

Guide to the Copyright Tribunal

1.Introduction

The Copyright Tribunal (“the Tribunal”) is an independent, quasi-judicial body set up under the Copyright Ordinance, Cap. 528 (“the Ordinance”) to hear and resolve specific types of disputes relating to the use or licensing of copyright works. The specific types of disputes are more particularly set out under the heading “Jurisdiction” below.

2.Composition of the Tribunal

The Tribunal consists of a Chairman, a Deputy Chairman and seven ordinary members. According to the Ordinance, the Chairman and Deputy Chairman must be qualified for appointment as a District Judge under the District Court Ordinance, Cap. 336.

3.Jurisdiction

The Tribunal has jurisdiction to hear and determine:

- (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;
- (b) disputes relating to a licence proposed to be granted by a licensing body or a licence due to expire;

- (c) awards payable to employees for using their work outside reasonable contemplation;
- (d) whether to give consent on behalf of owners of right of reproduction of a performance or on behalf of owners of the performers' rental right; and
- (e) other applications.

In general, any proceedings before the Tribunal shall be heard and determined by a Tribunal formed by:

- (a) a chairman, who is either the Chairman or Deputy Chairman of the Tribunal;
and
- (b) two or more ordinary members.

Any interlocutory proceedings that do not involve the final determination of an application may be heard and determined by a single member of the Tribunal. Please refer to the heading "Power to give orders or directions" for further details.

4. Practice and Procedure

The Copyright Tribunal Rules, Cap. 528D (“the Rules”) govern the practice and proceedings before the Tribunal. The current Rules have come into operation since 1 May 2017. Any proceedings commenced before the effective date of the Rules and pending immediately before such date must continue in accordance with the Rules.

Under the Rules, the Tribunal may issue practice directions to regulate its own procedure and set out the practice and procedure for complying with the Rules. Although practice directions do not have the force of law, they supplement the Rules in regulating the procedural matters in practice. Following the practice directions will ensure compliance with the procedures laid down by the Rules.

The Rules and the practice directions (if any) can be found at the official website of the Tribunal: <http://www.ct.gov.hk/eng/ordinance.html>. The relevant forms and fees payable in respect of the proceedings can be found at http://www.ct.gov.hk/eng/forms_and_fees.html.

5. Commencement of Proceedings

All proceedings before the Tribunal must be commenced by an originator serving an application in the specified form set out in Schedule 1 of the Rules on the Secretary of the Tribunal ("the Secretary"). The application must be accompanied by the prescribed fee. The application must contain a concise statement of the facts in support of the application and specify the relief sought. The statement of facts must be verified by a statement of truth signed by the originator or his/her representative.

Upon receipt of an application, the Secretary will serve an acknowledgement of receipt of the application on the originator. A copy of the application will be served on the respondent, unless the application is rejected by the Tribunal or the application is made ex parte.

6. Publication of Application

A notice of the application will also be published as soon as practicable. Such notice contains certain relevant information of the application, such as the name of the originator and the particulars of the relief sought by the originator. In particular, the notice stipulates the time limit within which a person or organisation may apply for

leave to intervene in the proceedings. Please refer to the heading “Intervention” below for further details.

7. Response

A respondent may serve a response to the application on the Secretary in the specified form set out in Schedule 2 of the Rules, accompanied by the prescribed fee. The response must contain a concise statement of the facts in support of the response and specify the relief sought. The statement of facts must be verified by a statement of truth signed by the respondent or his/her representative.

A response must be served on the Secretary within 28 days from the date on which the application was served on the respondent, unless otherwise specified by the Tribunal.

8. Intervention

A person or organisation with substantial interest in the matters to which any proceedings relate may apply for leave to be made a party to the proceedings as an “intervener” .

A request for leave to intervene must be served on the Secretary in the specified form set out in Schedule 3 of the Rules, accompanied by the prescribed fee. The request must contain a concise statement of the facts in support of the request and specify the relief sought. The statement of facts must be verified by a statement of truth signed by the intervener or his/her representative.

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.

9. Power to give orders or directions

At any stage of the proceedings, the Tribunal may, on its own initiative or at the request of a party, give any order or direction as specified in the Rules or as the Tribunal thinks fit to secure the just, expeditious and economical conduct of the proceedings. The Tribunal may give orders or directions concerning, for example, the manner in which the proceedings are to be conducted, the discovery and inspection of any documents and the giving of evidence.

