

立法會
Legislative Council

LC Paper No. CB(1)1360/16-17
(These minutes have been seen
by the Administration)

Ref : CB1/SS/7/16

Subcommittee on Copyright Tribunal Rules

First meeting on
Friday, 24 March 2017, at 10:00 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon Dennis KWOK Wing-hang

Public officers attending : Agenda Item II
Commerce and Economic Development Bureau

Ms Fabia TAM
Principal Assistant Secretary
for Commerce and Economic Development
(Commerce and Industry) 3

Intellectual Property Department

Ms Joyce POON
Assistant Director of Intellectual Property
(Copyright)

Ms Jasmine KUN
Senior Solicitor (Copyright)3

Department of Justice

Ms Phyllis POON
Senior Government Counsel

Clerk in attendance : Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Judy YEE
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Election of Chairman

Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in Council among members of the Subcommittee present at the meeting, presided at the election of the chairman of the Subcommittee and invited nominations for the chairmanship of the Subcommittee.

2. Mr Charles Peter MOK nominated Mr WONG Ting-kwong, and the nomination was seconded by Mr WU Chi-wai. Mr WONG accepted the nomination.

3. There being no other nominations, Mr WONG Ting-kwong was declared Chairman of the Subcommittee.

4. The Chairman sought members' views on the need for a deputy chairman. Members agreed that it was not necessary to elect a deputy chairman.

II. Meeting with the Administration

(L.N. 29 of 2017

-- Copyright Tribunal Rules

File Ref: CITB 07/09/8

-- Legislative Council Brief issued by the Commerce and Economic Development Bureau and Intellectual Property Department

LC Paper No. LS40/16-17

-- Legal Service Division Report

LC Paper No. CB(1)724/16-17(01)

-- Paper on Copyright Tribunal Rules prepared by the Legislative Council Secretariat (background brief)

5. The Subcommittee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions by the Administration

6. In relation to the use of language in the Copyright Tribunal ("the Tribunal") as stipulated under rule 52 of the Copyright Tribunal Rules ("the Rules"), the Administration was requested to inform the Subcommittee of whether a request by a party to use an official language in any proceedings, which was different from that decided to be used by the Tribunal under subrule (1), would be acceded to by the Tribunal.

7. The Administration was requested to inform the Subcommittee of whether the fees chargeable for the types of service or matter listed out in Part 2 of Schedule 4 of the Rules were comparable to the fees currently charged for the similar types of service or matter in Hong Kong's courts.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)760/16-17(02) on 30 March 2017.)

III. Any other business

Legislative timetable

8. The Subcommittee completed the scrutiny of the Rules at the conclusion of the meeting. The Subcommittee would not propose any amendment to the Rules.

9. The Subcommittee noted that the resolution to extend the scrutiny period of the Rules to 26 April 2017 moved by the Chairman of the House Committee was passed at the Council meeting of 22 March 2017. The Chairman would report the deliberations of the Subcommittee to the House Committee on 7 April 2017. The deadline for giving notice to move amendments to the Rules was 19 April 2017.

10. There being no other business, the meeting ended at 12:11 pm.

Council Business Division 1
Legislative Council Secretariat
3 August 2017

**Proceedings of the first meeting of the Subcommittee on Copyright Tribunal Rules
on Friday, 24 March 2017, at 10:00 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000629	Mr WONG Ting-kwong Mr Charles Peter MOK Mr WU Chi-wai	<u>Election of Chairman</u> Mr WONG Ting-kwong was elected Chairman of the Subcommittee.	
000630 – 000837	Chairman	Opening remarks by the Chairman.	
000838 – 001029	Chairman Administration	Briefing by the Administration on the Copyright Tribunal Rules ("the Rules").	
001030 – 001817	Chairman Mr MA Fung-kwok Administration	<p>Mr MA Fung-kwok supported the Rules and enquired about –</p> <p>(a) the reason for stipulating that an originator might amend or withdraw an application only with the leave of the Copyright Tribunal ("the Tribunal") as set out in rule 11; and</p> <p>(b) the actions the Tribunal would take under rule 12(3) when the respondent did not serve a response within 28 days.</p> <p>The Administration advised that –</p> <p>(a) in considering the grant of leave, the Tribunal might see it fit to take into account the circumstances of the case and whether any directions should be given. For instance, when a party sought to amend or withdraw an application, the other party in the proceedings might already have taken certain actions and incurred legal costs. The Tribunal might consider the circumstances and give further directions as it considered appropriate; and</p> <p>(b) under rule 12(3), the Tribunal might treat the application as being uncontested by the respondent and proceed to deal with the application as it considered appropriate. For instance, having considered the circumstances of the case, the Tribunal might give directions to seek further information from the originator and deal with the application based on all the relevant information submitted before the</p>	

