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STATUTORY INSTRUMENTS

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**1989 No. 1129**

**The Copyright Tribunal Rules 1989**

References and applications with respect to licensing schemes

**Commencement of proceedings (Forms 1 & 2)**

**3.—**(1) Proceedings in relation to a reference or an application with respect to a licensing scheme shall be commenced by the service on the Secretary by the applicant of a notice—

- (a) in Form 1 in the case of a reference under section 118, 119 or 120 of the Act,
- (b) in Form 2 in the case of an application for the grant of a licence or a review of the Tribunal's order under section 121 or 122 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 operator of the licensing scheme named in the notice and, in the case of a further reference under section 120 of the Act or an application for a review of an order under section 122 of the Act, as the case may be, on every person who was a party to the proceedings when the order of the Tribunal was made.

(3) In the case of a reference under section 118 of the Act the Tribunal shall, as soon as practicable after the receipt of the applicant's notice, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the applicant or the operator of the scheme or both and if, after considering the reference and representations (if any), the Tribunal—

- (a) decides to entertain the reference, it shall give such directions as to the taking of any steps required or authorised under these Rules, or as to any further matter (including any order as to costs) as the Tribunal thinks fit, and
- (b) declines to entertain the reference, it shall direct that no further proceedings shall be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may make under rule 48.

(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 the operator of the licensing scheme.

**Application for special leave (Form 3)**

**4.—**(1) An application under section 120 of the Act for the special leave of the Tribunal on a further reference under that section or an application under section 122 of the Act for the special leave of the Tribunal to review 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 reference or application on which the Tribunal made the last previous order with respect to the licensing scheme.

(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 any party who made representations.

### **Advertisement of reference or application**

5.—(1) Except where the Tribunal has declined to entertain a reference under section 118 of the Act, or the Chairman in any other case 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 118, 119, 120, 121 or 122 of the Act.

(2) An advertisement shall state—

- (a) the names and addresses of the applicant and any organisation or person on whom a copy of the notice of reference or application has been served in accordance with rule 3;
- (b) the nature of the reference or application;
- (c) the time, not being less than 21 days from the date of publication of the advertisement, within which—
  - (i) an objection to the applicant's credentials may be made in accordance with rule 6, and
  - (ii) any other organisation or person may apply to the Tribunal to be made a party to the proceedings in accordance with rule 7.

### **Objections to applicant's credentials (Form 4)**

6.—(1) Any organisation or person intending to object to the applicant's credentials shall, within the time specified under rule 5(2)(c), serve on the Secretary a notice of objection in Form 4:

Provided that the Tribunal or the Chairman may give leave, subject to such conditions as the Tribunal or Chairman may think fit, to serve such notice notwithstanding the expiration of the time specified under that rule.

(2) If notice of objection to the applicant's credentials has been served on the Secretary in accordance with this rule or if the Tribunal intends to make such objection of its own motion, the Secretary shall, on the expiration of the time specified in the advertisement under rule 5(2)(c), serve upon every party to the proceedings a notice of the same, and the proceedings shall (unless the Tribunal or the Chairman shall otherwise direct on the grounds that no reasonable cause of objection has been disclosed) be stayed from the date of such notice until further order.

(3) As soon as practicable after service of the notice under paragraph (2) above, the Chairman shall give directions for the making of representations in writing for the purpose of the consideration by the Tribunal of the objection. After consideration of the representations by the Tribunal the Chairman may, if he thinks fit, give the applicant, any objector and any other party an opportunity of being heard at a hearing to be appointed by the Chairman.

(4) If, after considering the objection and any written or oral representations, the Tribunal is not satisfied of the applicant's credentials, it shall direct that no further proceedings shall be taken by any party in connection with the reference or application, otherwise than in relation to any order for costs which the Tribunal may make under rule 48.

(5) If, after considering the objection and any written or oral representations, the Tribunal is satisfied of the applicant's credentials it shall direct that the reference or application shall proceed and the Tribunal or the Chairman may give such consequential directions as to the taking of any steps required or authorised under these Rules, or as to any further matter as the Tribunal or Chairman may think fit.

(6) When the Tribunal has arrived at its decision on the objection, or where the objection has been withdrawn or is not proceeded with, the Secretary shall serve notice of the same on every party to the proceedings.

