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The Copyright Tribunal in Singapore: A New Lease of Life?

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Despite turning 23 in 2010, the Copyright Tribunal has heard only three cases since its inception. The dismal average of processing about one case every seven years is certainly far from the goals its creators had originally intended it to accomplish, and has led to accusations of it being a lame duck. As such, the Copyright Act was amended in 2009 to revamp the Copyright Tribunal, and hopefully in consequence granting it a new lease of life.

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As elucidated by the Senior Minister of State for Law, Associate Professor Ho Peng Kee, on the second reading of the Copyright (Amendment) Bill 2009, the perennial challenge has always been how the law can “strike a fair balance between the rights of copyright owners and copyright users, ensuring in the process that the flow of knowledge, ideas and information would not be unduly stifled”. With the same aim in mind, the Copyright Tribunal was established in 1987 by the Singapore Copyright Act as a quasi-judicial body to provide an expeditious forum for copyright owners and users of copyright material to resolve their disputes without having to go to the Courts, mainly through examining the reasonableness of copyright licensing terms and making variations if necessary. In addition, it also acts as an administrative tribunal through the determination of the equitable remuneration payable to copyright owners for specified uses of their works; the royalties payable for records of musical works; and the equitable remuneration payable for making copies by educational institutions.

Nevertheless, due to the previously narrow definition of “licence” in the Copyright Act, the Tribunal’s powers were largely restricted as only a limited number of cases would fall under its purview. Moreover, the ineffectiveness of the Tribunal was exacerbated by the vast technological advances over the last two decades, which has significantly expanded the ways of accessing and using copyright works.

As such, to ensure that the copyright law stays relevant and meets the evolving needs of businesses, copyright owners and users, the Intellectual Property Office of Singapore (IPOS) conducted a round of public consultation in 2008 to better understand the different views the public had on the Copyright Tribunal, and the improvements that they would like to see. These efforts culminated in the Copyright (Amendment) Bill 2009, which was duly enacted by Parliament and recently came into effect on 31 December 2009.

Refining the Jurisdiction of the Tribunal

The previously limited jurisdiction of the Copyright Tribunal, due to the narrow definition of “licence” found in the Copyright Act, has often been perceived by commentators as its Achilles’ heel. Developments in technology also demanded legislative changes, since new storage mediums such as hard disks for storing digital music were at that time excluded from the Tribunal’s purview. As illustrated in the case of Orchard KTV & Lounge Pte Ltd v Recording Industry Performance Singapore Pte Ltd [2006] SGCRT 1, on which facts the Copyright Tribunal found the case to be beyond its jurisdiction, this lack of jurisdiction explains to a large extent why only three cases has been heard in the past 22 years. Following the recent amendments, the Tribunal will now be freed from these restraints, and is now able to hear all licence disputes relating to all copyright works.

In addition, the expanded jurisdiction empowers the Tribunal to oversee licensing entities which are in the business of collectively administering copyright licences for different copyright owners, such as collecting societies and commercial agencies, and prevent them from abusing their strong bargaining power to impose unreasonable licence fees. Further supplementary regulations are expected to be introduced by IPOS in time. Individual copyright owners, on the other hand, are unlikely to wield such influence and are therefore excluded from the jurisdiction of the Tribunal, in line with the practice in Australia and the United Kingdom.

Enabling the Tribunal to Substitute Licence Schemes

Previously, the Copyright Tribunal had authority to alter a licence scheme it deems to be unfair, but it is uncertain if this power extends so far as to allow it to substitute the unsatisfactory licence scheme with a new one entirely. In practice, however, the facts of a particular case may require substantial changes to be made to an existing licence scheme, in which the resulting effect is almost equal to substitution. To avoid doubts that the Copyright Tribunal may be acting ultra vires, the recent amendments specifically provided that it can substantially vary an existing licence scheme, to the extent of substituting it completely, if it appears reasonable and fair in the circumstances to do so.

Expansion of the Composition of the Tribunal

The size of the Copyright Tribunal has also been expanded. There are now two new Deputy Presidents to assist the President and the number of members is increased from four to

fifteen. Since the Copyright Tribunal is expected to hear much more cases following the aforementioned changes in the law, this larger pool of Tribunal members will ensure that the quorum for each hearing can be met and permits the possibility of multiple Tribunals being convened at the same time to hear different cases if the need arises.

Conclusion

These recent Copyright Act amendments provided a timely response to the desire for a more efficient legal framework from both copyright owners and users, at a period of rapidly evolving technology. There remains plenty of optimistic anticipation that the changes will not only rectify the longstanding criticisms of the Copyright Tribunal, but also to answer future challenges as well. As Associate Professor Ho Peng Kee envisaged at the end of his speech to Parliament, “these amendments will expand and clarify the powers as well as improve the operations of the Copyright Tribunal to ensure that it can effectively and expeditiously discharge its duties to hear all copyright issues in the face of continuing changes in technology and usage of copyright works”. We will now have to wait and see if the Copyright Tribunal will finally live up to its expectations, with this new lease of life being granted to it.

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