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		Tribunal.	
001818 – 002227	Chairman Mr Charles Peter MOK Administration	<p>Mr Charles MOK enquired about the benefits of having the Rules when compared to the existing rules under Cap. 528C.</p> <p>The Administration advised that the Rules sought to maintain the fairness of the proceedings before the Tribunal on the one hand, and make the proceedings as flexible, convenient and cost-effective as possible in accordance with contemporary dispute resolution practices on the other. In particular –</p> <p>(a) it was envisaged that the Rules would render an effective and efficient mechanism to facilitate the settlement of disputes; and</p> <p>(b) the Rules were more user-friendly as a set of self-contained rules with all links and cross-references to the Arbitration Ordinance (Cap. 609) delinked, and were available in both English and Chinese, which would facilitate easier comprehension of the Rules by the public.</p>	
002228 – 004057	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai enquired about –</p> <p>(a) where a type of copyright dispute fell within the jurisdiction of the Tribunal, whether an applicant could request that a copyright dispute be dealt with by a court in Hong Kong; and</p> <p>(b) the circumstances under which mediation would be promoted, at which stage of the proceedings the parties could engage in mediation, as well as the procedures for mediation.</p> <p>The Administration advised that –</p> <p>(a) while an applicant might commence legal proceedings before a court, the court might refer the copyright dispute to the Tribunal if such dispute fell within the jurisdiction of the Tribunal; and</p> <p>(b) the parties might engage in mediation at any stage of the proceedings by mutual consent.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Given that the Tribunal was empowered to issue practice directions as appropriate under the Rules, the Tribunal might consider issuing a practice direction to provide non-binding guidance to the parties, for instance, on the stage of proceedings at which the parties might attempt mediation, after the Rules had come into operation.</p>	
004058 – 004802	Chairman Mr MA Fung-kwok Administration	<p>Mr MA Fung-kwok noted that many copyright users were hesitant about commencing proceedings before the Tribunal because of the high legal costs involved and commented that the promotion of mediation as an alternative dispute resolution should be a means of facilitating quick and cost-effective settlement in dispute resolution.</p> <p>The Administration advised that a number of principles had been adopted in the formulation of the Rules, particularly the exercise of active case management, promotion of the use of alternative dispute resolution and empowerment of a single member of the Tribunal to exercise certain adjudication powers, all of which would make the proceedings as flexible, convenient and cost-effective as possible.</p>	
004803 – 005238	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai enquired about –</p> <p>(a) the rationale behind rule 37(1) whereby a decision of the Tribunal and the reasons for it might be delivered orally or in writing as the Tribunal thought fit;</p> <p>(b) the legal qualifications and relevant experience that members of the Tribunal should possess in order to be able to deal with copyright disputes.</p> <p>The Administration advised that –</p> <p>(a) apart from the final determination of an application, the Tribunal might make decisions at different stages in the proceedings. The Tribunal might deliver a decision and the reasons for it in a way it thought fit. In the case of a decision given orally, a party intending to bring an appeal might request that the decision and the reasons for it be recorded</p>	

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		<p>in writing in accordance with rule 37(2); and</p> <p>(b) the Tribunal consisted of a Chairman, a Deputy Chairman and seven ordinary members. In accordance with section 169(2)(a) of the Copyright Ordinance (Cap. 528) ("the Ordinance"), the Chairman and Deputy Chairman should be qualified for appointment as a District Judge under the District Court Ordinance (Cap. 336). The remaining seven members were currently from various sectors including legal, education, research and development, design, accountancy and financial services to ensure that the needs of different sectors might also be taken into account in a hearing before the Tribunal as appropriate.</p>	
Clause-by-clause examination of the subsidiary legislation			
005239 – 005357	Chairman Assistant Legal Adviser 6 ("ALA 6") Mr WU Chi-wai Administration	<p><u>Clause-by-clause examination of the Rules</u></p> <p>In response to Mr WU Chi-wai's enquiry, ALA6 advised that there were certain issues in relation to rules 17, 32, 39 and 41 that she had previously sought clarification from the Administration and these issues could be discussed at the appropriate time during the clause-by-clause examination of the Rules.</p>	
005358 – 005522	Chairman Mr WU Chi-wai Administration	<p><u>Part 1: Preliminary</u></p> <p>Mr WU Chi-wai asked whether the Tribunal would undergo any organizational changes, for example, setting up a new Secretariat, by the introduction of the Rules.</p> <p>The Administration replied in the negative.</p>	
005523 – 010916	Chairman Mr MA Fung-kwok Mr WU Chi-wai Administration	<p><u>Part 2: Commencement of Proceedings</u></p> <p><i>Rule 10 – Power to reject</i></p> <p>Mr MA Fung-kwok enquired about the circumstances under which the Tribunal might reject an application under rule 10(1)(b) on the basis that a reference under section 155(1) or 162(1) of the Ordinance was premature.</p>	

