

### **1995 PRACTICE DIRECTION (AS AMENDED)**

*This Practice Direction supersedes the Practice Direction dated 16 November 2000. There are no material changes, other than to modernise the language.*

1. Procedure before the Copyright Tribunal is governed overall by the Copyright Tribunal Rules 1989 which are currently under review. This Direction (which supersedes an earlier Direction) is given for the guidance of parties with a view to achieving a just, expeditious and economical disposal of proceedings. The procedure which follows will be compulsory except in cases where the Tribunal otherwise directs, but this Direction may be altered from time to time.
2. In this Direction, reference is made to service of copies of a variety of documents. Wherever service on the Secretary is referred to, the Secretary will inform the party concerned of the number of copies required.
3. Substantive hearings will be taken by a Tribunal consisting of the Chairman or a Deputy Chairman and at least two and ordinarily not more than four other members. Procedural hearings will be taken by the Chairman or one of the Deputy Chairmen sitting alone.

#### **Pre-Hearing Procedure**

4. In cases of proposed licensing schemes and proposed licences the Tribunal will, pursuant to s.118(2) and s.125(2) of the Act, consider whether the reference is premature. The Respondent will be invited to comment on this point before the Tribunal makes its decision. It will normally consider the matter on the basis of written submissions only.
5. (a) The Applicant's Statement of Case required by Rule 3 should specify exactly what variation of an existing scheme or proposed scheme, or existing licence or proposed licence is sought. This may conveniently be done (particularly in a complicated case) by setting out the existing scheme or proposed scheme on the right hand side of the page and, by italicising or striking out or otherwise, indicating the portions sought to be deleted. Proposed additions can be set out on the left hand side of the page.  
  
(b) Similarly the Respondent's Answer should specify exactly what the Respondent wants.

## **Chairman's Directions (Rule 11)**

6. (a) The Schedule contains a draft of the kind of order likely to be made by way of directions as to the further conduct of the proceedings in a case where there are only two parties. This draft is non-binding and the parties are free to propose alternative directions. Cases where there are more than two parties may require a more complicated form of order.

(b) Parties should consider whether they want any orders for disclosure of documents. Any jurisdictional points should be raised not later than the hearing for directions.

(c) In a two-party case the following procedure before the hearing for directions is desirable. Not less than 14 days before the day fixed for the giving of directions the Applicant should send to the Respondent and the Secretary written proposals for directions. Not less than 7 days before that day the Respondent should send to the Applicant a written statement stating whether or not the proposals are agreed, and if not, containing the Respondent's counter-proposals.

(d) In cases with three or more parties, each party should, not less than 10 days before the appointed day, send to the other parties and the Secretary its written proposals for directions.

(e) If any party wishes the Order for Directions to specify a date for the substantive hearing, it should, well in advance of the hearing for directions, make inquiries of all other parties and of the Secretary to the Tribunal as to a suitable date or dates. The parties should also make an estimate or estimates as to the likely length of the hearing. The Chairman will normally set a date but if no party wishes for a date to be set at this time, normally the Chairman will not do so.

(f) By the time of the Chairman's directions hearing the parties should, where possible, have discussed the details of any proposed variations in order to see whether any parts can be agreed, either as proposed or as modified.

(g) If the parties agree a proposed Order for Directions before the appointed day and submit a draft of the Order signed on behalf of all parties, the Chairman may make an Order accordingly. If however the Chairman considers that the attendance of the parties at a hearing will result in a more expeditious and economical disposal of the proceedings consistent with reaching a just result, the attendance of the parties will be required.

## **Preparation of Written Evidence**

7. To facilitate the reading and handling of written evidence the Tribunal desires that the following procedure should normally be followed.

(a) Where a witness statement is particularly lengthy, consideration should be given to shortening the main text by putting matters of a background or peripheral nature into exhibits referred to in the body of the main text. The use of headings in lengthy witness statements is helpful, and individual paragraphs should not normally be longer than a page.

(b) Originals of witness statements and exhibits should be retained by the party concerned and brought to the substantive hearing for reference if necessary.

(c) The hearing will normally be conducted using copy witness statements and exhibits

(d) Copies of witness statements should be served in a file or files indexed and tabbed (by witness statement) with the pages of the file or files numbered consecutively. Copies of exhibits should be served in a similar fashion but in a file or files separate from the witness statements so that a reader can look at the witness statement and exhibit side by side.

(e) Where an exhibit is particularly bulky consideration should be given to copying only its relevant parts. If parts are omitted a sheet so indicating should be included in the file with the copy of the relevant parts of the exhibit.

(f) All papers circulated subsequent to the original files should be hole-punched to facilitate filing.

## **8. Pre-Trial Review**

(a) The Tribunal may order a Pre-trial Review after the close of written evidence.

(b) Parties may be required by the Tribunal before or during a hearing to calculate the aggregate royalty product of the parties' proposals and the product on such alternate bases as the Tribunal may specify and in computer readable form as prescribed.

