by serving on the Secretary a written notice of the request; and
    - (b) must be accompanied by—
      - (i) the prescribed fee for the request; and
      - (ii) the prescribed fee for the service of a copy of the notice on the relevant parties.
  - (3) If the Secretary receives a notice of the request served under subrule (2), the Secretary must serve a copy of the notice on the relevant parties.
  - (4) If the Tribunal grants leave under subrule (1), it may do so on any terms it thinks fit.
-

## **Part 4**

### **Publication of application and Intervention**

#### **18. Publication of application**

- (1) Subject to subrule (2), the Secretary must, as soon as practicable after the receipt of the application, publish a notice of the application in a manner that the Chairperson directs unless the Tribunal rejects the application under rule 10.
- (2) If the Tribunal instructs the Secretary to defer the service of an application under rule 9(2)—
  - (a) the Secretary is not required to publish a notice under subrule (1); or
  - (b) (if the directions mentioned in rule 9(1) have been complied with) the Secretary must, as soon as practicable after the compliance of the directions, publish a notice of the application in a manner that the Chairperson directs.
- (3) The notice must contain—
  - (a) a statement that an application has been received by the Tribunal;
  - (b) a reference identifying the provision of the Ordinance under which the application is made;
  - (c) the name of the originator;
  - (d) the particulars of the relief sought by the originator;
  - (e) a summary of the principal grounds relied on by the originator; and
  - (f) a statement that a person or organization with substantial interest in the matter to which the application relates

may request under rule 19(1) for leave to intervene in the proceedings within—

- (i) 28 days after the date on which the notice is published; or
  - (ii) any other period after that date as the Chairperson directs.
- (4) The originator must pay the following amounts to the Secretary within the period specified by the Secretary—
- (a) an amount equals to the expenses incurred by the Secretary in publishing the notice; and
  - (b) an amount of \$[ \* ], being the administrative expenses of the Secretary in taking steps to publish the notice.

#### **19. Request for leave to intervene**

- (1) A person or organization with substantial interest in the matter to which an application relates may request the Tribunal for leave to intervene in the proceedings.
- (2) The request for leave—
  - (a) must be in the form set out in Schedule 3;
  - (b) must—
    - (i) contain a concise statement of the facts in support of the request; and
    - (ii) specify the relief sought; and
  - (c) must be accompanied by the prescribed fee for the request.
- (3) The request for leave must be served on the Secretary within—
  - (a) 28 days after the date on which the notice of the application is published under rule 18(1); or

- (b) the period directed by the Chairperson as mentioned in rule 18(2)(f)(ii).

**20. Statement of truth in request for leave to intervene**

- (1) A statement of facts contained in a request for leave to intervene must be verified by a statement (*statement of truth*) that the intervener believes the facts stated in the statement of facts are true.
- (2) The Tribunal may by order strike out a request if the statement of facts contained in it is not verified by a statement of truth.
- (3) The statement of truth must be signed by—
  - (a) the intervener; or
  - (b) the representative of the intervener.
- (4) If a representative has signed the statement of truth on behalf of the intervener, the Tribunal must treat the signature as the representative's statement that—
  - (a) the intervener on whose behalf the representative has signed had authorized the representative to do so;
  - (b) before signing, the representative had explained to the intervener that in signing the statement of truth the representative would be confirming the intervener's belief that the facts stated in the statement of facts were true; and
  - (c) before signing, the representative had informed the intervener of the possible consequences to the intervener if it should subsequently appear that the intervener did not have an honest belief in the truth of those facts.

**21. Duties of Secretary on receipt of request**

- (1) If the Secretary receives a request served under rule 19(3), the Secretary must—
  - (a) as soon as practicable after the expiry of the period specified in that rule, serve a notice of the request on every other party; and
  - (b) invite their observations on the request within a specified period.
- (2) The intervener must pay the Tribunal the prescribed fee for the service of the notice of the request within the period specified by the Secretary.

**22. Defective request for leave to intervene**

- (1) If the Tribunal considers that a request for leave to intervene does not comply with any of the requirements under these Rules, or is materially incomplete, or is lacking in clarity, it may give any directions that it thinks fit, including any directions it thinks necessary to ensure that those defects are remedied.
- (2) The Tribunal may, if it is satisfied that the efficient conduct of the proceedings so requires, instruct the Secretary to defer the service of a copy of the request on every other party until the directions mentioned in subrule (1) have been complied with.

