

立法會
Legislative Council

LC Paper No. CB(1)632/14-15(06)

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Panel on Commerce and Industry

Meeting on 17 March 2015

**Information note on
Copyright Tribunal and the updating of Copyright Tribunal Rules**

Purpose

This paper provides background information on the Copyright Tribunal ("the Tribunal") and the updating of the Copyright Tribunal Rules. The subject matter has not been discussed by the Panel on Commerce and Industry.

Copyright Tribunal

2. The Tribunal is an independent, quasi-judicial body established on 1 December 1997 under section 169 of the Copyright Ordinance ("the Ordinance") (Cap. 528). The Tribunal consists of a Chairman, a Deputy Chairman and seven members appointed by the Chief Executive. According to the Ordinance, the Chairman and Deputy Chairman must be qualified for appointment as a District Judge under the District Court Ordinance (Cap. 336). The membership of the Tribunal is in **Appendix**.

3. The main function of the Tribunal is to hear and resolve specific types of disputes relating to the use or licensing of copyright works. Sections 173 and 233 of the Ordinance set out the types of cases that the Tribunal has power to hear and determine. These 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.

4. The Tribunal is entitled to conclusively establish the facts of a case and to come to a decision which is reasonable in the light of those facts. Hearings in the Tribunal would normally be conducted in public. Its decisions are appealable to the Court of First Instance only on points of law.

Updating of Copyright Tribunal Rules

5. Section 174(1) of the Ordinance empowers the Chief Justice to make rules for regulating the proceedings before the Tribunal. The Copyright Tribunal Rules currently in force are set out in Cap. 528C. The Administration has been working to update the Copyright Tribunal Rules to provide a new set of concise and user-friendly rules to modernize the practice and procedure of the Tribunal. A public consultation¹ was launched from 31 August to 30 September 2009 inviting views from the community, in particular the professional bodies and copyright licensing bodies, on the drafting approach and direction for a new set of Copyright Tribunal Rules. Having taken into account the views received as well as the contemporary dispute resolution practices and development, the Administration has prepared a new set of draft Copyright Tribunal Rules ("the Draft Rules") for further consultation.

6. According to the Administration, 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. 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;

¹ Source: Government press release on 31 August 2009.
<http://www.info.gov.hk/gia/general/200908/31/P200908310188.htm>

- (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.

Recent development

7. The Administration has launched a two-month consultation exercise² from 9 December 2014 to 9 February 2015 to invite views from stakeholders on the Draft Rules. Having regard to the views received, the Administration will finalize the Draft Rules for submission to the Chief Justice for consideration. Subject to the making of the new set of rules by the Chief Justice pursuant to section 174(1) of the Ordinance, the Administration plans to introduce the subsidiary legislation into the Legislation Council for negative vetting in the 2015-2016 legislative session³.

Latest position

8. The Administration will brief the Panel on Commerce and Industry on 17 March 2015 on the proposal for a new set of Copyright Tribunal Rules to modernize the practice and procedures of the Tribunal and the views received in the consultation exercise.

Council Business Division 1
Legislative Council Secretariat
 12 March 2015

² Source: Government press release on 9 December 2014.

(http://www.ipd.gov.hk/eng/pub_press/press_releases/2014/20141209/press_release.pdf)

³ Paragraph 9 of Administration Paper [LC Paper No. CB\(1\)340/14-15\(01\)](#).

**Membership of the Copyright Tribunal¹
(from 1 December 2013 to 30 November 2015)**

Chairman

Mr Huen WONG, BBS, JP

Deputy Chairman

Mr Anthony TONG Tat-hay

Members

Dr Sunny CHAI Ngai-chiu

Ms Rebecca CHAN Ching-chu

Mr Dewitt CHIK Koon-yin

Ms Grace CHU Hing-wah

Ms Norris LAM Man-ngar

Dr Jack LAU

Mr Kenneth WONG Wing-yan

¹ Source: Website of the Copyright Tribunal.
(<http://www.ct.gov.hk/eng/membership.html>)
Government press release on 8 November 2013.
(<http://www.info.gov.hk/gia/general/201311/08/P201311080211.htm>)