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		<p>The Administration explained that rule 10 of the Rules sought to enable the Tribunal to dispose of certain applications as appropriate (for instance, where an application disclosed no reasonable ground for bringing the application or was frivolous or vexatious). Under sections 155(1) and 162(1) of the Ordinance, the terms of the licensing scheme proposed to be operated by a licensing body, and the terms on which a licensing body proposed to grant a licence might be referred to the Tribunal. Sections 155(2) and 162(2) of the Ordinance further provided that the Tribunal might decline to entertain the reference on the ground that the reference was premature. This might apply, for instance, where discussions on the terms in relation to a proposed licence or proposed licensing scheme had not reached a mature stage.</p> <p>Mr WU Chi-wai further enquired that where a reference was ruled premature and rejected by the Tribunal, whether an appeal mechanism would be in place to allow a party to appeal against the Tribunal's decision. Mr MA expressed a similar concern.</p> <p>The Administration advised that a party might appeal on any point of law arising from a decision of the Tribunal to the Court of First Instance under section 176(1) of the Ordinance.</p>	
010917 – 011021	Chairman Administration	<p><u>Part 3: Response to Application</u></p> <p>Members raised no question.</p>	
011022 – 011350	Chairman Administration	<p><u>Part 4: Publication of Application and Intervention</u></p> <p><i>Rule 17 – Publication of application</i></p> <p>In response to ALA6's enquiry about whether amended or withdrawn applications would also be published, the Administration advised that the major reason for publishing a notice of an application was to provide an opportunity for a person or organization with substantial interest in the matter to which the application related to request the Tribunal for leave to intervene in the proceedings. In practice, whether an amended or withdrawn application was to be published would largely depend on the stage of the proceedings.</p>	

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		<p>In any event, the Tribunal could direct that an amended or withdrawn application be published at any stage of the proceedings under rule 25.</p>	
<p>011351 – 012443</p>	<p>Chairman Mr MA Fung-kwok Mr WU Chi-wai Administration</p>	<p><u>Part 5: Case Management</u></p> <p><i>Rule 24 – Active case management</i></p> <p>Mr MA Fung-kwok enquired whether the Tribunal had the power to invite an independent third party to provide information so as to assist the Tribunal in resolving a dispute.</p> <p>Mr WU Chi-wai was of the view that it might not be appropriate for the Tribunal to bear a responsibility to seek independent evidence to resolve parties' claims in any proceedings.</p> <p>The Administration advised that, under the Rules, the Tribunal could make orders or directions to provide for the appointment of an expert witness and specify the terms and conditions of the appointment of an expert witness, in order to assist the Tribunal to resolve the dispute, as appropriate.</p>	
<p>012445 – 013446</p>	<p>Chairman Mr WU Chi-wai Administration</p>	<p><u>Part 6: Mediation</u></p> <p><i>Rule 29 – Mediation</i></p> <p>Mr WU Chi-wai enquired how mediation could expedite dispute resolution because it would require mutual consent from both parties.</p> <p>The Administration advised that after the implementation of the Rules, the Tribunal would encourage the use of mediation in expediting dispute resolution if appropriate. Meanwhile, the parties might be in a better position to consider mediation after the proceedings have been started as they might have obtained more information on the other side's position by then.</p> <p>Mr WU Chi-wai referred to rule 29(4) and enquired whether a mechanism was in place to deal with a situation where an appointed mediator had conflict of interests with the parties of the case that he/she was handling.</p> <p>The Administration advised that in such a case the</p>	