**23. Amendment of request for leave to intervene**

- (1) An intervener may amend a request for leave to intervene only with the leave of the Tribunal.
- (2) A request for the leave of the Tribunal mentioned in subrule (1)—
  - (a) must be made by serving on the Secretary a written notice of the request; and

- (b) must be accompanied by—
  - (i) the prescribed fee for the request; and
  - (ii) the prescribed fee for the service of a copy of the notice on the relevant parties.
- (3) If the Secretary receives a notice of the request served under subrule (2), the Secretary must serve a copy of the notice on the relevant parties.
- (4) If the Tribunal grants leave under subrule (1), it may do so on any terms it thinks fit.

**24. Decision of Tribunal**

On request under rule 19, the Tribunal may grant the leave to intervene on any terms it thinks fit, if it is satisfied that the intervener has a substantial interest in the matter to which the application relates.

---

## **Part 5**

### **Case Management**

#### **25. Active case management**

- (1) The Tribunal must further the underlying objectives of these Rules set out in rule 3 by actively managing cases.
- (2) Active case management includes—
  - (a) encouraging the parties to cooperate with each other in the conduct of the proceedings;
  - (b) identifying the issues at an early stage;
  - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
  - (d) deciding the order in which the issues are to be resolved;
  - (e) encouraging the parties to use an alternative dispute resolution procedure (including in particular mediation) if the Tribunal considers that appropriate, and facilitating the use of such a procedure;
  - (f) helping the parties to settle the whole or part of the case;
  - (g) fixing timetables or otherwise controlling the progress of the case;
  - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
  - (i) dealing with as many aspects of the case as practicable on the same occasion;
  - (j) dealing with the case without the parties needing to attend before the Tribunal;
  - (k) making use of technology;

- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently; and
- (m) giving appropriate orders or directions under these Rules to remedy any non-compliance with these Rules or an order or direction of the Tribunal, or to sanction against such a non-compliance.

## **26. Power to give orders or directions**

- (1) The Tribunal may at any stage of the proceedings, whether on its own initiative or at the request of a party, give—
  - (a) any order or direction specified in subrule (4); or
  - (b) any other order or direction that it thinks fit to secure the just, expeditious and economical conduct of the proceedings.
- (2) A request mentioned in subrule (1)—
  - (a) must be made by serving on the Secretary a written notice of the request; and
  - (b) must be accompanied by—
    - (i) the prescribed fee for the request; and
    - (ii) the prescribed fee for the service of a copy of the notice on the relevant parties.
- (3) If the Secretary receives a notice of the request served under subrule (2)(a) and considers it appropriate to do so, the Secretary must serve a copy of the notice and any documents in support of the request on the relevant parties.
- (4) The order or direction mentioned in subrule (1)(a) is one that—
  - (a) specifies the manner in which the proceedings are to be conducted;
  - (b) requires a party to serve a document on any other party;

- (c) requires a party to file with the Tribunal or serve on any other party additional statements or particulars;
- (d) directs that any matter be disposed of or otherwise dealt with as a preliminary issue;
- (e) strikes out an application or response in whole or in part, or disposes of the proceedings summarily;
- (f) stays the whole or part of the proceedings or any decision of the Tribunal, either permanently or for a period specified in the order or direction;
- (g) requires a party to prepare a statement setting out any arguments in a summary form and serve a copy of the statement on any other party;
- (h) specifies the scope and nature of evidence that is required in the proceedings;
- (i) specifies the manner in which evidence may be admitted or given, including giving evidence through the use of any audio-visual technology;
- (j) decides the persons to be called to give evidence before the Tribunal or to produce documents;
- (k) specifies the manner in which witnesses are to be cross-examined;
- (l) requires all or any of the parties to preserve evidence that may be material to the resolution of the matter in dispute;
- (m) sets a time limit to be complied with in relation to the proceedings;
- (n) fixes, extends or shortens the time for compliance with any of these Rules, or any decision of the Tribunal;

- (o) provides for the disclosure of documents between the parties and the production or inspection of documents by those parties;
  - (p) regulates the use or further disclosure of a document that has been disclosed in the proceedings, irrespective of whether it has been read to or by the Tribunal, or referred to at a hearing held in public;
  - (q) awards costs to or against a party;
  - (r) requires a party to give security for costs;
  - (s) requires that 2 or more applications involving the same licensing scheme or copyright licence, or involving the same or similar issues be consolidated or heard together;
  - (t) requires a party to provide a translation of a document or part of a document into one or both of the official languages; and
  - (u) (if a party or witness for a party addresses the Tribunal or testifies in the proceedings in an official language with which the other party is not familiar or in a language other than the official languages) requires the party to provide for interpretation into the official language with which that other party is familiar.
- (5) In subrule (4)(s)—
- copyright licence** (版權特許) means a copyright licence as defined by section 145(2) of the Ordinance;
- licensing scheme** (特許計劃) means a licensing scheme as defined by section 145(1) of the Ordinance.

