

**SUBMISSION ON JURISDICTION AND PROCEDURES
OF THE COPYRIGHT TRIBUNAL
By
SCREENSOUND AUSTRALIA**

INTRODUCTION

ScreenSound Australia (formerly the National Film and Sound Archive) has had no direct experience of the workings of the Copyright Tribunal. However, we have a general interest in the workings of the copyright system and the ways in which creators are remunerated. We therefore welcome this opportunity to comment on the possible reform of this body. References in the text of this submission refer to paragraphs in the discussion paper.

Paragraphs 12-18 Scope for Expansion, Costs and Benefits

There is no reason why the Copyright Tribunal's jurisdiction should be artificially limited based on the nature of the subject matter covered by a collective agreement. This is particularly true given that there has been something of a multiplication of collecting societies in recent years. Mr Shane Simpson's recommendations about expanding the jurisdiction of the Tribunal are, in our view, to be supported.

It is also the view of ScreenSound Australia that the jurisdiction of the Copyright Tribunal should be expanded to allow for the hearing of matters brought by individual members of collecting societies. The objection that agreements between members and collecting societies are "private matters" does not really reflect the operation of the industries concerned, where individuals have little real choice but to let collecting societies act on their behalf. Individuals should know that a body exists which can examine sampling schemes at their instigation should dissatisfaction arise.

Paragraphs 19-21 Structure and Constitution of the Tribunal

ScreenSound Australia firmly supports the proposal to have persons of a nonlegal background represented on the Tribunal. The discussion paper mentions "accountants, economists and other professional persons" and we would go so far as to suggest that there may be a place for experienced persons from the relevant industry, such as performers, managers, producers etc. to be included on the Tribunal where appropriate, with of course, due consideration of questions of neutrality being addressed in each instance.

Paragraphs 22-25 Procedure and Practices of the Tribunal

ScreenSound Australia is of the view that a more informal approach to the proceedings of the Copyright Tribunal is to be encouraged, particularly if individuals with grievances are to be able to bring matters before the Tribunal (see above.) Strict "court-like" procedure is perhaps to be avoided as unnecessarily intimidating and encouraging debate on these matters rather than issues of substance. If however, an Ombudsman is appointed with powers to hear matters before they are referred to the Tribunal, or compulsory mediation is instituted (see

below) and the Tribunal is therefore a secondary body, it may be appropriate for a slightly more “formal” approach to remain, so as a difference is clearly visible between the two stages or levels of dispute resolution. However, as a general point, a relatively informal approach is to be commended.

Paragraphs 26-30 Alternative Dispute Resolution Mechanisms

The establishment of an Ombudsman, or a compulsory mediation process is an excellent idea which may result in many matters being solved before more formal procedures become necessary. Many areas of law have seen the introduction of such alternative dispute resolution mechanisms, even in (or especially in) more emotionally charged areas than copyright law, such as the long established tribunals operating in the industrial area, and even in family law.

Japan is pointed out as an example of such a system. We would point out that the spirit of conciliation is deeply entrenched in many areas of Japan, which remains one of the least litigious advanced countries in the world. This is surely something to be emulated. As pointed out in the last paragraph, Australia has developed many instances of statutorily required mediation, some of them long standing and successful. Such a development, in either the creation of an Ombudsman or compulsory mediation by members of the Tribunal can only be encouraged in the copyright area.

Paragraphs 31 to 32 Accessibility and Promotion...to Potential Users

All the proposals in paragraph 31 will simplify procedure and make potential users aware of the Tribunal. They really only make sense if the Tribunal’s jurisdiction is expanded to include individuals (see above). Collecting societies are probably familiar with the Tribunal, but individual practitioners represented by collecting societies are perhaps not, and will need to be informed. Of course, such publicity will result in costs, not just through the production of materials, but presumably through an increase in matters brought to the Tribunal.

Conclusion

ScreenSound Australia supports proposals which will increase the relevance of the Copyright Tribunal to the ordinary rights holder, simplify its procedures and avoid, wherever possible, legalistic and complex hearings.