

Secretary to the Copyright Tribunal  
Intellectual Property Office  
Harmsworth House  
13-15 Bouverie Street  
London  
EC4Y 8DP

25 June 2009

By Post and E-mail (consultation@ipo.gov.uk)

Dear Sir/ Madam

**Copyright Tribunal Consultation – Modernisation and Simplification of Rules of Procedure**

I am writing to you on behalf of RadioCentre, the industry body for Commercial Radio, in response to the above consultation. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre's membership comprises the overwhelming majority of UK Commercial Radio stations, who fund the organisation. RadioCentre is governed by a board of eight directors, representing a cross section of the industry and including all the major Commercial Radio groups.

The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

RadioCentre (and its predecessor organisations) have had extensive experience of the Copyright Tribunal, both in proceedings before it and in terms of how the existence of the Tribunal's jurisdiction influences the way in which negotiations between broadcasters and copyright licensing bodies proceed.

This response is consistent with submissions provided by RadioCentre to the IPO's internal review of the Copyright Tribunal in 2007 and the response we submitted jointly to the IPO along with major broadcasters (BBC, ITV, Channel 4 and Sky) in May 2008, following the recommendations of the House of Commons Innovation, Universities and Skills Committee.

On this occasion we have focussed our comments to the specific proposals that are being considered as part of this consultation, before providing some further feedback on broader issue of access to the Copyright Tribunal.

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## **Current proposals**

The policy objectives outlined in the consultation document are to promote effective resolution of disputes in line with the Civil Procedure Rules 1998; to improve access to the Tribunal for small businesses; and to reduce costs and delays by providing more active and robust case management.

These are laudable objectives based on a clear desire to ensure that the Copyright Tribunal functions effectively. We would simply highlight a small number of points of detail.

### **– Staffing and resources**

In our joint response of May 2008 we agreed that the level of support and resources provided to the Tribunal should be reviewed. In addition we stated that the post of Chairman should be a salaried post, with additional lay members who have expertise relevant to the work of the Tribunal being appointed in an open and transparent manner.

Therefore we welcome the measures outlined on page 6 of the consultation document to recruit eight new lay members on the basis of relevant expertise and using guidance from the Office of the Commissioner for Public Appointments. In addition, while we have not yet had cause to access the services of the Copyright Tribunal Registry we would obviously welcome the convenience of this being relocated to London, with its professional advisory services being overseen by a full time Head of Registry.

### **– Rules of procedure**

The new two-track procedure (for "small" and "standard" applications) outlined in Part V of the proposed regulations, appears to be consistent with the objective of improving access for individuals and small businesses and institutions.

As the representative body for the Commercial Radio industry we would clearly not expect to be affected directly by a new procedure designed for applications where the financial value is small and the facts and legal issues involved are simple. However, we would urge the IPO to ensure that guidance on this matter is clear and unambiguous, so that all parties understand the types of cases that will be considered as either small or standard and therefore subject to differing procedures.

In addition we would expect that any case before the Tribunal, regardless of its size and scale, would still be subject to the same high levels of scrutiny and application of principles. Therefore we welcome the fact that the consultation stresses that the Tribunal must "ensure that there is no unreasonable discrimination between licensees" (p.9).

### **– Case management**

RadioCentre has no objection to the proposals designed to allow the Tribunal to deal with cases in an efficient, fair and cost effective manner.

The only specific point where we would comment is in relation to the procedure to submit expert evidence. In our joint submission in 2008 we expressed a concern regarding the proposal to limit expert evidence to a single joint expert, and questioned whether this would be desirable or workable in practice. Therefore we welcome the fact that this particular measure does not form part of regulation 26 as drafted.

### **Access to the Tribunal by collecting societies**

While it is not strictly within the scope of this review, RadioCentre would like to repeat its objections to the proposal from the IUS select committee to allow licensing bodies to refer cases to the Copyright Tribunal.

We believe that any perception of imbalance due to fact that licensing bodies do not have access to the Tribunal is misleading, particularly as a licensing body has the right to promulgate a licence without consultation, or to grant or withhold consent to use repertoire. Without a licence and access to the repertoire of the licensing bodies, the user would be infringing copyright and subject to legal action.

Therefore we believe that it is perfectly reasonable that only prospective licensees are able to apply to the Tribunal so that it can decide what licensing terms are appropriate in these circumstances.

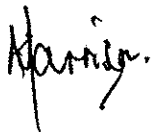
To do otherwise would result in licensing bodies routinely referring their schemes to the Tribunal for approval, without necessarily market testing them through negotiations, which would have cost implications for licensees and for the Tribunal.

Therefore while we are pleased that this proposal has been separated from the current process and does not seem to be being actively pursued at this time, we remain concerned that the IPO still intends to consult on a measure that could be so potentially damaging.

RadioCentre is pleased to be given the opportunity to be able to comment on these proposals and looks forward further details on our key areas of concern.

I hope that you find these comments helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Harrison'.

Andrew Harrison,  
Chief Executive, RadioCentre