## 27. Awards on different issues

The Tribunal may make more than one award at different times on different aspects of the matters to be determined.

**28. Failure to comply with orders or directions**

If a party fails to comply with any order or direction given by the Tribunal in accordance with these Rules, then without affecting its other powers under these Rules, the Tribunal may, if it considers that the justice of the case so requires—

- (a) order that the party be debarred from taking any further part in the proceedings without the leave of the Tribunal; and
- (b) give any consequential orders or directions it thinks necessary.

**29. Power to issue guidelines etc.**

Subject to the Ordinance and these Rules, the Tribunal may—

- (a) regulate its own procedure; and
  - (b) issue guidelines setting out the practice and procedure to be followed in relation to the compliance with these Rules.
-

## **Part 6**

### **Mediation**

#### **30. Mediation**

- (1) If the parties wish to engage in mediation, they must first attempt to reach agreement on the appointment of a mediator.
  - (2) If the parties fail to reach agreement on the appointment of a mediator, they may make a joint request to the Tribunal for the appointment of a mediator by the Tribunal.
  - (3) A joint request mentioned in subrule (2)—
    - (a) must be made by serving on the Secretary a written notice of the request; and
    - (b) must be accompanied by the prescribed fee for the request.
  - (4) The appointment of a mediator by the Tribunal is not subject to appeal.
-

## **Part 7**

### **Evidence**

#### **31. Powers relating to evidence**

- (1) The Tribunal is not bound by the rules of evidence in any proceedings and may—
  - (a) receive any evidence that the Tribunal considers relevant to determining the proceedings; and
  - (b) give the weight that the Tribunal considers appropriate to any evidence received by it.
- (2) The Tribunal may give directions as to—
  - (a) the issues on which the evidence is required;
  - (b) the nature of the evidence required to decide on those issues; and
  - (c) the manner in which the evidence is to be admitted or given.
- (3) The Tribunal may exclude the evidence that would otherwise be admissible if—
  - (a) the evidence was not given within the time allowed by the Tribunal or otherwise in a manner specified by the Tribunal under these Rules;
  - (b) it would be unfair to admit the evidence;
  - (c) the evidence is not proportionate to the issues of the case; or
  - (d) the evidence is not necessary for the fair disposal of the case.
- (4) The Tribunal may—
  - (a) administer oaths and affirmations; and

- (b) examine on oath or affirmation any person attending before it.

### **32. Expert evidence**

- (1) Expert evidence must be restricted to that which is proportionate to the issues of the case and necessary for the fair disposal of the case.
- (2) A party must not call an expert or put in expert evidence without the leave of the Tribunal.

### **33. Summoning of witnesses and orders to answer questions or produce documents**

- (1) The Tribunal may—
  - (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons; or
  - (b) order any person to answer any question or produce any document in the person's possession or custody or power that relates to any issue in the proceedings.
- (2) Despite subrule (1), a person must not be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law.
- (3) Subrule (2) does not entitle a person to refuse to give any evidence or produce any document on the ground only that the evidence or document would not be admissible in a court of law and that accordingly the person could not be compelled to give or produce it.
- (4) If a person summoned under subrule (1)(a) is not a party, the Tribunal may allow for the person a professional witness allowance, expert witness allowance or loss allowance not exceeding the professional witness allowance, expert witness

allowance or loss allowance that may be allowed under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) for a witness who attends to give evidence in criminal proceedings.

**34. Witness statement and expert report to be verified by statement of truth**

- (1) A witness statement or expert report served in proceedings must be verified by a statement (*statement of truth*) that the maker believes the facts stated in the witness statement or expert report are true and (if applicable) the opinion expressed in it is honestly held.
  - (2) The Tribunal may by order direct that a witness statement or expert report that is not verified by a statement of truth be inadmissible as evidence in proceedings.
  - (3) The statement of truth for a witness statement or expert report must be signed by the maker of the statement or report.
-

## **Part 8**

### **Hearing**

#### **35. Right to be heard**

- (1) The Tribunal must, before making any decision on any matter under the Ordinance or these Rules that is or may be adverse to any party, give that party an opportunity—
  - (a) of being heard at an oral hearing; or
  - (b) of making submissions in writing.
- (2) If an oral hearing is to be held, the Tribunal must give the party referred to in subrule (1) at least 14 days' notice of the time and place fixed for the hearing unless the party consents to a shorter notice.
- (3) If a party who is notified of the hearing under subrule (2) intends to appear at the oral hearing, the party must serve on the Secretary a written notice of the intention within the time specified by the Tribunal.
- (4) The Tribunal may determine a matter without an oral hearing if at least one of the following circumstances applies in relation to each party notified of the hearing under subrule (2)—
  - (a) the party has informed the Tribunal that the party elects to have the matter decided by the Tribunal without an oral hearing;
  - (b) the party has informed the Tribunal that the party does not intend to appear at the oral hearing;
  - (c) the party has not indicated to the Tribunal that the party intends to appear at the oral hearing;
  - (d) the party does not attend the oral hearing.

