

L.N. 29 of 2017

Copyright Tribunal Rules

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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 1 May 2017.

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 means the Court of First Instance;

intervener (介入人) means a person or organization that has requested under rule 18(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 any 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 45(1);
- (b) a counsel 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 12;

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), 12(2)(b)(i) or 18(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 the 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.
- (5) In this rule, a reference to an application includes an application amended under rule 11.

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 or withdrawal of application

- (1) An originator may amend or 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

12. 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 date on which 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—
 - (a) treat the application as being uncontested by the respondent; and
 - (b) proceed to deal with the application as it thinks fit.

13. 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.
- (5) In this rule, a reference to a response includes a response amended under rule 16.

14. Duties of Secretary on receipt of response

If the Secretary receives a response served under rule 12(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.

15. 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.

16. Amendment or withdrawal of response

- (1) A respondent may amend or withdraw 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.

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- (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.
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Part 4

Publication of Application and Intervention

17. Publication of application

- (1) Subject to subrule (2), the Secretary must, as soon as practicable after the receipt of an 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 a copy 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 18(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) \$890, being the administrative expenses of the Secretary in taking steps to publish the notice.

18. 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 17(1); or
- (b) the period directed by the Chairperson as mentioned in rule 17(3)(f)(ii).

19. Statement of truth in request for leave to intervene

- (1) A statement of facts contained in a request for leave to intervene under rule 18 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 the 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.

- (5) In this rule, a reference to a request for leave to intervene includes a request for leave to intervene amended under rule 22.

20. Duties of Secretary on receipt of request

- (1) If the Secretary receives a request served under rule 18(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.

21. Defective request for leave to intervene

- (1) If the Tribunal considers that a request for leave to intervene under rule 18 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 notice of the request on every other party until the directions mentioned in subrule (1) have been complied with.

22. Amendment or withdrawal of request for leave to intervene

- (1) An intervener may amend or withdraw a request for leave to intervene under rule 18 (*intervention request*) only with the leave of the Tribunal.
- (2) A request for the leave of the Tribunal to amend or withdraw an intervention request mentioned in subrule (1)—
 - (a) must be made by serving on the Secretary a written notice of the request for leave; and
 - (b) must be accompanied by—
 - (i) the prescribed fee for the request for leave; 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.

23. Decision of Tribunal

On request under rule 18, 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

24. 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 one another 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.

25. 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) 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—

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- (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, a response or a request for leave to intervene under rule 18 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 to 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) provides for the appointment of an expert witness, whether by the Tribunal or by the parties;
 - (l) specifies the terms and conditions of the appointment of an expert witness, including the scope of instructions to be given to the expert witness and the payment of the expert witness's fees and expenses;

- (m) specifies the manner in which witnesses are to be cross-examined;
- (n) requires all or any of the parties to preserve evidence that may be material to the resolution of the matter in dispute;
- (o) sets a time limit to be complied with in relation to the proceedings;
- (p) fixes, extends or shortens the time for compliance with any of these Rules, or any decision of the Tribunal;
- (q) provides for the disclosure of documents between the parties and the production or inspection of documents by those parties;
- (r) directs a party to serve on any other party interrogatories relating to the proceedings and the other party to give an answer;
- (s) 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;
- (t) awards costs to or against a party;
- (u) requires an originator to give security for costs;
- (v) 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;
- (w) requires a party to provide a translation of a document or part of a document into one or both of the official languages; and

- (x) (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 make provision for interpretation into the official language with which that other party is familiar.

(5) In subrule (4)(v)—

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.

26. Awards on different issues

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

27. 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 or further orders or directions that it thinks fit.

28. Power to issue guidelines etc.

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

- (a) regulate its own procedure; and

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- (b) issue guidelines setting out the practice and procedure to be followed in relation to the compliance with these Rules.
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Part 6

Mediation

29. 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

30. 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 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.

31. Expert witness and 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 witness or put in expert evidence without the leave of the Tribunal.
- (3) If an expert witness is called to give evidence, it is the duty of the witness to help the Tribunal on the matters within the witness's expertise.
- (4) The duty under subrule (3) overrides any obligation owed to any person from whom the expert witness has received instructions or by whom the witness is paid.

32. 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 to the proceedings, 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.

33. 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 of the witness statement or expert report 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 witness statement or expert report.
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Part 8

Hearing

34. 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 oral hearing under subrule (2) intends to appear at the 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.

35. 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.

36. 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

37. Delivery of decisions

- (1) A decision of the Tribunal and the reasons for it 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.

38. 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 any other 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* (屬實聲明) means a statement of truth mentioned in rule 7, 13, 19 or 33.

39. 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.

40. 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.

