

1991 No. 201 COPYRIGHT

The Copyright Tribunal (Amendment) Rules 1991

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|-------------------------------|--------------------------|
| <i>Made</i> | <i>5th February 1991</i> |
| <i>Laid before Parliament</i> | <i>8th February 1991</i> |
| <i>Coming into force</i> | <i>1st March 1991</i> |

The Lord Chancellor in exercise of the powers conferred upon him by sections 150 and 152(2) and (3) of, and paragraph 34 of Schedule 1 to, the Copyright, Designs and Patents Act 1988¹, after consultation with the Lord Advocate, with the approval of the Treasury as to the fees chargeable under these Rules in respect of proceedings before the Copyright Tribunal, and after consultation with the Council on Tribunals in accordance with section 10(1) of the Tribunals and Inquiries Act 1971², hereby makes the following Rules:—

Citation and commencement

1. These Rules, which amend the Copyright Tribunal Rules 1989³ (“the Principal Rules”), may be cited as the Copyright Tribunal (Amendment) Rules 1991 and shall come into force on 1st March 1991.

2. The Principal Rules are amended as follows:—

- (a) there shall be inserted in rule 2(1)—
- (i) after the definition of “the Act” and before the definition of “applicant”,
““the 1990 Act” means the Broadcasting Act 1990⁴”;
 - (ii) in the definition of “intervener”, in place of the numbered rules there mentioned, a reference to rule 7, 23, 26, 26D, 30, 33, 37, 41, 41D or 44;
 - (iii) after the definition of “proceedings” and before the definition of “the Secretary”,
““programme service” has the meaning given to it by section 201 of the 1990 Act”;

¹1988 c.48. The Copyright, Designs and Patents Act 1988 (“the Act”) was amended by sections 175 (use as of right of sound recordings) and 176 (duty to provide advance information about programmes) of, and Schedule 17 to, the Broadcasting Act 1990 (c.42); section 175 inserted sections 135A to 135G into Chapter VII of Part I of the Act; section 176 also provides for Schedule 17 to have effect; and paragraph 7 of Schedule 17 provides for that Schedule to have effect as if it were included in Chapter III of Part I of the Act. Section 175(2) of, and paragraph 7 of Schedule 17 to, the Broadcasting Act 1990, by way of a modification to section 149 of the Act, extends the jurisdiction of the Copyright Tribunal.

²1971 c.62.

³S.I. 1989/1129.

⁴1990 c. 42.

- (b) there shall be inserted after rule 26—

**“Applications and references with respect to use
as of right of sound recordings in broadcasts
and cable programme services**

Commencement of proceedings (Forms 10A, 10B & 10C)

26A.—

(1) Proceedings with respect to use as of right of sound recordings in broadcasts or cable programme services shall be commenced by the service on the Secretary by the applicant of a notice—

- (a) in Form 10A in the case of an application to settle terms of payment under section 135D of the Act,
- (b) in Form 10B in the case of a reference under section 135E of the Act,
- (c) in Form 10C in the case of an application for a review of an order under section 135F of the Act,

together with a statement of the applicant’s case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant’s statement) on the licensing body named in the notice and, in the case of an application for review of an order under section 135F, on every person who was a party to the proceedings when the original order of the Tribunal was made.

(3) Except where the Chairman otherwise directs, the Secretary shall give notice by advertisement in such manner as the Chairman may think fit of every reference or application under section 135D, 135E or 135F of the Act.

Application for special leave (Form 3)

26B.—

(1) An application under section 135F (2) of the Act for the special leave of the Tribunal for the review of its order under that section shall be made by the service on the Secretary by the applicant of a notice in Form 3 together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the application or reference on which the Tribunal made the last previous order with respect to the licence.

(2) Within 14 days of the service upon him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on the applicant and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

26C.—

(1) Within 21 days of the service of the notice under rule 26A, the licensing body or other person shall serve on the Secretary his written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of a reference or application under rules 26A and 26B as they apply to proceedings in respect of a reference or an application under rule 3.

(3) The final decision of the Tribunal on a reference or an application under rule 26A shall be given in writing and shall include a statement of the Tribunal's reasons and there shall be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied.

(4) The Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

26D. A person or organisation who claims to have a substantial interest in proceedings in respect of a reference or an application under rule 26A may, in accordance with rule 23, apply to the Tribunal to be made a party to that reference or application and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20."