**36. Interlocutory proceedings**

For the purposes of section 172(1A) of the Ordinance, all proceedings not involving the final determination of an application may be heard and determined by a person specified in that section.

**37. Hearing to be in public**

An oral hearing before the Tribunal must be in public unless the Tribunal, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs.

---

## Part 9

### Decisions of Tribunal

#### 38. Delivery of decisions

- (1) A decision of the Tribunal and the reasons for the decision may be delivered orally or in writing as the Tribunal thinks fit.
- (2) Even if the decision and the reasons for it have been delivered orally, the Tribunal must record the decision and the reasons in writing if a party—
  - (a) informs the Tribunal of the intention to bring an appeal under section 176 of the Ordinance; and
  - (b) serves on the Secretary a written notice of a request that the decision and the reasons be recorded in writing.
- (3) If a decision of the Tribunal and the reasons for it are delivered or recorded in writing, the Secretary must as soon as practicable serve on every party a copy of the decision and the reasons.

#### 39. Order for costs

- (1) For the purposes of section 175(1) of the Ordinance, the Tribunal may, in any of the following special circumstances, order a party (*paying party*) to pay the costs of another party for the whole or part of the proceedings—
  - (a) there is no reasonable ground for the paying party to—
    - (i) make the application or response; or
    - (ii) make any request under these Rules;
  - (b) the paying party has conducted the case in a frivolous or vexatious manner, or has otherwise abused the process of the Tribunal;

- (c) the paying party has contravened a requirement of these Rules or an order or a direction given by the Tribunal;
  - (d) the paying party has conducted the proceedings in a way that—
    - (i) gives rise, or is likely to give rise, to a substantial risk that any issue in the proceedings will not be resolved fairly;
    - (ii) causes, or is likely to cause, serious prejudice to the other party; or
    - (iii) unreasonably or unnecessarily causes the other party to incur a significant amount of costs in relation to the proceedings;
  - (e) the paying party has made, or caused to be made, a false statement in a statement of facts, witness statement or expert report verified by a statement of truth, without an honest belief in its truth.
- (2) The Tribunal may direct that the costs ordered under subrule (1) are to be paid immediately or at the time that the Tribunal may otherwise specify.
- (3) In subrule (1)(e)—
- statement of truth*** (屬實申述) means a statement of truth mentioned in rule 7, 14, 20 or 34.

#### **40. Publication of decision**

If a decision of the Tribunal is delivered or recorded in writing, the Secretary must arrange for the decision to be published in a manner that the Tribunal directs.

**41. Effective date of order**

Unless the operation of an order of the Tribunal is suspended by the Tribunal, the order takes effect from the date, and remains in force for the period, specified in the order.

**42. Power to correct and clarify**

- (1) The Tribunal may—
  - (a) whether on its own initiative or at the request of a party, correct in its decision or any document produced by it any clerical or typographical errors or any other accidental slip or omission; and
  - (b) whether on its own initiative or at the joint request of all parties, clarify any ambiguity in its decision or any document produced by it.
- (2) If a party makes a request mentioned in subrule (1)(a), the party must—
  - (a) serve on the Secretary a written notice of the request; and
  - (b) at the same time or as soon as practicable after the request has been made, serve a notice of the request on every other party.
- (3) If all the parties make a joint request mentioned in subrule (1)(b), the parties must serve on the Secretary a written notice of the request.
- (4) A request mentioned in subrule (1)(a) or (b) must be made within 7 days after the date on which the decision or document is made or produced.
- (5) If a decision delivered orally is subsequently recorded in writing, the 7-day period specified in subrule (4) begins to run from the date on which the decision is recorded in writing.