### **Intervener's application (Form 5)**

7.—(1) An application to the Tribunal by a person or organisation to be made a party to a reference or an application referred to in rule 3 may be made by serving on the Secretary, within the time specified under rule 5(2)(c), a notice of intervention in Form 5, together with a statement of his interest:

Provided that the Tribunal or the Chairman may give leave, subject to such conditions as the Tribunal or Chairman may think fit, to serve such notice notwithstanding the expiration of the time specified under that rule.

- (2) As soon as practicable after receipt of a notice served under this rule the Secretary shall—
- (a) serve a copy of the notice on every other party to the proceedings, and
  - (b) serve on the intervener a copy of the applicant's reference or application and statement of case, together with any other notice of intervention which has been served upon him.

### **Objections to intervener's credentials (Form 6)**

8.—(1) Any party intending to object to an intervener's credentials shall, within 14 days of being served with a copy of the notice of intervention under rule 7, serve on the Secretary a notice of objection in Form 6.

(2) The Secretary shall, as soon as practicable after receipt of any notice of objection, serve on every other party to the proceedings a copy of the same.

(3) If the Tribunal intends of its own motion to object to an intervener's credentials, the Secretary shall, on the expiration of the time specified under rule 5(2)(c), serve on the intervener and every other party notice of that intention with a statement of the Tribunal's reasons for the objection.

(4) An objection to an intervener's credentials shall not, subject to any direction to the contrary that the Chairman may give under rule 11(2)(vii), operate as a stay of the proceedings and shall be considered by the Tribunal at the same time as the reference or application in question.

### **Written response by operator of scheme or intervener**

9.—(1) Except where otherwise directed under rule 3(3)(a), the operator of the licensing scheme shall, within 28 days of the service on him of a copy of the applicant's statement of case in accordance with rule 3(2), serve on the Secretary a written answer to the applicant's statement setting out his case.

(2) Within 21 days of the expiration of the time specified under rule 5(2)(c), an intervener shall serve on the Secretary a statement of the case he intends to make.

(3) The Secretary shall serve a copy of such case or answer on every other party to the proceedings within 10 days of the receipt thereof.

### **Amendment of statement of case and answer**

10.—(1) Subject to paragraph (3) of this rule, a party may at any time amend his statement of case or answer by serving on the Secretary the amended statement or answer.

(2) On being served with an amended statement of case or answer, the Secretary shall as soon as practicable serve a copy thereof on every other party.

(3) No amended statement of case or answer shall, without the leave of the Chairman, be served after such date as the Chairman may direct under rule 11(2)(iii).

### **Chairman's directions**

11.—(1) Upon the expiration of the time specified by rule 9(2) for the service on the Secretary of a statement of case or answer, the Chairman shall appoint a date and place for the attendance of the parties for the purpose of his giving directions as to the further conduct of the proceedings, and the Secretary shall serve on every party and every person whose application under rule 7(1) has not been determined not less than 21 days' notice of such date and place.

(2) On the appointed day, the Chairman shall afford every party attending the appointment an opportunity of being heard and, after considering any representations made orally or in writing, give such directions as he thinks fit with a view to the just, expeditious and economical disposal of the proceedings and, without prejudice to the generality of the foregoing, may give directions as to—

- (i) the date and place of any oral hearing requested by any party or which the Chairman for any reason considers necessary, and the procedure (including the number of representatives each party may appoint for the purpose of such hearing) and the timetable (including the allocation of time for the making of representations by each party) to be followed at such a hearing;
- (ii) the procedure to be followed with regard to the submission and exchange of written arguments;
- (iii) the date after which no amended statement of case or answer may be served without leave;
- (iv) the preparation and service by each party, or any one party if all other parties agree, of a schedule setting out the issues to be determined by the Tribunal and brief particulars of the contentions of each party in relation thereto;
- (v) the admission of any facts or documents, and the discovery and inspection of documents;
- (vi) the giving of evidence on affidavit; and
- (vii) the consideration by the Tribunal of whether any objection made to an intervener's credentials under rule 8 shall operate as a stay of the proceedings.

(3) The Chairman may postpone or adjourn to a later date to be appointed by him the giving of any directions under this rule and, at any time after directions have been given under this rule the Chairman may, whether or not any application on that behalf has been made under rule 12, give such further directions as he may think fit.

(4) If any party fails to comply with any direction given or order made under this rule or rule 12, the Chairman may, without prejudice to the making of any order under rule 53, give such consequential directions as may be necessary and may order such a party to pay any costs occasioned by his default.