(c) there shall be inserted after rule 41—

**“Use of information as of right: application
to settle terms of payment**

Commencement of proceedings (Forms 16A & 16B)

41A.—

(1) Proceedings under Schedule 17 to the 1990 Act for the settlement of terms of payment to be made by a publisher to a person providing a programme service shall be commenced by the service on the Secretary by the applicant of a notice—

(a) in Form 16A, in the case of an application under paragraph 5(1) of Schedule 17 to the 1990 Act,

(b) in Form 16B, in the case of an application for a review of an order under paragraph 6(1) of that Schedule,

together with a statement of the applicant's case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant's statement) on the person providing the programme service named in the notice and, in the case of an application for review of an order under paragraph 6(1) of Schedule 17 to the 1990 Act, on every person who was a party to the proceedings when the original order of the Tribunal was made.

(3) Except where the Chairman otherwise directs, the Secretary shall give notice by advertisement in such manner as the Chairman may think fit of every reference or application under paragraph 5(1) or 6(1) of Schedule 17 to the 1990 Act.

Application for special leave (Form 3)

41B.—

(1) An application for the special leave of the Tribunal for the review of an order under paragraph 6(2) of Schedule 17 to the 1990 Act shall be made by serving on the Secretary a notice in Form 3, together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the application when the order of the Tribunal was made.

(2) Within 14 days of the service upon him of a copy of the notice under that rule, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on every other party to the proceedings and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made representations an opportunity of being heard, shall grant or dismiss the application for special leave (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

41C.—

(1) Within 21 days of the service of the notice under rule 41A, the other party shall serve on the Secretary a written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of service.

(2) Rules 10 to 16 shall apply in respect of an application under rules 41A and 41B as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 41A shall be given in writing and shall include a statement of the Tribunal's reasons, and there shall be annexed to the decision a copy of the order and where the Tribunal has varied a previous order, a copy of that order as varied, and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

41D. A person or organisation who claims to have a substantial interest in the proceedings in respect of any application under rule 41A may, in accordance with rule 23, apply to the Tribunal to be made a party to that application and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20."

(d) there shall be inserted after rule 50—

"Notice of intention to exercise right

50A. Notice of an intention to exercise rights conferred by section 135C of the Act or paragraph 4 of Schedule 17 to the 1990 Act to be given to the Tribunal under section 135B(3)(a) of the Act and paragraph 3(2)(a) of Schedule 17 to the 1990 Act may be effected by service on the Secretary of such notice and rule 50(1) shall apply to such service as it applies to any notice required to be served on the Secretary by these Rules."



3. Schedule 1 to the Principal Rules shall be replaced by the following:—

**“SCHEDULE 1
TABLE OF FEES**

Rule 49

- | | | |
|-----|---|------|
| (1) | On serving notice in Forms 1, 2, 7, 8, 10A, 10B, 12, 14, 15, 16 or 16A. | £30 |
| (2) | On serving notice in Forms 3, 4, 5, 6, 9, 10, 10C, 11, 13, 16B, 17 or 18. | £15 |
| (3) | On every application for directions under rule 12. | £10” |

4. Schedule 3 to the Principal Rules shall be amended as follows:—

- (a) the forms numbered 3, 5 and 6 in that Schedule shall be replaced by the forms so numbered and set out in Part I of the Schedule to these Rules;
- (b) there shall be inserted in that Schedule in the appropriate numerical order those forms referred to in these Rules numbered 10A, 10B, 10C, 16A and 16B as so numbered and set out in Part II of the Schedule to these Rules.

Dated 5th February 1991

Mackay of Clashfern, C

We approve the fees prescribed by these Rules in respect of proceedings before the Copyright Tribunal.

Cyril Patnick

Nicholas Baker

Two of the Lords Commissioners
of Her Majesty’s Treasury

Dated 5th February 1991



SCHEDULE

Rules 4(1), 21(1), 26B(1), 28, 39(1) and 41B

PART I

**FORM 3
BROADCASTING ACT 1990
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL**

Application for special leave under section 120, 122, 127, 135F or 142 or Schedule 6, paragraph 5 of the Act or Schedule 17, paragraph 6 of the 1990 Act

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of person, organisation, operator of licensing scheme, licensing body, publisher or person providing a programme service] (“the Applicant”) hereby applies for the special leave of the Tribunal

- Application under s.120(2) *to refer again to the Tribunal the licensing scheme which was *confirmed/varied by the Tribunal by an order
- Application under s.122(2) *to review its order as to entitlement to licence
- Application under s.127(2) *to review its order as to licence
- Application under s.142(4) or Schedule 6, paragraph 5(3) *to review its order as to royalty or other sum/remuneration payable
- Application under s.135F(2) *to review its order as to terms of payment
- Application under s.135F(2) *to review its order as to reasonableness of a *condition/requirement for information
- Application under Schedule 17, paragraph 6(2) of 1990 Act *to review its order as to terms of payment

dated and bearing the reference number

2. There is delivered herewith a statement of the grounds for the application.

3. A copy of this Notice, together with the statement, *has been/will be served on [date of service] on every person who was a party to the proceedings to which the above order of the Tribunal relates, namely [specify names and addresses of parties].