(c) The Tribunal may direct that issues are separated into separate topics – e.g. the rates separated from the licence terms – and heard separately.

## **Agreement of Facts and Skeleton Arguments**

9. It is desirable following the close of the written evidence stage of the proceedings that the parties should, so far as possible, agree such matters of fact as they consider are not in dispute. If any such agreement can be reached a written statement of agreed facts should be prepared and sent to the Secretary as soon as practicable before the date appointed for the substantive hearing.

10. Not less than 7 days before the date appointed for the hearing each party should send to the other and to the Secretary a skeleton argument setting out briefly that party's arguments, including references to all portions of evidence particularly relied upon and any legal authorities relied upon. The skeleton argument should also have annexed to it a concise summary of the written evidences of each of that party's witnesses.

11. An important purpose of the skeleton argument is to assist the members of the Tribunal to read in advance the evidence and pleadings. The skeleton argument will not be taken as binding a party but failure to comply with this direction or substantial departure from it may well result in an adverse costs order.

### **12. Bundles**

#### **(a) Core Bundle**

Parties are encouraged to co-operate in preparing a single file containing copies of only the key portions of all parties' evidence and exhibits. If copies of such a bundle can be supplied to the Secretary 7 days in advance of the hearing, time at the hearing should be saved.

#### **(b) Bundle of Authorities**

The parties should co-operate to lodge at least 7 days before the date appointed for the hearing copies of a bundle containing tabbed copies of all legal authorities upon which they intend to reply.

## **Procedure and the Hearing**

### **Opening Speeches**

13. The Tribunal will have read in advance the pleadings, the parties' written evidence and the skeleton arguments. Accordingly, where there is a hearing attended by the parties with cross-examination of witnesses,

substantial opening speeches by, or on behalf of, the parties are not necessary. Unless the Tribunal is persuaded otherwise in any particular case, it would not want to hear, before the first witness is called, an opening speech by or on behalf of the Applicant lasting more than 1 hour and then or at a later stage an opening speech from the Respondent lasting more than 1 hour. The purpose of these speeches should be to focus attention on the matters in dispute rather than introduce the Tribunal to the case. The Tribunal particularly wishes to have a good grasp of the parties' contentions so that it can follow the relevance of any cross-examination more readily.

### **Cross-examination**

14. Cross-examination should be limited to matters in dispute. Lengthy cross examination, most of which is directed to matters of peripheral relevance, is to be avoided. Attention is particularly drawn to paragraph 9 of the Schedule indicating that a witness' evidence need not be cross-examined to be challenged.

### **Speeches following Close of Oral Evidence**

15. Normally closing speeches will be given first by or on behalf of the Respondent and then by or on behalf of the Applicant in Reply. Lengthy speeches are not called for and each party is encouraged to provide at the beginning of its closing speech a written summary of the main points being made on its behalf in that speech.

### **Power to Award Costs**

16. Parties are reminded that under Rule 48(1) the Tribunal has power to award costs. The Tribunal will consider exercising this power against any party which it considers is guilty of undue length in its evidence or at the hearing. Further, though it is not the Tribunal's practice that in all cases costs will follow the event, the fact that a party's case may have been unreasonably maintained will weigh heavily with the Tribunal.

17. Parties are also reminded that in considering any application for costs following determination of a dispute the Tribunal will consider any offer which has been made by any party "without prejudice save as to costs".

**18. Applications under S190 for consent on behalf of a performer**

If the Tribunal is satisfied that the identity or whereabouts of a performer cannot be ascertained by reasonable enquiry and that all particulars required (including particulars of the terms upon which the previous recording was made) have been supplied the Tribunal may make an Order simply giving consent, with provision for liberty to apply for an Order as to payment or other terms as the Tribunal may think fit.

Christopher Tootal,  
Chairman  
For the Tribunal  
7 April 2004

## SCHEDULE

### Draft Chairman's Order for Directions

*(In a Case involving only two parties)*

1. The evidence of all parties shall be signed statements in typescript, each page and each paragraph respectively being numbered.
2. Reference in this Order to service of documents means, in the case of service on the Secretary, service 5 copies, and in the case of service on the other party, service of at least one copy.
3. Evidence on behalf of the Applicant and evidence on behalf of the Respondent is to be served on the other party and on the Secretary on or before\_\_\_\_\_.
4. Any party wishing to serve any further evidence shall serve it on the other party and on the Secretary on or before\_\_\_\_\_.
5. Any party wishing to serve any evidence after this may do so only with the consent of the Tribunal.
6. There shall be a hearing, but any party shall be free to make any or all of its submissions in writing.
7. The hearing shall commence on\_\_\_\_\_.
8. If a party wants to cross-examine any witness for the other party it shall on or before give notice in writing to the Secretary and the other party to that effect.
9. It shall not be necessary for a witness to be cross-examined in order to challenge his evidence. This provision applies also to parts of the statement of a witness who is cross-examined but not on those parts.
10. The parties have liberty to apply for further or other directions.

***Chairman, for the Tribunal***