Parties can make a request for orders or directions by serving on the Secretary a written notice of the request, accompanied by the prescribed fee. A copy of the

notice of the request and any supporting documents will be served on the relevant parties.

Any interlocutory proceedings that do not involve the final determination of an application may be heard and determined by the Chairman or the Deputy Chairman of the Tribunal, or a suitably qualified ordinary member appointed by the Chairman.

If a party fails to comply with any order or direction given by the Tribunal, the Tribunal may order that the party be debarred from taking any further part in the proceedings without the leave of the Tribunal, and give any consequential or further orders or directions that it thinks fit.

10. Mediation

Mediation is a process through which a mediator will assist parties to reach settlement for their disputes. Experience has shown that this is a cheaper, more effective and faster process for resolution of disputes.

As part of active case management of the Tribunal, the Tribunal may encourage and facilitate parties to use an alternative dispute resolution procedure, including in particular mediation, if the Tribunal considers appropriate.

If the parties wish to engage in mediation, they must first attempt to reach agreement on the appointment of a mediator. If they fail to reach agreement, they may make a joint request to the Tribunal for the appointment of a mediator by the Tribunal. Such request must be in writing and served on the Secretary, accompanied by the prescribed fee.

11. Representation and rights of audience

A party may appoint another person to act as his/her agent in the proceedings. Such appointment must be made in writing. A notice of appointment must be served on the Secretary, accompanied by the prescribed fee.

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. A party who is a natural person may appear in person at a hearing.

12. Hearings

Parties have the opportunity to be heard at an oral hearing or make submissions in writing before the Tribunal makes any decision that is or may be adverse to any party.

If an oral hearing is to be held, the Tribunal must give a party at least 14 days' notice of the time and place fixed for the hearing, unless that party consents to a shorter notice. If a party intends to appear at the hearing, the party must serve on the Secretary a written notice of the intention to appear at the hearing within the time specified by the Tribunal.

In some circumstances, the Tribunal may determine a matter without an oral hearing. For example, where a party informs the Tribunal that the party does not intend to appear at the oral hearing, or the party elects to have the matter decided by the Tribunal without an oral hearing.

All oral hearings before the Tribunal are open to the public unless the Tribunal otherwise directs.

13. Inspection of documents served on the Tribunal

A party to any proceedings may search for, inspect and obtain a copy of any documents served on the Secretary in respect of the proceedings, upon payment of the prescribed fee.

Non-parties may, on payment of the prescribed fee, search for, inspect and obtain a copy of an application served on the Secretary in respect of any proceedings, and/or a copy of a written final decision made by the Tribunal.

14. Appeal

A party may appeal against a decision of the Tribunal on a point of law to the Court of First Instance ("the Court"). The appeal must be brought within 28 days after the date on which the decision is delivered or recorded in writing, or within a further period that the Court allows.

15. Rules of evidence

The Tribunal is not bound by the rules of evidence and may receive and take into account any relevant evidence, whether or not it would be otherwise admissible in a court of law.

16. Use of Language

The Tribunal may use either or both of the official languages in any proceedings or part of any proceedings.

A party or witness may use either or both of the official languages. They may also address the Tribunal or testify in any language. A party may serve a document on the Tribunal for the purposes of any proceedings in either official languages.

A counsel or solicitor in any proceedings may use either or both of the official languages.

17. Enforcement of decisions

With leave of the Court of First Instance, a decision by the Tribunal may be enforced in the same manner as a judgment, order or direction from the Court that has the same effect.

18. Costs

The Tribunal may order a party to pay the costs of any other party for the whole or part of the proceedings in special circumstances, for example, if the paying party has conducted the case in a frivolous or vexatious manner, or has otherwise abused the process of the Tribunal.

The Tribunal may also direct the costs ordered are to be paid immediately or at the time that the Tribunal may otherwise specify.