- 
- (6) If the Tribunal considers the request to be justified, it must make the correction or clarification within 7 days after the date on which the request is made.
  - (7) If the Tribunal makes any correction or clarification on its own initiative or under subrule (6), it must—
    - (a) serve a notice of the correction or clarification on all parties; and
    - (b) make any consequential amendment to any information published in relation to the decision or document.
  - (8) If the Tribunal makes any clarification on its own initiative or under subrule (6), the clarification forms part of the decision of the Tribunal.
-

## **Part 10**

### **Appeal and Suspension**

#### **43. Bringing of appeal**

An appeal to the Court under section 176 of the Ordinance on a point of law arising from a decision of the Tribunal must be brought within—

- (a) 28 days after the date on which the decision is delivered or recorded in writing;
- (b) if the Tribunal has made a correction or clarification under rule 42(1) in relation to the decision, 28 days after the date on which the correction or clarification is made; or
- (c) a further period that the Court allows.

#### **44. Suspension of decision**

- (1) Unless the Tribunal orders otherwise, an appeal under rule 43 does not operate as a stay of the decision appealed against.
- (2) Pending the determination of an appeal under rule 43, a party may request the Tribunal to suspend the operation of the decision appealed against.
- (3) The request mentioned in subrule (2)—
  - (a) must be in writing;
  - (b) must be accompanied by the prescribed fee for the request; and
  - (c) must be served on the Secretary and every other party within 7 days after the date on which the appeal is brought.

- 
- (4) A party on whom a request is served under subrule (3) must indicate whether the party consents or objects to the request.
  - (5) The indication must—
    - (a) be in writing; and
    - (b) be served on the Secretary within 7 days after the request is served on the party.
  - (6) At the request of a party under subrule (2), the Tribunal may suspend the operation of the decision appealed against subject to any terms and conditions it thinks fit, and for this purposes, the Tribunal may endorse a consent order if all parties have consented to the suspension.
  - (7) If the operation of the decision is suspended under subrule (6), the Secretary must—
    - (a) serve a notice of the suspension on all parties; and
    - (b) if the decision has been published under rule 40, arrange for the notice to be published in the same manner.
-

## **Part 11**

### **Supplementary**

#### **45. Enforcement of Tribunal's decisions**

- (1) A decision of the Tribunal may be enforced in the same manner as a judgment, order or direction of the Court that has the same effect, but only with the leave of the Court.
- (2) If leave is granted under subrule (1), the Court may enter judgment in terms of the decision of the Tribunal.

#### **46. Representation and rights of audience**

- (1) Subject to subrule (5), a party may, at any stage of the proceedings, appoint another person to act as agent for the party in the proceedings.
- (2) The appointment or its termination is not effective unless—
  - (a) the appointment or termination is made in writing;
  - (b) a notice of the appointment or termination has been served on the Secretary; and
  - (c) a copy of the notice has been served by the Secretary on every other party.
- (3) The notice under subrule (2)(b) must be accompanied by the prescribed fee for the service of a copy of the notice on every other party.
- (4) Only 1 agent may be appointed to act for a party at any one time.
- (5) A party must be represented at any hearing before the Tribunal by a barrister or solicitor, or by any other person allowed by the Tribunal to appear on behalf of the party. But a party who is a natural person may appear in person.

**47. Address for service**

- (1) An originator, a respondent and an intervener must provide in the application, response or request for leave to intervene under rule 19 an address for service in Hong Kong.
- (2) Service of documents at the address is to be regarded as good service for the purposes of the proceedings.
- (3) A party may change an address of service by serving a written notice of the new address on—
  - (a) the Secretary; and
  - (b) every other party.

**48. Service of documents on Secretary**

A document required or authorized by the Ordinance or these Rules to be served on the Secretary for the purposes of any proceedings may only be served by—

- (a) delivering it personally to the Secretary at the office of the Tribunal during the office hours of the Tribunal; or
- (b) sending it to the Secretary by post.

**49. Service of documents on other persons**

- (1) A document required or authorized by the Ordinance or these Rules to be served on a person other than the Secretary for the purposes of any proceedings may only be served by leaving it at, or sending it by post to, the person's address for service in Hong Kong.
- (2) If no address for service in Hong Kong is provided, the document may only be served by—
  - (a) leaving it at or sending it by post to—
    - (i) if the person is a body corporate, the person's registered office in Hong Kong;

- (ii) the person's principal place of business in Hong Kong; or
- (iii) the person's last known address in Hong Kong;
- (b) if the person to be served is a licensing body that is not a body corporate, sending it to the manager, secretary or other similar officer of the licensing body.
- (3) In this rule—  
***licensing body*** (特許機構) means a licensing body as defined by section 145(4) of the Ordinance.