### **Application for directions**

12.—(1) A party may, at any stage of the proceedings, apply to the Tribunal for directions with respect to any issue or other matter in the proceedings and, except where the Tribunal (whether generally or in any particular case) otherwise directs or these Rules otherwise provide, every such application shall be disposed of by the Chairman.

(2) The application shall be made by the service of a notice on the Secretary (stating the grounds upon which it is made) and, unless the notice is accompanied by the written consent of all parties to the proceedings, the party making the application shall serve a copy of the application on every other party to the proceedings and inform the Secretary of the date of such service.

(3) Any party who objects to the application may, within 7 days after being served with the copy thereof, serve a notice of objection (stating the grounds of objection) on the Secretary and he shall serve a copy of the same on the applicant and any other party to the proceedings and inform the Secretary of the date of such service.

(4) After considering the application and any objection thereto and, if he considers necessary, after having given all parties concerned an opportunity of being heard, the Chairman may make such order in the matter as he thinks fit and give such consequential directions as may be necessary.

### **Consolidation of proceedings**

**13.** Where there is pending before the Tribunal more than one reference under section 118, 119, or 120 of the Act, or more than one application under section 121 or 122 of the Act relating to the same licensing scheme, the Chairman may if he thinks fit, either of his own motion or on an application made under rule 12, order that some or all of the references or applications, as the case may be, shall be considered together, and may give such consequential directions as may be necessary:

Provided that the Chairman shall not make an order under this rule of his own motion without giving all parties concerned a reasonable opportunity of objecting to the proposed order.

### **Procedure and evidence at hearing**

**14.—(1)** Every party to a reference or application which is considered at an oral hearing before the Tribunal shall be entitled to attend the hearing, to address the Tribunal, to give evidence and call witnesses.

(2) Except where the Tribunal or the Chairman otherwise orders in the case of an application for directions under rule 12, the hearing shall be in public.

(3) Evidence before the Tribunal shall be given orally or, if the parties so agree or the Tribunal or the Chairman so orders, by affidavit, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

### **Representation and rights of audience**

**15.—(1)** Subject to paragraph (5) of this rule, a party may at any stage of the proceedings appoint some other person to act as agent for him in the proceedings.

(2) The appointment of an agent shall be made in writing and shall not be effective until notice thereof has been served on the Secretary, and a copy of the same has been served on every other party and the Secretary informed of the date of such service.

(3) Only one agent shall be appointed to act for a party at any one time.

(4) For the purpose of service on a party of any document, or the taking of any step required or authorised by these Rules, an agent appointed by a party shall be deemed to continue to have authority to act for such a party until the Secretary and every other party has received notice of the termination of his appointment.

(5) A party or an agent appointed by him under paragraph (1) of this rule may be represented at any hearing, whether before the Tribunal or the Chairman, by a barrister, or in Scotland an advocate, or a solicitor, or by any other person allowed by the Tribunal or the Chairman to appear on his behalf or may, save in the case of a corporation or unincorporated body, appear in person.

### **Withdrawal of reference or application**

16.—(1) The applicant may withdraw his reference or application made under rule 3 at any time before it has been finally disposed of by serving a notice thereof on the Secretary, but such withdrawal shall be without prejudice to the Tribunal's power to make an order as to the payment of costs incurred up to the time of service of the notice. The applicant shall serve a copy of the notice on every other party to the proceedings and inform the Secretary of the date of such service.

(2) Any party to the proceedings upon whom a copy of the notice of withdrawal is served under this rule may, within 14 days of such service, apply to the Tribunal for an order that, notwithstanding such withdrawal, such reference or application should proceed to be determined by the Tribunal, and if the Tribunal decides, at its discretion, to proceed with such reference or application it may for that purpose substitute such party as the applicant to the proceedings and give such consequential directions as may be necessary.

### **Decision of Tribunal**

17. The final decision of the Tribunal on a reference or an application made under rule 3 shall be given in writing and shall include a statement of the Tribunal's reasons and, where on any further reference or application for review of the Tribunal's order under section 120 or 122 of the Act the Tribunal has varied the licensing scheme, there shall be annexed to the decision a copy of the scheme as so varied, and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision.

### **Publication of decision**

18. The Secretary shall cause a copy of the Tribunal's decision to be made available at the office for public inspection during office hours and, if the Chairman so directs, shall cause to be advertised, in such manner as the Chairman thinks fit, short particulars of the decision.

### **Effective date of order**

19. Except where the operation of the order is suspended under rule 42 or 43, the order of the Tribunal shall take effect from such date, and shall remain in force for such period, as shall be specified in the order.