

COPYRIGHT TRIBUNAL RULES 2014

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The Minister responsible for intellectual property, in exercise of the powers conferred by sections 186 and 189 of the Copyright and Designs Act 2004, with the approval of the Minister of Finance as to the fees chargeable under these Rules in respect of proceedings before the Copyright Tribunal, makes the following Rules:

PART 1  
PRELIMINARY

Citation

- 1 These Rules may be cited as the Copyright Tribunal Rules 2014.

Interpretation

- 2 (1) In these Rules—

“the Act” means the Copyright and Designs Act 2004;

“address for service” means—

- (a) an address in Bermuda given by a party to proceedings or an intervener for the service on them of any notice or other document relating to the proceedings; and
- (b) in relation to the Tribunal, the Tribunal address for service;

“applicant” means a person who has made a reference or other application to the Tribunal in accordance with rule 7;

“application” means the application form and statement of grounds filed with the Tribunal in accordance with rule 7(1);

“application form” means the form set out in Schedule 1;

“Chairman” means the chairman of the Tribunal or a deputy chairman or any other member of the Tribunal appointed to act as chairman;

“Court” means the Supreme Court of Bermuda;

“intervener” means a person who has applied under rule 15 to be made a party to proceedings;

“physical address” does not include a post office box;

“proceedings” means proceedings in respect of an application before the Tribunal;

“public holiday” has the meaning given in section 1 of the Public Holidays Act 1947;

“registered e-mail” means the Bermuda Post Office’s registered e-mail service;

“relevant fee” means the fee payable to the Tribunal as set out in Schedule 2;

“Secretary” means the Secretary of the Tribunal appointed by the Minister, with the approval of the Minister of Finance, under section 183(2) of the Act;

“small application” has the meaning given in rule 17(6);

“standard application” has the meaning given in rule 17(6);

“statutory declaration” means a statement which is not required to be made under oath but meets the requirements of paragraphs (2) and (3) of this rule;

“Tribunal” means the Copyright Tribunal;

“Tribunal address for service” means the address for the service or filing of applications, notices or any other documents on, or with, the Tribunal pursuant to rule 4;

“Tribunal office” means the office of the Tribunal located at the offices of the Registry General;

- (2) A statutory declaration is a written statement that—

(a) the party putting forward a document; or

(b) in the case of a witness statement, the maker of the witness statement,

believes the facts stated in the document or in the witness statement (as the case may be) are true.

- (3) A statutory declaration shall be signed by—

(a) in the case of a statement of grounds, a response or a request for permission to intervene, the party or the legal representative of the party; and

(b) in the case of a witness statement, the maker of the statement.

(4) An address for service shall be a physical address but may also include an e-mail address.

(5) Service to or from an e-mail address for service shall be deemed to be service to or from the physical address for service.

(6) The powers conferred on the Tribunal by rules 38(3) and 41 may be exercised by either the Chairman or the Tribunal.

Overriding objective

3 (1) The Rules set out a procedural code with the overriding objective of enabling the Tribunal to deal with cases justly.

- (2) Dealing with a case justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate—

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the resources available to the Tribunal, while taking into account the need to allot resources to other cases.

- (3) The parties are required to help the Tribunal to further the overriding objective.

Tribunal address for service

4 The address for the service or filing of applications, notices or any other documents on, or with, the Tribunal is: The Secretary of the Copyright Tribunal—

(a) at c/o Registry General, Government Administration Building, 30 Parliament Street, Hamilton HM 12, Bermuda; or

(b) where service is effected by registered email, at copytribunal@gov.bm.

Tribunal website

5 The Tribunal’s website is located at: www.registrygeneral.gov.bm.

Representation and right of audience

- 6 In proceedings a party may be represented by—

(a) a barrister and attorney entitled to practise law in Bermuda;

(b) any other person allowed by the Tribunal to appear on his behalf;

(c) or in the case of a natural person, himself.

PART 2  
COMMENCING PROCEEDINGS

Commencing proceedings

- 7 (1) Proceedings are started when a person—

(a) files an application form;

(b) files a statement of grounds;

(c) and pays the relevant fee.

- (2) The statement of grounds shall—

(a) contain a concise statement of the facts on which the applicant relies;

(b) state the statutory provision under which the application is made;

(c) where appropriate, include the terms of payment or terms of licence which the applicant believes to be unreasonable;

(d) specify the relief sought;

(e) be verified by a statutory declaration.

(3) The address for service given in the application form shall be an address in Bermuda.

Defective applications

8 (1) If the Tribunal considers that an application does not comply with rule 7, or is materially incomplete, or is lacking in clarity, it may give such directions as may be necessary to ensure that those defects are remedied.

(2) The Tribunal may, if satisfied that the efficient conduct of the proceedings so requires, instruct the Secretary to defer service of the application on the respondent until after the directions referred to in paragraph (1) have been complied with.