## 50. Effective day of service

- (1) If a document is served by post, the service is presumed, unless there is evidence to the contrary, to be effected—
  - (a) for registered post, on the fourth working day after posting; and
  - (b) for ordinary post, on the second working day after posting.
- (2) In this rule—

***working day*** (工作日) means a day that is not—

- (a) a public holiday; or
- (b) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

## 51. Dispensation of service

Despite anything in these Rules, the Tribunal may direct that service of any document be dispensed with or effected otherwise than in the manner specified in these Rules.

**52. Right of parties or other persons to inspect, etc. documents**

- (1) A party to any proceedings may, on payment of the prescribed fee, search, inspect and obtain a copy of any of the documents served on the Secretary in respect of the proceedings.
- (2) A person (other than a party to the proceedings concerned) may, on payment of the prescribed fee, search, inspect and obtain a copy of any of the following documents—
  - (a) an application served on the Secretary in respect of the proceedings; and
  - (b) a decision in writing made by the Tribunal involving the final determination of an application or the written reasons for that decision given by the Tribunal.
- (3) The party or person may search, inspect and obtain the documents during the hours that the Secretary may direct.

**53. Use of language in Tribunal**

- (1) The Tribunal may use either or both of the official languages in any proceedings as it considers appropriate for the just, expeditious and economical conduct of the proceedings.
- (2) The decision of the Tribunal under subrule (1) is final.
- (3) A party to, or a witness in, any proceedings may—
  - (a) use either or both of the official languages; and
  - (b) address the Tribunal or testify in any language.
- (4) A legal representative in any proceedings may use either or both of the official languages.
- (5) A party may serve a document on the Tribunal for the purpose of any proceedings in either official language.
- (6) A party may serve a document on another party or person for the purpose of any proceedings in either official language.

- (7) In this rule, a reference to any proceedings includes a part of the proceedings.

**54. Translation of document to be used in Tribunal**

- (1) Where a person serves a document or part of a document that is not in one of the official languages in any proceedings, the Tribunal may order that person to provide a translation of the document or that part into one or both of the official languages within the period specified by the Tribunal.
- (2) The translation of a document—
- (a) must be agreed by the parties; or
  - (b) if the translation is not agreed by the parties under paragraph (a), must be verified to the satisfaction of the Tribunal as corresponding to the original text of the document.

**55. Fees**

- (1) If a party requests any service or matter described in column 2 of Part 2 of Schedule 4, the party is to pay the Tribunal, at the time of making the request, a fee specified in column 3 of that Part opposite to the description.
- (2) If a party requests for a taxation of a bill of costs under section 175(1) of the Ordinance, the party is to pay to the Tribunal, at the time of making the request, a fee of \$[ \* ] for every \$100 or fraction of \$100 of the amount claimed by the party.

**56. Time**

- (1) A period of time fixed by these Rules or by any order, direction or other decision of the Tribunal for doing any act is to be computed in accordance with this rule.

- (2) If the act is required to be done within a specified period after or from the occurrence of an event, the period begins immediately after the date on which the event occurs.
- (3) If the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
- (4) If the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.
- (5) If the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.
- (6) If, apart from this subrule, the period in question, being a period of 7 days or less, would include a general holiday, that day is to be excluded.
- (7) The word **month** (月), if it occurs in any order, direction or other decision of the Tribunal or in any other document forming part of any proceedings, means a calendar month unless the context otherwise requires.

## **57. Office hours**

- (1) The office of the Tribunal is open between the hours of 9 a.m. and 12:30 p.m. and between the hours of 1:30 p.m. and 5:48 p.m. on every day of the year except a day that is—
  - (a) a Saturday;
  - (b) a public holiday; or
  - (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

- 
- (2) Despite subrule (1), the office of the Tribunal may be open at such time or on such days as directed by the Chairman of the Tribunal appointed under section 169(2)(a) of the Ordinance.
-

## **Part 12**

### **Repeal and Transitional Provision**

**58. Copyright Tribunal Rules repealed**

The Copyright Tribunal Rules (Cap. 528 sub. leg. C) are repealed.

**59. Transitional provision**

Any proceedings commenced before the commencement date of these Rules and pending immediately before the commencement date must continue in accordance with these Rules.

