



Views and Comments
From Composers and Authors Society of Hong Kong Limited
On The Consultation Paper on Copyright Tribunal Rules
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Our Society appreciates the efforts of the Government in coming up with some proposals to make the new rules more flexible, convenient and cost-effective to users. Our views and comments on the proposals are as follows:-

(a) Applying the relevant principles of the Civil Justice Reform as the fundamental value of dispute resolution before the Tribunal

We agree that Tribunal proceedings should be conducted in a more expeditious and cost-effective manner if the underlying objectives of the Civil Justice Reform are adopted in the new rules.

(b) One standard procedure and form for all types of applications/references before the Tribunal

It would indeed be easier and less confusing to select from choices in a standard form fit for all types of applications/references rather than having to pick up the correct form from a set of varying but very similar forms. Likewise, standardized procedures would be more user-friendly to the legal profession and the Tribunal.

We would like to take this opportunity to make a suggestion concerning our pressing need for a mechanism enabling licensing bodies like us to initiate applications/references before the Tribunal. In this regard, we would be appreciative of amendments being made to the Copyright Ordinance, Cap.528 in the near future for licensing bodies to initiate applications/references before the Tribunal.

(c) Exercising active case management

It would be time and cost effective to deal with interlocutory matters in case management conferences and pre-hearing reviews as suggested. Parties would

get well prepared for hearings so that adjournments could be avoided. For better case management, it is sensible to empower the Tribunal to give directions, reject applications or make cost-sanction, where appropriate, in interlocutory hearings.

(d) Promotion of Alternative Dispute Resolution (ADR)

We opine that there should be safeguards against the appointment of a mediator or a reference to mediation by the Tribunal in inappropriate cases. Mediators may not have the expertise to deal with very complicated issues. Mediators' costs could be substantial whereas parties to Tribunal proceedings have no obligations to pay costs to the Tribunal. Mediators may also ask for deposit (and further deposit) for costs whereas the Tribunal will not ask for payment of a deposit.

It may not be easy for the parties already in dispute and moving away from each other to reach a settlement merely through mediation, given the fact that a mediator has no power to impose a settlement. If at the end of the day the stay of the Tribunal proceedings has to be uplifted because mediation is unsuccessful, the additional time and costs for mediation would inevitably be wasted.

The Tribunal shall appoint a mediator or make a reference to mediation only in appropriate cases and with informed consent from the parties.

(e) Empowering a single member of the Tribunal to exercise certain adjudication powers

We agree that it would be more efficient for interlocutory applications to be heard singly, provided that more complicated applications for discovery and filing of Statements of Truth should be heard by a person in the legal profession.

(f) Use of Practice Directions to regulate proceedings, if appropriate

We trust that a set of Practice Directions tailor-made for Tribunal proceedings would give parties useful guidance on administrative matters.

(g) Prescribing a set of self-contained rules – de-linking all direct links/cross-references to the Arbitration Ordinance (Cap 341)

We trust that a set of self-contained rules with tailor-made provisions reflecting practices and procedures of arbitration applicable to proceedings before the Tribunal would be more user-friendly.

Likewise, references to the Copyright Act 1956 in the rules and the forms shall also be revised to refer to relevant provisions in the Copyright Ordinance, Cap.

528 instead.

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