4. All communications about this application should be addressed to
*[the Applicant at the address shown above]
*[name and address of Applicant’s solicitor/agent].



Signed

Status of signatory [Applicant, an officer
of Applicant, solicitor or agent]

Date

*Delete whichever is inappropriate



Rules 7(1), 23(1), 26, 26D, 30, 33, 37, 41, 41D and 44

FORM 5
BROADCASTING ACT 1990
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL

Notice of intervention

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of intervener] (“the Intervener”) wishes to be made a party to the proceedings commenced by notice of *reference/application/appeal dated

*[which was advertised in [name of publication and date of issue]].

2. The Intervener has a substantial interest in the matter for the following reasons [state reasons].

3. All communications about this reference should be addressed to

*[the Intervener at the address shown above]

*[name and address of Intervener’s solicitor/agent].

Signed

Status of signatory [Intervener, an officer of Intervener, solicitor or agent]

Date

*Delete whichever is inappropriate



Rules 8(1), 23(3), 26, 26D, 30, 33, 37, 41, 41D and 44

FORM 6
BROADCASTING ACT 1990
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL

Notice of objection to Intervener's credentials

To,

The Secretary to the Tribunal

1. TAKE NOTICE that in connection with *proceedings commenced by notice of *reference/application dated served by [name of Applicant], and with the notice of intervention given by [name of Intervener] dated [name and address of party making objection] ("the Objector"), being

*[the Applicant]

*[the licensing body named in the notice of *reference/application]

*[person providing a programme service named in the notice of *reference/application]

*[*a person/an organisation on whom the notice of *reference/application was served]

*[an intervener in the proceedings by virtue of a notice of intervention served on [date of service]]

objects to the Intervener's credentials.

2. The Objector's grounds for the objection are as follows [state grounds].

3. All communications about this reference should be addressed to

*[the Objector at the address shown above]

*[name and address of Objector's solicitor/agent].

Signed

Status of signatory [Objector, an officer of Objector, solicitor or agent]

Date

*Delete whichever is inappropriate



PART II

Rule 26A(1)(a)

**FORM 10A
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL**

Notice of application under section 135D

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of prospective licensee or licensee] (“the Applicant”) being a person intending to avail himself of the right to include sound recordings in a *broadcast/and/cable programme service for which [name and address of licensing body] could *grant/procure the grant of a licence,

*having given notice to the Tribunal on [date on which notice was given] of the intention to exercise that right; and the date on which it was proposed to begin to do so, namely [],

*who herewith gives notice to the Tribunal of the intention to exercise that right; and of the date on which it is proposed to begin to do so, namely [],

hereby applies to the Tribunal to settle the terms as to payment for including sound recordings in a *broadcast/and/cable programme service.

2. There is delivered herewith a statement of the Applicant’s case.

3. All communications about this application should be addressed to

*[the Applicant at the address shown above

*[name and address of Applicant’s solicitor/agent].

Signed

Status of signatory [Applicant, an officer of Applicant, solicitor or agent

Date

*Delete whichever is inappropriate



FORM 10B
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL

Notice of reference under section 135E

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of person making reference] (“the Applicant”) being a person who

*has given notice to the Copyright Tribunal on [date on which notice was given] of his intention to exercise

*has exercised

the right to include sound recordings in a *broadcast/and/cable programme service,

*having been given notice of [a] condition[s] as to the inclusion in a *broadcast/and/cable programme service by:

*having been required to provide information to:

[name and address of licensing body], hereby refers to the Tribunal the question whether

*the condition[s] [setting out condition objected to] is a reasonable condition

*the information [setting out item objected to] can reasonably be required to be provided.

2. There is delivered herewith a statement of the Applicant’s case.

3. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant’s solicitor/agent].

Signed

Status of signatory [Applicant, an officer of Applicant, solicitor or agent]

Date

*Delete whichever is inappropriate



FORM 10C
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL.

