

**EXPLANATORY MEMORANDUM TO
THE COPYRIGHT TRIBUNAL RULES 2010**

2010 No. 791

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To introduce new Rules of Procedure for the Copyright Tribunal, which settles various kinds of disputes around copyright licensing, particularly concerning the terms of licensing schemes for copyright material. The new rules aim to streamline the working of the Tribunal and thereby make it easier, quicker and fairer.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Introduction of the new Rules is partly in response to the Commons Innovation, Universities and Skills Committee report of March 2008 (www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmdius/245/245.pdf); the Government's response to this report is at www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmdius/637/637.pdf. The new Rules are intended to promote more effective resolution of disputes by introducing procedures in line with the Civil Procedure Rules 1988.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 The Copyright Tribunal exists to resolve disputes about pricing and availability of licences to use copyright material from "licensing bodies" – typically collecting societies that collect money for use of copyright works on behalf of their members. Complaints to the Tribunal typically come from trade associations representing a class of businesses such as hairdressers or the hospitality industry. In response to concerns that the Tribunal's proceedings were longer and more expensive than necessary, and that this was impeding access to justice, the Rules of Procedure that govern how the Tribunal operates are being modernised and streamlined. This can be done only through legislation by virtue of s.150 of the Copyright, Designs & Patents Act 1988. Interest in this measure is largely specialist – collecting societies, trade bodies and intellectual property lawyers are the main likely sources of interest and media coverage. However,

it has some political and legal importance by virtue of being done in response to a Commons Select Committee and adopting existing good practice for civil litigation.

- **Consolidation**

7.2 Not applicable.

8. Consultation outcome

8.1 Annex C of the consultation document (www.ipo.gov.uk/consult-ctribrules.pdf, p34) sets out organisations consulted directly, both collecting societies and current or potential licensees, including business and trade associations that represent licensee interests. 24 responses were received to the consultation, which ran from 9 April 2009 to 17 July 2009. There was general support for the broad thrust of the Government's proposed changes, a widespread wish for more detail on some issues and concerns about the balance between making applications too easy (encouraging frivolous or ill-founded cases) and too difficult (discouraging legitimate cases). The Government has provided additional clarification on these issues in the Copyright Tribunal Rules 2010.

9. Guidance

9.1 After publication of the 2010 Rules the IPO will arrange a briefing for licensees, by a copyright legal professional, on these Rules. The briefing will focus in particular on the new small applications procedure to the Tribunal.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. The total changes to quantifiable burdens are so small that the cost of an impact assessment would have been disproportionate to the amounts involved.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument, on the advice of the Better Regulation Executive.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Given that each case is different and the Tribunal handles relatively few (historically around four per year), it is hard to set precise success criteria. Success will be judged on whether more cases are brought, whether similar cases are dealt with more quickly under the new Rules and the general tenor of feedback from participants in Tribunal cases. Unless ongoing monitoring of the Tribunal's operations reveals problems that require more urgent action, the new Rules of Procedure will be subject to internal review after 2 years. This should allow sufficient cases to familiarise Tribunal members with the new Rules.

13. Contact

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