19. Contact us

Secretary of the Copyright Tribunal

Address: 3801-3807, 8/F, Immigration Tower, 7 Gloucester Road, Wan Chai,

Hong Kong

Telephone: 3520 0738

Facsimile: 3520 0775

E-mail: secretary_of_copyright_tribunal@ipd.gov.hk

20. Office hours

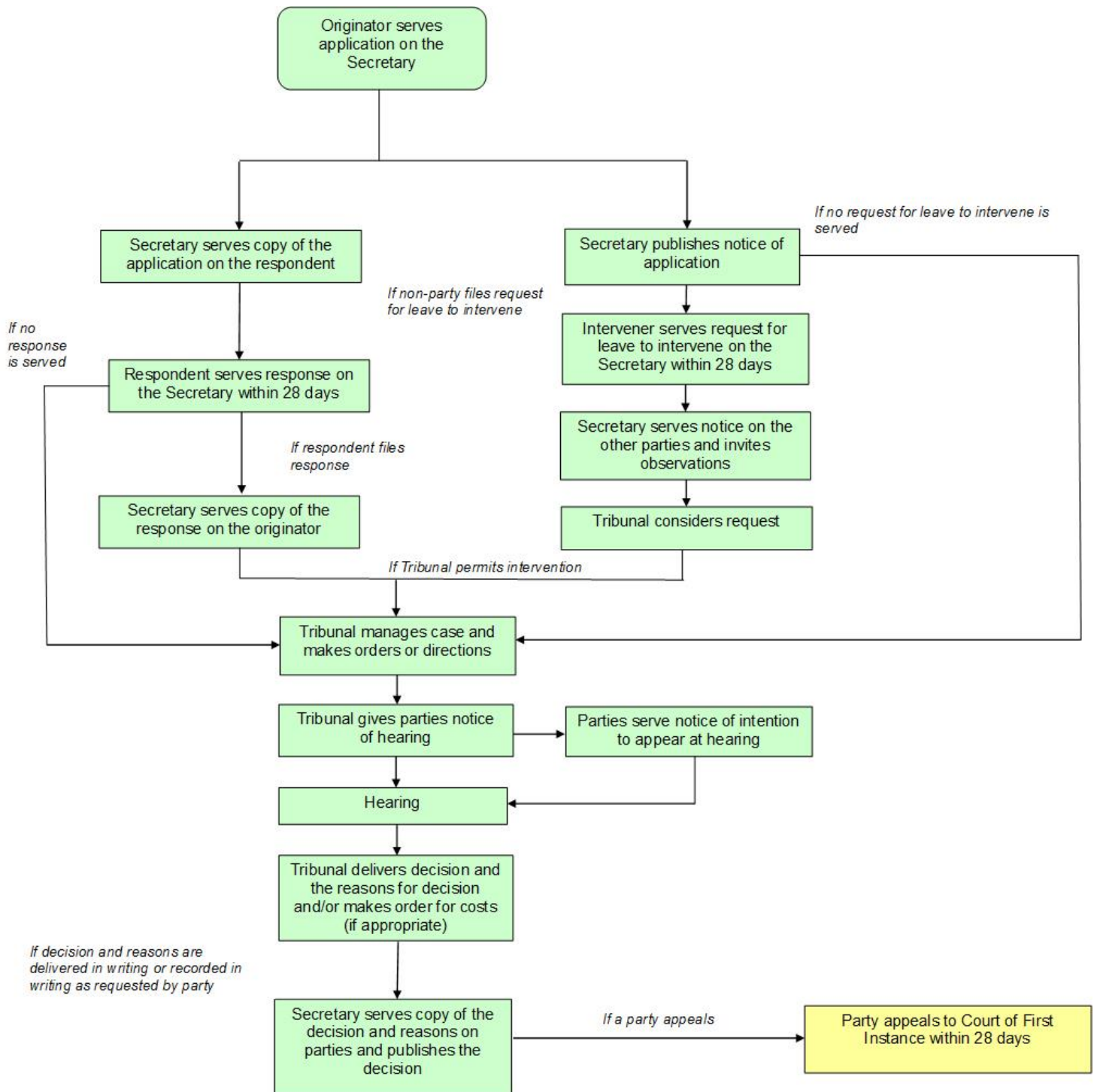
Registry

Monday to Friday 9:00 am to 12:30 pm

1:30 pm to 5:48 pm

(Closed on Saturdays, Sundays and Public Holidays)

Summary of key procedural steps in a case before the Copyright Tribunal



* Depending on the case, the proceedings may involve other steps. Readers are advised to refer to the Copyright Tribunal Rules in full and seek legal advice as necessary.

This Guide does not constitute legal advice and the Government of the Hong Kong Special Administrative Region does not accept any liability for any loss or damage caused to any person relying on any information or omission in the Guide. Readers are advised to seek legal advice if necessary.