Notice of application for review of order under section 135F

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of licensing body or person seeking review] (“the Applicant”) hereby applies to the Tribunal for a review of its order dated and bearing the reference number

*in respect of the settlement of the terms as to payment for including sound recordings in a
*broadcast/and/cable programme service payable to [name and address of licensing body]

*in respect of the reasonableness of *a/condition[s]/requirement to provide information to [name and address of licensing body].

2. There is delivered herewith a statement of the Applicant’s case.

3. All communications about this application should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant’s solicitor/agent].

Signed

Status of signatory [Applicant, an officer of Applicant, solicitor or agent]

Date

*Delete whichever is inappropriate



FORM 16A
BROADCASTING ACT 1990
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL

Notice of application under section 176 of, and paragraph 5 of Schedule 17 to, the Broadcasting Act 1990

To,

The Secretary to the Tribunal

1. TAKE NOTICE that [name and address of publisher] (“the Applicant”) being a person intending to exercise the right to be treated as if he had at all material times been the holder of a licence granted by [name and address of person] *providing/treated as providing [name of programme service] authorising him to publish copyright information relating to the titles of the programmes which are to be, or may be, included in the service and the times of their inclusion (“the act restricted by copyright”),

*having given notice to the Tribunal on [] of the intention to exercise that right and the date on which it was proposed to begin to do so, namely [],

*who herewith gives notice to the Tribunal of the intention to exercise that right and of the date on which it is proposed to begin to do so, namely, [],

hereby applies to the Tribunal to settle the terms of payment for doing the act restricted by copyright.

2. There is delivered herewith a statement of the Applicant’s case.

3. All communications about this application should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant’s solicitor/agent].

Signed

Status of signatory [Applicant, an officer of Applicant, solicitor or agent]

Date

*Delete whichever is inappropriate



FORM 16B
BROADCASTING ACT 1990
COPYRIGHT, DESIGNS AND PATENTS ACT 1988
COPYRIGHT TRIBUNAL

Notice of application for review of order under section 176 of, and paragraph 6(1) of Schedule 17 to, the
Broadcasting Act 1990

To,

The Secretary to the Tribunal

1. TAKE NOTICE that

*[name and address of person] providing [name of programme service]

*[name and address of publisher]

seeking review (“the Applicant”) hereby applies to the Tribunal for a review of its order dated and bearing the reference number in respect of the settlement of the terms of payment for exercising the right to publish copyright information relating to titles of programmes which are to be or may be included in the programme service and the times of their inclusion.

2. There is delivered herewith a statement of the Applicant’s case.

3. All communications about this application should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant’s solicitor/agent].

Signed

Status of signatory [Applicant, an officer of Applicant, solicitor or agent]

Date

*Delete whichever is inappropriate

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the amendments which are to be made to the Copyright Tribunal Rules 1989 following the provision made by the Broadcasting Act 1990 (c.42) (“the 1990 Act”):

- for the inclusion as of right of sound recordings in broadcasts and cable programme services and
- imposing a duty on a person providing a programme service, to provide advance information about programmer included in that service.

The 1990 Act extended the jurisdiction of the Copyright Tribunal to deal with additional applications and references which it provides are to be heard and determined by that Tribunal (“the additional matters”).

The procedure before the Tribunal in respect of the additional matters is set out in these amending Rules by reference to each additional function of the Tribunal and, accordingly—

- (1) rule 2(a) inserts additional definitions required by the 1990 Act, including a reference to the 1990 Act itself;
- (2) rule 2(b) inserts new rules 26A to 26D which relate to applications with respect to the settlement of terms of payment for the inclusion as of right of sound recordings in broadcasts or cable programme services and references with respect to the reasonableness of any condition imposed as to that inclusion or any information required by a licensing body;
- (3) rule 2(c) inserts new rules 41A to 41D which relate to applications to settle terms of payment for the use of copyright information relating to programmes to be included in a programme service;
- (4) rule 2(d) inserts a new rule 50A applying the existing rule 50 relating to service of notices or other documents to the giving of notice to the Tribunal which is required by the 1990 Act before the rights referred to above may be exercised;
- (5) rule 3 replaces Schedule 1 (Table of fees) amended only so far as necessary to introduce the fees applicable to the additional matters;
- (6) rule 4 amends Schedule 3 (Forms) by the replacement of amended existing forms (3, 5 and 6) and introduction of the additional forms (10A, 10B, 10C, 16A and 16B) which are referred to in, and made necessary by the amendments to, these Rules.