41. Powers 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 written 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 immediately after 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

42. 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 41(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.

43. Suspension of decision

- (1) Unless the Tribunal or the Court (as the case may be) orders otherwise, an appeal under rule 42 does not operate as a stay of the decision appealed against.
- (2) Pending the determination of an appeal under rule 42, 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 date on which 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 that purpose, 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 39, arrange for the notice to be published in the same manner.
-

Part 11

Supplementary

44. 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.

45. 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 counsel 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.

46. 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 18 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 for service by serving a written notice of the new address on—
 - (a) the Secretary; and
 - (b) every other party.

47. 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.

48. 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 a person does not provide an address for service in Hong Kong, 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 is a licensing body that is not a body corporate, sending it by post 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.

49. 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).

50. 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.

51. Right of parties or other persons to inspect etc. documents

- (1) A party to any proceedings may, on payment of the prescribed fee, search for, 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 for, 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 for, inspect and obtain the documents during the hours that the Secretary may direct.

52. Use of language in Tribunal

- (1) The Tribunal may decide to 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 or any other person allowed by the Tribunal to appear on behalf of a party 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 counsel or solicitor in any proceedings may use either or both of the official languages.
- (5) A party may serve a document on the Tribunal for the purposes of any proceedings in either official language.
- (6) A party may serve a document on any other party or person for the purposes of any proceedings in either official language.
- (7) In this rule, a reference to any proceedings includes a part of the proceedings.

53. Translation of document to be used in Tribunal

- (1) If 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.

54. 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 the amount of the costs under section 175(1) of the Ordinance, the party is to pay the Tribunal, at the time of making the request, a fee of \$6 for every \$100 or fraction of \$100 of the amount claimed by the party.

55. 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 public 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.

56. 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

57. Copyright Tribunal Rules repealed

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

58. 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 <i>(to be assigned by the Secretary of the Copyright Tribunal)</i> —
--

Name and address of the originator ^{Note 1} —
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Name and address of the respondent—

Originator's address for service in Hong Kong ^{Note 2} —

Name and address of the agent (if any) whom the originator has appointed to act—
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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. ^{Note 3}

Signed

Name and 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 any other party for the whole or part of the proceedings.
-

Schedule 2

[r. 12]

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 ^{Note 1} —
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. ^{Note 2}

Signed

Name and 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

Copyright Tribunal Rules

Schedule 2

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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 any other party for the whole or part of the proceedings.
-

Schedule 3

[r. 18]

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 ^{Note 2}—

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. ^{Note 3}

Signed

Name and position or office held
(if signing on behalf of a firm or corporation)

Date

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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 any other party for the whole or part of the proceedings.
-

Schedule 4

[rr. 2 & 54]

Fees**Part 1**

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	An application under rule 6	\$890
2.	Service of a copy of an application under rule 6	\$120 per copy served
3.	Request for leave to amend or withdraw an application under rule 11	\$890
4.	Service of a copy of a notice of a request under rule 11	\$120 per copy served
5.	Service of a copy of a response under rule 12	\$120 per copy served
6.	Request for leave to amend or withdraw a response under rule 16	\$890
7.	Service of a copy of a notice of a request under rule 16	\$120 per copy served

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Schedule 4—Part 1

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Column 1	Column 2	Column 3
Item	Matter	Fee
8.	Request for leave to intervene in proceedings under rule 18	\$890
9.	Service of a notice of a request for leave to intervene under rule 20	\$120 per copy served
10.	Request for leave to amend or withdraw an intervention request under rule 22	\$890
11.	Service of a copy of a notice of a request under rule 22	\$120 per copy served
12.	Request for any order or direction of the Tribunal under rule 25	\$890
13.	Service of a copy of a notice of a request under rule 25	\$120 per copy served
14.	Request to appoint a mediator under rule 29	\$890
15.	Request to suspend the operation of a decision of the Tribunal under rule 43	\$890
16.	Service of a copy of a notice of appointment of an agent or its termination under rule 45	\$120 per copy served
17.	Search for, inspect and obtain a copy of a document under rule 51	\$26 per 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	\$46
	(b) For additional copies	\$6.5
2.	(a) For a photostatic copy of a document	\$6.5
	(b) For a photostatic copy of a document and certification of the copy	\$8.0

Geoffrey MA
Chief Justice

8 February 2017

Explanatory Note

These Rules regulate the proceedings before the Copyright Tribunal (*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 to the proceedings before the Tribunal 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 powers relating to case management.
8. Part 6 deals with the procedure for mediation.
9. Part 7 contains the rules relating to evidence.

Copyright Tribunal Rules

Explanatory Note
Paragraph 10

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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 powers 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 fees chargeable in respect of the proceedings before the Tribunal.