

## Overview of the Role of the Copyright Tribunal

Remarks by the Registrar, Corporate Affairs and Intellectual Property Office at a Press Launch for Copyright Tribunal at Sherbourne Conference Centre on February 24, 2005

This is an edited version.

In establishing the Copyright Tribunal of Barbados which is set-up under the Copyright Act, No. 4 of 1998I, Barbados joins several countries from around the world (most notably the United Kingdom, Australia, Singapore and Jamaica) which have chosen to establish Copyright Tribunals to arbitrate disputes between owners and users concerning the amount of remuneration which should be paid under a licence for the use and public performance of copyright material.

In performing its mandate under the Copyright Act, the Copyright Tribunal will perform a role which though not identical, is similar to the role now performed by the Fair Trading Commission in the area of utilities regulation.

In essence, the Tribunal will perform the role of balancing the interests of the owners of copyright material (seeking remuneration for the use and public performance of their works) against the interests of the users, (namely, those persons and business wishing to use or publicly perform those works, copy or reproduce them or include them in broadcasts or other communications to the public.)

### Policy /Rationale

The policy or rationale which informed Government's decision to establish a Copyright Tribunal to arbitrate disputes between copyright owners and users, is founded in the recognition that the Copyright Act confers on the creators of protected works very lengthy period of protection in most cases the life of the owner plus 50 years.

The lengthy period of protection coupled with the owner's right, conferred by statute, to prohibit the use of the protected work without a licence could in theory create a potential monopoly in the hands of the copyright holder since users cannot legally use or exploit the work in public unless a licence is first obtained. It is this potential abuse of monopoly power which the Copyright Tribunal is setup to balance or keep in check.

## **Performance of its Mandate**

In performing its mandate under the act, the Barbados copyright Tribunal has jurisdiction under section 102:

- a. (i) To act as a quasi-judicial body to hear and determine any matter referred to it which concerns a licensing scheme operated by a “licensing body” with respect to the copyright in literary, dramatic, musical or artistic works or films, film sound tracks and other protected works; and  
(ii) To act as a quasi-judicial body in hearing and determining applications under section 99 of the Act to settle the royalty or other sum payable for rental of a sound recording, film or computer programme.
- b. The copyright tribunal is also mandated by the Act to keep under review the prescribed rate of royalty payable to a performer in connection with an adaptation of an original recording of his performance.
- c. The copyright tribunal is also required to make recommendations to the Minister on the rate of royalties or other payments in respect of the use or presentation in such national cultural event as the Minister may by order designate, or any works or performance in which copyright or other rights subsist.

## **Powers of Copyright Tribunal**

It is important to note that when it is exercising its jurisdiction under the Act to hear and determine matters concerning the operation of a licensing scheme operated by a “licensing body”, the Copyright Tribunal will only be empowered to settle disputes which arise in connection with a licence or licensing scheme proposed or operated by a “licensing body” as defined by the Act.

Licensing body is defined as a society or other organisation that has as its main object or one of its main objects, the negotiation or granting, (either as owner or prospective owner of copyright or as agent for a copyright owner) of licences, and whose other objects include the granting of licences covering works of more than one author” [s.85(1) copyright act]

Accordingly, an agent who only represents one copyright holder will not qualify as a licensing body and the tribunal will have no jurisdiction to settle issues or disputes between a single copyright holder or his agent and other persons.

### **Examples of Licensing Bodies in Barbados**

At present in Barbados, there are at least three or four representative bodies which could qualify or fall within the definition of “licensing body” and therefore find themselves before the Copyright Tribunal. These would seem to be the

1. Copyright Society of Composers Authors and Publishers Inc. – COSCAP
2. Copyright And Related Rights Association Inc. – CARRA
3. Barbados Association of Tent Managers – BATMAN
4. United Artistes of Barbados - UAB

### **Handling of Disputes/ Issues**

From time to time, as we all know, disputes or issues arise between some of these organisations and other agencies regarding the terms and conditions of use of copyright material managed by these bodies on behalf of right holders.

It is envisaged that the Copyright Tribunal may provide the venue where the licensing schemes and licences negotiated by these bodies maybe subjected to public scrutiny.