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Legislative Council

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Subcommittee on Copyright Tribunal Rules

Background Brief

Purpose

This paper provides background information on the new Copyright Tribunal Rules ("the Rules") and summarizes the relevant views and concerns expressed by members of the Panel on Commerce and Industry ("the Panel").

Background

Copyright Tribunal

2. The Copyright Tribunal ("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.¹

3. Section 174(1) of the Ordinance stipulates that the Chief Justice is empowered to make rules for regulating the proceedings before the Tribunal, as to the fees chargeable in respect of such proceedings, and as to the enforcement of orders made by the Tribunal. The Ordinance also provides that, until such rules are made, the previous Copyright Tribunal Rules (Cap. 528C) immediately in force

¹ Sections 173 and 233 of the Copyright Ordinance (Cap. 528) ("the Ordinance") set out the types of cases that the Copyright 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.

preceding the commencement of the Ordinance² shall continue to apply, insofar as they are not inconsistent with the Ordinance and subject to such necessary modifications and adaptations.

Consultation exercise on a new set of Copyright Tribunal Rules

4. As the existing rules under Cap. 528C were outdated in some aspects, the Administration was committed to providing a new set of concise and user-friendly rules to modernize the practice and procedures of the Tribunal. According to the Administration, the new set of 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 Administration conducted a two-month consultation exercise between 9 December 2014 and 9 February 2015 to collect views on the draft new set of rules. The Panel was informed of the consultation vide an information paper (LC Paper No. CB(1)340/14-15(01)) issued on 12 December 2014.

5. Upon the close of the consultation, the Administration received six written submissions as well as comments from individual members of the Tribunal. In general, the respondents supported having a new set of rules which sought to modernize the practice and procedures of the Tribunal. The Panel was briefed on the draft new set of rules and the views received during the consultation exercise at the meeting on 17 March 2015. Subsequently, having considered the views received, the Administration refined the draft new set of rules and engaged relevant stakeholders for further discussion.

New Copyright Tribunal Rules

6. In exercise of the power conferred upon him, the Chief Justice had made the Rules. The Rules were gazetted on 24 February 2017 and tabled at the Legislative Council ("LegCo") on 1 March 2017. At the House Committee meeting on 17 March 2017, Members agreed to form a subcommittee to examine the Rules. Subject to negative vetting by LegCo, the Rules will come into operation on 1 May 2017.

7. The Rules, which consist of 12 Parts and four Schedules, are as follows –

- (a) Part 1 contains definitions used in the Rules and sets out the underlying objectives of the Rules. It also contains rules requiring the Tribunal to give effect to the underlying objectives and requiring parties and their representatives to assist the Tribunal to further the underlying objectives.

² The Ordinance commenced operation in 1997.

- (b) Part 2 sets out procedures 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.
- (c) Part 3 sets out procedures for responding to an application.
- (d) Part 4 sets out requirements for publication of an application and procedures for intervening in the proceedings before the Tribunal.
- (e) Part 5 sets out the Tribunal's power relating to case management.
- (f) Part 6 deals with procedures for mediation.
- (g) Part 7 contains rules relating to evidence.
- (h) Part 8 contains rules relating to a hearing.
- (i) Part 9 contains 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.
- (j) Part 10 contains rules relating to an appeal and a suspension of the operation of the decision under appeal.
- (k) 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.
- (l) Part 12 repeals the existing rules (Cap. 528C) and contains a transitional provision.
- (m) Schedules 1, 2 and 3 set out forms required under the Rules.
- (n) Schedule 4 specifies the fee chargeable in respect of the proceedings before the Tribunal.

8. The fees that are currently chargeable under the existing rules (Cap. 528C) have not been revised since 1994. According to the Administration, they have been reviewed in accordance with the "user-pay" principle in line with the established Government policy. The fees as set out in rules 17(4) and 54(2) and Schedule 4 of the Rules are prepared on a full cost recovery basis.

Views expressed by members of the Panel on Commerce and Industry

9. The Administration briefed the Panel on 17 March 2015 on the draft new set of rules and the views received during the consultation exercise and the way forward to finalize the draft new set of rules. Major views expressed by members are summarized in the ensuing paragraphs.

10. Highlighting that copyright users tended to agree to discontinue the Tribunal cases reluctantly only because of the complexity of the procedures and the high legal costs, some members suggested that the new set of rules should make proceedings before the Tribunal as flexible, convenient and cost-effective as possible to facilitate dispute resolution.

11. The Administration advised that the major principles adopted in formulating the new set of rules included, among other things, applying the principles of the Civil Justice Reform as the fundamental value of dispute resolution before the Tribunal, and promoting the use of alternative dispute resolution. In line with the modern practice in civil proceedings, the Tribunal would encourage and facilitate the use of mediation in appropriate cases. The Administration believed that mediation could be a potential means of facilitating quick and cost-effective settlement in appropriate cases.

12. Some members enquired whether the Law Society of Hong Kong's ("Law Society") suggestions (Annex to LC Paper No. CB(1)632/14-15(05) issued on 11 March 2015) would be incorporated in the final version of the new set of rules, as well as whether the Administration had consulted the Hong Kong Bar Association ("Bar Association") on the draft new set of rules. The Administration advised that the Law Society and some respondents had made suggestions and requested clarifications on the drafting of individual provisions in the draft new set of rules in relation to the operational procedures of the Tribunal. No comments from the Bar Association had been received so far. The Administration was considering the views received in refining the draft new set of rules, and would continue to engage the Law Society and relevant stakeholders to clarify their comments as appropriate before finalizing the draft new set of rules for submission to the Chief Justice for consideration.

13. Some members were of the view that many copyright users did not have professional knowledge in handling copyright matters, and were not familiar with the functions and procedures of the Tribunal. They urged the Administration to step up publicity in promoting the functions of the Tribunal to the community. The Administration advised that after the new set of rules came into operation, the authorities would step up its publicity and promotional efforts to enhance the awareness of the functions of the Tribunal amongst the relevant stakeholders.

Relevant papers

14. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
23 March 2017

List of relevant papers

Date	Event	Paper/Minutes of meeting
12 December 2014 (issue date)	Panel on Commerce and Industry	Administration's paper on "Consultation on a new set of Copyright Tribunal Rules" (LC Paper No. CB(1)340/14-15(01))
17 March 2015	Panel on Commerce and Industry	Administration's paper on "Consultation on a new set of Copyright Tribunal Rules: summary of views" (LC Paper No. CB(1)632/14-15(05)) Information note on Copyright Tribunal and the updating of Copyright Tribunal Rules prepared by the Legislative Council Secretariat (LC Paper No. CB(1)632/14-15(06)) Minutes of meeting (LC Paper No. CB(1)819/14-15)
25 January 2017	Panel on Commerce and Industry	Administration's paper on "Update of the Copyright Tribunal Rules" (LC Paper No. CB(1)476/16-17(01))
February 2017 (issue date)	Legislative Council Brief	Legislative Council Brief on "Copyright Tribunal Rules" issued by the Commerce and Economic Development Bureau and Intellectual Property Department (File Ref.: CITB 07/09/8)