---

**Schedule 1**

[r. 6]

**Application Form****Part 1—Basic Information**

Case number *(to be assigned by the Secretary of the Copyright Tribunal)*—

Name and address of the originator<sup>Note 1</sup>—

Name and address of the respondent—

Originator's address for service in Hong Kong<sup>Note 2</sup>—

The application is (*tick appropriate box*)—

☐ inter partes

☐ ex parte

Name and address of the agent (if any) whom the originator has appointed to act —

## **Part 2—Grounds of Application and Relief Sought**

Statement of facts giving rise to the application—

Provision(s) of the Copyright Ordinance (Cap. 528) under which the application is made—

Relief sought—

---

I believe that the facts stated in the statement of facts in Part 2 of this Form are true.<sup>Note 3</sup>

Signed

Position or office held  
(if signing on behalf of  
a firm or corporation)

Date

Notes:

1. An originator is a person or organization that makes—
  - (a) an application or a reference to the Copyright Tribunal under section 155(1), 156(1), 157(1), 158(1) or (2), 159(1), 162(1), 163(1), 165(1), 213(1) or 213A(1) of the Copyright Ordinance (Cap. 528); or
  - (b) an application in relation to a matter to which the Copyright Tribunal has jurisdiction to determine under—
    - (i) section 14(2) of the Copyright Ordinance (Cap. 528);
    - (ii) paragraph 6 or 14(3) of Schedule 2 to the Copyright Ordinance (Cap. 528); or
    - (iii) paragraph 6 of Schedule 3 to the Copyright

Ordinance (Cap. 528).

2. A party may change an address for service by serving a written notice of the new address on the Secretary of the Copyright Tribunal and every other party. Unless the written notice has been so served, service of documents at the party's last known address for service is to be regarded as good service for the purposes of the proceedings.
  3. (a) The Copyright Tribunal may strike out this application if the facts stated in the statement of facts in Part 2 of this Form are not verified by the originator.  
  
(b) If a party has made, or caused to be made, a false statement in the statement of facts in Part 2 of this Form without an honest belief in its truth, the Copyright Tribunal may order the party to pay the costs of another party for the whole or part of the proceedings.
-

**Schedule 2**

[r. 13]

**Response Form****Part 1—Basic Information**

Title of proceedings and case number—
Name and address of the respondent—
Respondent's address for service in Hong Kong <sup>Note 1</sup> —
Name and address of the agent (if any) whom the respondent has appointed to act —

**Part 2—Grounds of Response and Relief Sought**

Statement of facts on which the respondent relies—

Legal basis on which the respondent relies—

Relief sought—

I believe that the facts stated in the statement of facts in Part 2 of this Form are true.<sup>Note 2</sup>

Signed

Position or office held  
(if signing on behalf of  
a firm or corporation)

Date

## Notes:

1. A party may change an address for service by serving a written notice of the new address on the Secretary of the Copyright Tribunal and every other party. Unless the written notice has been so served, service of documents at the party's last known address for service is to be regarded as good service for the purposes of the proceedings.
  2. (a) The Copyright Tribunal may strike out this response if the facts stated in the statement of facts in Part 2 of this Form are not verified by the respondent.  
  
(b) If a party has made, or caused to be made, a false statement in the statement of facts in Part 2 of this Form without an honest belief in its truth, the Copyright Tribunal may order the party to pay the costs of another party for the whole or part of the proceedings.
-

**Schedule 3**

[r. 19]

**Request Form for Leave to Intervene****Part 1—Basic Information**

Title of proceedings and case number—
Name and address of the person or organization wishing to intervene Note 1—
Address for service in Hong Kong of the person or organization wishing to intervene <sup>Note 2</sup> —
Name and address of the agent (if any) whom the person or organization wishing to intervene has appointed to act —

**Part 2—Grounds of Intervention and Relief Sought**

Statement of facts on which the person or organization wishing to intervene relies—

Legal basis on which the person or organization wishing to intervene relies—

Relief sought—

I believe that the facts stated in the statement of facts in Part 2 of this Form are true.<sup>Note 3</sup>

Signed

--

Position or office held  
(if signing on behalf of  
a firm or corporation)

--

Date

--

Notes:

1. A person or organization with substantial interest in the matter to which an application relates may request the Copyright Tribunal for leave to intervene in the proceedings.
2. A party may change an address for service by serving a written notice of the new address on the Secretary of the Copyright Tribunal and every other party. Unless the written notice has been so served, service of documents at the party's last known address for service is to be regarded as good service for the purposes of the proceedings.
3. (a) The Copyright Tribunal may strike out this request for leave to intervene if the facts stated in the statement of facts in Part 2 of this Form are not verified by the person or organization wishing to intervene.  
  
(b) If a party has made, or caused to be made, a false statement in the statement of facts in Part 2 of this Form without an honest belief in its truth, the Copyright Tribunal may order the party to pay the costs of another party for the whole or part of the proceedings.