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		<p>parties could voice their concerns to the Tribunal and seek further directions as appropriate.</p> <p>The Chairman was of the view that as mediation was a voluntary process, the parties could always end the process and proceed with the Tribunal proceedings if they wished.</p>	
013447 – 013854	Chairman Administration	<p><u>Part 7: Evidence</u></p> <p><i>Rule 32 – Summoning of witnesses and orders to answer questions or produce documents</i></p> <p>In response to ALA6's and the Chairman's enquiry as to whether there would be sanctions imposed for a person who failed to attend as a witness at a hearing of the Tribunal at the time and place specified in the summons or to answer any question or produce any document in the person's possession or custody or power that related to any issue in the proceedings as ordered pursuant to rule 32(1), the Administration advised that under the Rules, witnesses were expected to attend a hearing to give evidence or produce documents in the proceedings before the Tribunal on a voluntary basis. For instance, neutral non-parties may be asked to give evidence before the Tribunal, particularly on industry practices and customs. The Administration considered that it was not necessary to provide under the Rules any sanctions in the event of such failure.</p>	
013855 – 013935	Chairman Administration	<p><u>Part 8: Hearing</u></p> <p>Members raised no question.</p>	
013936 – 014554	Chairman Mr WU Chi-wai Administration	<p><u>Part 9: Decisions of Tribunal</u></p> <p><i>Rule 38 – Order for costs</i></p> <p>Mr WU Chi-wai enquired about how a false statement in a statement of facts, witness statement or expert report would be dealt with, apart from the possible costs sanctions provided in the Rules.</p> <p>The Administration advised that a party which had 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</p>	

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		<p>honest belief in its truth could be prosecuted under other relevant ordinances as appropriate.</p> <p><i>Rule 39 – Publication of decision</i></p> <p>As rule 39 provided that the Secretary of the Tribunal must arrange for a decision of the Tribunal which was delivered or recorded in writing to be published in a manner that the Tribunal directed, ALA6 enquired as to whether reasons for the decision would also be published and if not, the reasons for not requiring so.</p> <p>The Administration explained that since written decisions of the Tribunal and the reasons for the decision (if any) would be provided to the parties concerned, publication of the reasons for a decision of the Tribunal was not necessary.</p>	
014555 – 014842	Chairman ALA6 Administration	<p><i>Rule 41 – Powers to correct and clarify</i></p> <p>In relation to rule 41(4) which stipulated that a request for correction or clarification of the Tribunal’s decision or any document produced by it must be made within seven days after the date on which the decision or document was made or produced, ALA6 enquired as to whether seven days would be sufficient for the above request to be made.</p> <p>The Administration advised that a party in the proceedings who needed more time might apply to the Tribunal for time extension under the Rules.</p>	
014843 – 014938	Chairman Administration	<p><u>Part 10: Appeal and Suspension</u></p> <p>Members raised no question.</p>	
014939 – 020500	Chairman Administration	<p><u>Part 11: Supplementary</u></p> <p><i>Rule 52 – Use of language in Tribunal</i></p> <p>The Chairman enquired as to –</p> <p>(a) whether a request by a party to use an official language in any proceedings, which was different from that decided to be used by the Tribunal, would be acceded to by the Tribunal; and</p>	The Administration to follow up as stated in paragraph 6 of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether the above practice was in conformity with Article 9 of the Basic Law, which stipulated that in addition to the Chinese language, English might also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.</p> <p>The Administration advised that –</p> <p>(a) reference had been made to other existing legislation such as section 3 of the District Court Civil Procedure (General) (Use of Language) Rules (Cap. 5A) when formulating rule 52. Under rule 52, the Tribunal had the discretion to use either or both of the official languages in its proceedings as it considered appropriate. In deciding on the choice of official language, the paramount consideration for the Tribunal would be the just, expeditious and economical conduct of the proceedings having regard to all the circumstances of the case;</p> <p>(b) regardless of the official language chosen to be used by the Tribunal in the proceedings, a party or witness might use either or both of the official languages, and address the Tribunal or testify in any language (including a language which was not one of the official languages) in accordance with rule 52(3); and</p> <p>(c) the Rules were in conformity with the Basic Law.</p>	
020529 – 020541	Chairman Administration	<p><u>Part 12: Repeal and Transitional Provision</u></p> <p>Members raised no question.</p>	
020542 – 020614	Chairman Administration	<p><u>Schedule 1: Application Form</u> <u>Schedule 2: Response Form</u> <u>Schedule 3: Request Form for Leave to Intervene</u></p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s)	Action required
020615 – 021057	Chairman Mr WU Chi-wai Administration	<u>Schedule 4: Fees</u> Mr WU Chi-wai enquired as to whether the fees chargeable for the types of service or matter listed out in Part 2 of Schedule 4 were comparable to the fees currently charged for the similar types of service or matter in Hong Kong's courts. The Administration advised that the fees payable to the Tribunal had been reviewed and updated regularly in accordance with the "user-pay" principle to recover the full costs of providing the relevant services and reflect the up-to-date cost level at 2017-2018 price level.	The Administration to follow up as stated in paragraph 7 of the minutes.
021058 – 021249	Chairman Administration	The Subcommittee completed the scrutiny of the Rules, and did not propose any amendment to it. Legislative timetable.	

Council Business Division 1
Legislative Council Secretariat
3 August 2017