Power to reject

9 (1) The Tribunal may, after giving the parties an opportunity to be heard, reject an application in whole or in part at any stage in the proceedings if—

(a) it considers that the Tribunal has no jurisdiction to hear the application;

(b) it considers that the applicant—

(i) does not have a sufficient interest in the application; or

(ii) is not an organisation that is representative of a class of persons that have a sufficient interest in the application;

(c) it considers, in accordance with the relevant provision of the Act, that the application is premature;

(d) it considers that the application is an abuse of the Tribunal’s process;

(e) it considers that the application discloses no reasonable grounds for bringing the application.

(2) Unless the Tribunal is satisfied that an organisation which claims to be representative of a class of persons is reasonably representative of the class of persons, the Tribunal shall reject a reference—

(a) under section 147, 148 or 149 of the Act; or

(b) under paragraph 3, 4 or 5 of Schedule 5 to the Act,

by the organisation.

(3) When the Tribunal rejects an application it may make any consequential order it considers appropriate.

(4) For the purposes of paragraph (1)(c), the relevant provision means—

(a) section 147(2), where the reference is made under section 147;

(b) section 154(2), where the reference is made under section 154;

(c) paragraph 3(2) of Schedule 3 to the Act, where the reference is made under paragraph 3 of Schedule 3 to the Act; and

(d) paragraph 10(2) of Schedule 3 to the Act, where the reference is made under paragraph 10 of Schedule 3 to the Act.

Amendment of application

10 (1) The applicant may amend the application only with the permission of the Tribunal.

(2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

Withdrawal of application

11 (1) The applicant may withdraw an application only with the permission of the Tribunal.

- (2) Where the Tribunal gives permission under paragraph (1) it may—

(a) do so on such terms as it thinks fit; and

(b) instruct the Secretary to publish notice of the withdrawal in the Gazette or in such other manner as the Tribunal may direct.

(3) Where an application is withdrawn any interim order of the Tribunal, other than an order made in respect of costs, shall immediately cease to have effect, unless the Tribunal directs otherwise.

PART 3  
RESPONSE TO THE PROCEEDINGS

Acknowledgement and notification

12 On receiving an application the Secretary shall—

(a) send an acknowledgement of its receipt to the applicant; and

(b) subject to rules 8(2) and 9, send a copy of the application to the respondent marked to show the date on which that copy is sent.

The response

13 (1) The respondent shall send to the Tribunal a response in the form in Schedule 3 so that the response is received within 28 days (or such further time as the Tribunal may allow) of the date on which the Secretary sent a copy of the application to the respondent in accordance with rule 12(b).

- (2) The response filed by the respondent shall state—

(a) the name and address of the respondent;

(b) the name and address of the respondent’s legal representatives, if any;

(c) an address for service (which shall be an address in Bermuda),

and shall be signed and dated by the respondent, or on the respondent’s behalf by a duly authorised officer or legal representative.

- (3) The response shall contain a concise statement of—

(a) the facts on which the respondent relies;

(b) any relief sought by the respondent; and

(c) any directions sought pursuant to rule 20.

- (4) The response shall be verified by a statutory declaration.

- (5) Rules 8 and 10 shall, mutatis mutandis, apply to the response.

(6) On receiving the response, the Secretary shall send a copy to the applicant.

PART 4  
INTERVENTION AND CONSOLIDATION

Publication of application

14 (1) Subject to rules 8 and 9, the Secretary shall as soon as practicable upon receipt of an application publish a notice in the Gazette and in any other manner the Chairman may direct.

- (2) The notice referred to in paragraph (1) shall state—

(a) that an application has been received;

(b) the section of the Act under which the application is made;

(c) the name of the applicant;

(d) the particulars of the relief sought by the applicant;

(e) a summary of the principal grounds relied on; and

(f) that any person—

(i) with substantial interest in the proceedings;

(ii) who objects to the application on the basis that the applicant does not have a sufficient interest in the application; or

(iii) who objects to the application on the basis that the applicant is not representative of a class of persons that have a sufficient interest in the application,

may apply to intervene in the proceedings, in accordance with rule 15, within 28 days of publication of the notice or such other period as the Chairman may direct.

Intervention

15 (1) Any person with substantial interest in the outcome of proceedings may make a request to the Tribunal for permission to intervene in those proceedings.

(2) The request shall be delivered to the Tribunal within 28 days of the publication of the notice in accordance with rule 14.

(3) The Secretary shall give notice of the request for permission to intervene to the respondent and all other parties to the proceedings and invite their observations on that request within a specified period.

- (4) A request for permission to intervene shall state—

(a) the title of the proceedings to which that request relates;

(b) the name and address of the person wishing to intervene;

(c) the name and address of the person’s legal representative, if any;

(d) an address for service (which shall be an address in Bermuda);

(e) the facts on which the person wishing to intervene relies and the relief sought.

(5) The request shall be verified by a statutory declaration and accompanied by the relevant fee.

(6) The Tribunal may permit the intervention on such terms and conditions as it thinks fit, if satisfied, having taken into account the observations of the parties, that the intervening party has a substantial interest.

(7) On granting permission in accordance with paragraph (6), the Tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the intervener of the documents