---

**Schedule 4**

[r. 2 &amp; 55]

**Fees****Part 1**

Column 1 Item	Column 2 Matter	Column 3 Fee
1.	An application under rule 6	\$[ * ]
2.	Service of a copy of an application under rule 6	\$[ * ] per copy served
3.	Request for leave to amend an application under rule 11	\$[ * ]
4.	Service of a copy of a notice of request under rule 11	\$[ * ] per copy served
5.	Request for leave to withdraw an application under rule 12	\$[ * ]
6.	Service of a copy of a notice of request under rule 12	\$[ * ] per copy served
7.	Service of a copy of a response under rule 13	\$[ * ] per copy served
8.	Request for leave to amend a response under rule 17	\$[ * ]

Column 1 Item	Column 2 Matter	Column 3 Fee
9.	Service of a copy of a notice of request under rule 17	\$[ * ] per copy served
10.	Request for leave to intervene in proceedings under rule 19	\$[ * ]
11.	Service of a notice of a request for leave to intervene under rule 21	\$[ * ] per copy served
12.	Request for leave to amend a request for leave to intervene under rule 23	\$[ * ]
13.	Service of a copy of a notice of request under rule 23	\$[ * ] per copy served
14.	Request for an order or direction of the Tribunal under rule 26	\$[ * ]
15.	Service of a copy of a notice of request under rule 26	\$[ * ] per copy served
16.	Request to appoint a mediator under rule 30	\$[ * ]
17.	Request to suspend the operation of a decision of the Tribunal under rule 44	\$[ * ]
18.	Service of a copy of a notice of appointment of an agent or its termination under rule 46	\$[ * ] per copy served
19.	Inspection, search and obtain a copy of a document under rule 52	\$[ * ] per

Column 1	Column 2	Column 3
Item	Matter	Fee
		document

## Part 2

Column 1	Column 2	Column 3
Item	Service or matter	Fee Per page
1.	(a) For a copy of a document typed in the Tribunal and certification of the copy	\$[ * ]
	(b) For additional copies	\$[ * ]
2.	(a) For a photostatic copy of a document	\$[ * ]
	(b) For a photostatic copy of a document and certification of the copy	\$[ * ]

Chief Justice

2014

---

### **Explanatory Note**

These Rules regulate the proceedings before the Copyright Tribunal (*the Tribunal*), as to the fees chargeable in respect of the proceedings, and as to the enforcement of orders made by the Tribunal.

2. There are 12 Parts and 4 Schedules in these Rules.
3. Part 1 contains the definitions used in these Rules and sets out the underlying objectives of these Rules. Part 1 also contains rules requiring the Tribunal to give effect to the underlying objectives and requiring the parties and their representatives to assist the Tribunal to further the underlying objectives.
4. Part 2 sets out the procedure for making an application to the Tribunal, the Tribunal's power to reject an application and the originator's power to amend or withdraw an application.
5. Part 3 sets out the procedure for responding to an application.
6. Part 4 sets out requirements for publication of an application and the procedure for intervening in the proceedings before the Tribunal.
7. Part 5 sets out the Tribunal's power relating to case management.
8. Part 6 deals with the procedure for mediation.
9. Part 7 contains the rules relating to evidence.
10. Part 8 sets out the rules that apply to a hearing.
11. Part 9 contains the rules relating to the delivery of decisions, costs orders, publication of decisions, the effective date of an order and the Tribunal's power to make corrections and clarifications.
12. Part 10 sets out the rules that apply to an appeal and to a suspension of the operation of the decision appealed against.

13. Part 11 contains supplementary provisions, including rules on enforcement of the Tribunal's decisions, representation and rights of audience, address for service, service of documents and fees.
14. Part 12 repeals the existing Copyright Tribunal Rules (Cap. 528 sub. leg. C) and contains a transitional provision.
15. Schedules 1, 2 and 3 set out the forms required under these Rules.
16. Schedule 4 specifies the fee chargeable in respect of the proceedings before the Tribunal.

**STATEMENT OF PERSONAL DATA COLLECTION**

It is voluntary for members of the public to supply their personal data when providing views on this consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise. The submissions and personal data collected may be passed to relevant Government bureaux and departments for purposes directly related to this consultation exercise.

2. We may publish the submissions made in response to this consultation note for public viewing after the conclusion of the consultation exercise. If you do not wish your name or your affiliation (or both) to be disclosed, please state so when making your submission.

3. Any sender providing personal data to us in the submission will have the rights of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing to -

By mail: Director of Intellectual Property  
Intellectual Property Department  
25th Floor, Wu Chung House,  
213 Queen's Road East,  
Wanchai,  
Hong Kong

E-mail: [co\\_ctr@ipd.gov.hk](mailto:co_ctr@ipd.gov.hk)

Fax: 2574 9102