

Subcommittee on Copyright Tribunal Rules

Follow-up actions arising from the discussion at the meeting on 24 March 2017

Use of Official Languages for Conducting Copyright Tribunal Proceedings and Charges for Copies

Purpose

At the meeting on 24 March 2017, the Government was requested to provide information on –

- (a) whether the Copyright Tribunal (“the Tribunal”) would accede to 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 rule 52 of the Copyright Tribunal Rules (“the Rules”); and
- (b) whether the fees chargeable for the types of service or matter listed in Part 2 of Schedule 4 of the Rules were comparable to those currently charged for the similar types of service or matter in Hong Kong’s courts.

This paper provides the information as requested.

Use of official languages for conducting Tribunal proceedings

2. Under rule 52(1) of the Rules, the Tribunal may decide to use either or both of the official languages¹ in any proceedings as it considers appropriate. Rule 52(2) states that such decision of the Tribunal is final. When the Tribunal decides that the proceedings are to be conducted in one particular official language, the Tribunal will use that language in the proceedings, and the written decision and the reasons for it will be in that language. The Tribunal has the discretion to use one official language for part of the proceedings and another official language for another part of the proceedings where appropriate. For example, it may decide to use Cantonese for the oral evidence and English for the submissions.

¹ By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), “official languages” means the English language and the Chinese language.

3. In deciding on the choice of official language, the paramount consideration for the Tribunal is the just, expeditious and economical conduct of the proceedings, having regard to all the circumstances of the case. Factors which will be taken into consideration may include the language ability of the parties and their representatives, the wishes of the parties, and the volume of documents which may be required to be translated into the other official language. The Tribunal will not dismiss a party's views on the official language to be used by the Tribunal, unless with justified reasons.

4. Regardless of the official language chosen to be used by the Tribunal in its proceedings, it does not mean that a party or witness is restricted only to use that language in the proceedings. In accordance with rule 52(3), a party or witness may (a) use either or both of the official languages, and (b) address the Tribunal or testify in any language². In other words, a party or witness has the right to choose the language he or she wishes to use in presenting his or her case or giving evidence in the proceedings. Such provision is consistent with other existing rules governing other proceedings, such as section 3 of the District Court Civil Procedure (General)(Use of Language) Rules (Cap. 5A), rule 53 of the Competition Tribunal Rules (Cap. 619D) and rule 4 of the Matrimonial Cause Rules (Cap. 179A).

Charges for copies

5. Part 2 of Schedule 4 of the Rules specifies the fees chargeable for copies of a document and certification thereof in respect of a Tribunal proceeding. The fee chargeable by the Tribunal for a copy of a document typed in the Tribunal and certification of the copy is \$46 per page and \$6.5 per page for additional copies. Making a photostatic copy of a document of the Tribunal costs \$6.5 (without certification) or \$8.0 (with certification) per page. The fees payable to the Tribunal are reviewed and updated regularly in accordance with the established "user-pay" principle to recover the full costs of providing the relevant services. The level of the fees set out in Schedule 4 is arrived at after conducting a costing exercise at the 2017 to 2018 price level to reflect the up-to-date cost level.

6. Hong Kong's courts provide similar services. The High Court and the District Court currently charge \$36.0 per page for a copy of a document typed in their Registry and the certifying of the same, and \$4.0 per page for additional

² This would include any language which is not one of the official languages.

copies. They charge the making of a photostatic copy of a document made in their Registry at \$4.0 (without certification) or \$5.5 (with certification) per page.

Presentation

7. Members are invited to note the information provided in this paper.

Commerce and Economic Development Bureau
Intellectual Property Department
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