

## The Copyright Tribunal

The Copyright Tribunal (“the Tribunal”) was established<sup>1</sup> under the Copyright Act to hear and settle the following matters:

- i. The determination of reasonable remuneration payable to copyright owners for making a recording or a film of a work<sup>2</sup>;
- ii. The determination of remuneration payable for making a copy of sound recording<sup>3</sup>;
- iii. The determination of remuneration payable for making available to the public a sound recording by means of a digital audio transmission<sup>4</sup>;
- iv. the reasonable remuneration of copyright owners under statutory licensing schemes<sup>5</sup>;
- v. apportionment of royalty in respect of a record between the copyright owner of a musical work and the copyright owner of a literary or dramatic work<sup>6</sup>;
- vi. reference of proposed licence schemes<sup>7</sup>;
- vii. use of copyright material by the government<sup>8</sup>;
- viii. determination of charges and conditions in relation to licences<sup>9</sup>; and
- ix. inquiries into royalty payable in respect of musical works<sup>10</sup>.

Our Tribunal was modeled after the Australian Copyright Tribunal, established under the Australian Copyright Act of 1968. Historically, the Australian Copyright Tribunal was principally established to “counterbalance the monopoly position of particular collecting societies, it was also granted jurisdiction to determine particular disputes between users and copyright owners in respect of licences for use of a single work or other subject matter”<sup>11</sup>. The collecting societies at that time administered the performing and broadcasting rights of literary, dramatic or musical works. This largely explains the narrow jurisdiction of the Copyright Tribunal.

Under section 149(1) of the Copyright Act, “licence” is narrowly defined to mean:

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<sup>1</sup> Section 151 of the Copyright Act (Cap. 63, 1999 Rev. Ed.).

<sup>2</sup> Section 156A of the Copyright Act.

<sup>3</sup> Section 156B of the Copyright Act.

<sup>4</sup> Section 156C of the Copyright Act.

<sup>5</sup> Section 158 of the Copyright Act.

<sup>6</sup> Section 159 of the Copyright Act.

<sup>7</sup> Sections 160 and 161 of the Copyright Act.

<sup>8</sup> Section 198(5) of the Copyright Act.

<sup>9</sup> Section 163 of the Copyright Act.

<sup>10</sup> Section 157 of the Copyright Act.

<sup>11</sup> Australian Copyright Law Review Committee report on “Jurisdiction and Procedures of the Copyright Tribunal”, December 2000, at paragraph 1.11, page 15.

- a. a licence granted by the copyright owner for the performance, broadcast, making of a sound recording or film or including in a cable programme service of a literary, dramatic or musical work (or their respective adaptations); or
- b. a licence granted by the copyright owner to enter into a commercial rental arrangement for a computer program or a sound recording.

The current definition of “licence” does not extend to the following:

- (a) any licence for the exercise of reproduction, publication and communication rights for literary, dramatic, artistic and musical works or adaptations of such works;
- (b) any licence for the exercise of any of the rights in films<sup>12</sup>, television and sound broadcasts, cable programmes and published editions of works; and
- (c) any licence for making copies of sound recordings (other than for broadcasting<sup>13</sup> or simulcasting<sup>14</sup>) and publishing sound recordings, and making available to the public sound recordings by means of a digital audio transmission.

The Tribunal consists of a President of the Tribunal and between 2 to 4 other members appointed by the Minister<sup>15</sup>. The President of the Tribunal shall possess the qualifications required for a District Judge under section 9 (3) of the Subordinate Courts Act (Cap. 321)<sup>16</sup>. The quorum required for a sitting is the President and 2 other members<sup>17</sup> and the Tribunal decides matters by the votes of the majority if there is no agreement as to the order<sup>18</sup>. The Tribunal or any party to the dispute may refer any question of law to the High Court<sup>19</sup>.

The proceedings of the Tribunal are to be conducted in public<sup>20</sup>. The procedure is to be determined by the Tribunal, subject to the provisions of the Copyright Act and the regulations<sup>21</sup>. The Tribunal is not bound by the Evidence Act (Cap. 97)<sup>22</sup> and proceedings shall be conducted with as little

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<sup>12</sup> See *Orchard KTV & Lounge Pte Ltd v Recording Industry Performance Singapore Pte Ltd* [2006] SGCR 1, where the Copyright Tribunal decided that the Tribunal did not have jurisdiction over the licence scheme for the copying and “public performance” of films by way of use in the Karaoke On Demand System.

<sup>13</sup> Section 107 of the Copyright Act.

<sup>14</sup> Section 107A of the Copyright Act.

<sup>15</sup> Section 151(1) of the Copyright Act.

<sup>16</sup> Section 151(2) of the Copyright Act.

<sup>17</sup> Section 154 of the Copyright Act.

<sup>18</sup> Section 155 of the Copyright Act.

<sup>19</sup> Section 169 of the Copyright Act.

<sup>20</sup> Section 171 of the Copyright Act.

<sup>21</sup> Section 173(a) of the Copyright Act.

<sup>22</sup> Section 173(b) of the Copyright Act.

formality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit<sup>23</sup>.

Since its inception in 1987, the Tribunal has rendered three decisions in 1991, 1992 and 2006 respectively.

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<sup>23</sup> Section 173(c) of the Copyright Act.