



STATUTORY INSTRUMENTS

S.I. No. 20 of 2009

COPYRIGHT AND RELATED RIGHTS (PROCEEDINGS BEFORE THE
CONTROLLER) RULES 2009

(Prn. A9/0126)

COPYRIGHT AND RELATED RIGHTS (PROCEEDINGS BEFORE THE CONTROLLER) RULES 2009

I, JIMMY DEVINS, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 363(1) of the Copyright and Related Rights Act 2000 (No. 28 of 2000) and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2008 (S.I. No. 288 of 2008) and, in so far as these rules relate to fees chargeable in respect of proceedings before the Controller, with the consent of the Minister for Finance, hereby make the following rules:

1. These Rules may be cited as the Copyright and Related Rights (Proceedings before the Controller) Rules 2009.

2. (1) In these Rules—

“Act” means the Copyright and Related Rights Act 2000 (No. 28 of 2000);

“applicant” in relation to an application under Rule 17, has the meaning assigned to it by that Rule;

“counter statement” has the meaning assigned to it by Rule 6(a);

“document” includes a reproduction in legible form of a record in non-legible form;

“operator” means operator of a scheme;

“petitioner” means any of the following:

- (a) a person or licensing body who makes a reference to the Controller under section 38(4) and if applicable, section 38(9);
- (b) a person or licensing body who applies to the Controller under section 38(11) to review an order made by the Controller under subsection (7) or (10) of section 38;
- (c) a person by or to whom equitable remuneration is payable under section 125 who applies to the Controller under section 126(1) in default of agreement;
- (d) a person by or to whom equitable remuneration is payable under section 125 who applies to the Controller for an order under section 126(2) to vary an agreement or any previous determination of the Controller as to the amount payable;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 30th January, 2009.

- (e) the organisation which refers the terms of a licensing scheme proposed to be operated by a licensing body to the Controller under section 151, 267 or 342 as the case may be;
- (f) an operator, person or organisation who is a party to a dispute referred to in that section who refers a licensing scheme to the Controller under section 152, 268, or 343 as the case may be;
- (g) an operator, person or organisation who refers a licensing scheme to the Controller under section 153, 269 or 344 as the case may be;
- (h) a person who applies to the Controller for an order pursuant to section 154, 270 or 345 as the case may be;
- (i) an operator or original applicant who applies to the Controller for a review of an order under section 155, 271 or 346 as the case may be;
- (j) a prospective licensee who refers to the Controller for an order under section 158, 274 or 349 as the case may be;
- (k) a licensee under a licence which is due to expire with the passage of time or as a result of notice given by a licensing body who applies to the Controller under section 159, 275 or 350 as the case may be;
- (l) a licensing body or person entitled to the benefit of an order under section 158, 159, 274, 275, 349 or 350 as the case may be, who applies to the Controller for a review pursuant to section 160, 276 or 351 as appropriate;
- (m) a person by or to whom equitable remuneration is payable under section 208 who applies to the Controller under section 208(5) in default of agreement;
- (n) the person by or to whom equitable remuneration is payable under section 208 who applies to the Controller for an order under section 208(6) to vary an agreement or any previous determination of the Controller as to the amount payable;
- (o) a person by or to whom equitable remuneration is payable under section 298 who applies to the Controller under section 299(1) in default of agreement;
- (p) a person by or to whom equitable remuneration is payable under section 298 who applies to the Controller for an order under section 299(2) to vary an agreement or any previous determination of the Controller as to the amount payable;
- (q) a person who makes an application under section 254;

“respondent” means any of the following:

- (a) a person or licensing body, other than a petitioner, where the petitioner makes a reference to the Controller under section 38(4) and, if applicable, section 38(9);
- (b) a person or licensing body, other than a petitioner, where an application is made under section 38(11) by the petitioner to review an order made by the Controller under section 38(7) or section 38(10);
- (c) a person by or to whom equitable remuneration is payable under section 125, other than a petitioner, where the petitioner applies to the Controller for an order under section 126(1) in default of agreement;
- (d) a person by or to whom equitable remuneration is payable under section 125, other than a petitioner, where the petitioner applies to the Controller under section 126(2) to vary an agreement or any previous determination of the Controller as to the amount payable;
- (e) a licensing body proposing to operate a licensing scheme where the terms of the scheme are referred to the Controller under section 151, 267 or 342, as the case may be;
- (f) an operator, person or organisation who is a party to a dispute referred to in that section, other than a petitioner, where a reference is made by the petitioner to the Controller under section 152, 268 or 343, as the case may be;
- (g) an operator, person or organisation referred to in that section, other than a petitioner, where the licensing scheme is referred by the petitioner to the Controller under section 153, 269 or 344 as the case may be;
- (h) an operator in respect of whose scheme an application is made under section 154, 270 or 345 as the case may be;
- (i) an operator or original applicant who is not a petitioner where an application is made by the petitioner for a review of an order under section 155, 271 or 346 as the case may be;
- (j) a licensing body the terms of whose proposed licence are referred by the petitioner to the Controller under section 158, 274 or 349 as the case may be;
- (k) a licensing body operating a licensing scheme in respect of which an application is made by a petitioner to the Controller under section 159, 275 or 350, as the case may be;
- (l) a licensing body or the person entitled under section 160, 276 or 351 as the case may be to seek a review of an order made under section

158, 159, 274, 275, 349 or 350 as the case may be, other than a petitioner, where the petitioner seeks such review under section 160, 276 or 351 as appropriate;

- (m) a person by or to whom equitable remuneration is payable under section 208, other than a petitioner, where the petitioner applies to the Controller for an order under section 208(5) in default of agreement;
- (n) a person by or to whom equitable remuneration is payable under section 208, other than a petitioner, where the petitioner applies to the Controller under section 208(6) to vary an agreement or any previous determination of the Controller as to the amount payable;
- (o) a person by or to whom equitable remuneration is payable under section 298, other than a petitioner, where the petitioner applies to the Controller for an order under section 299(1) in default of agreement;
- (p) a person by or to whom equitable remuneration is payable under section 298, other than a petitioner, where the petitioner applies to the Controller for an order under section 299(2) to vary an agreement or any previous determination of the Controller as to the amount payable;

“statement” has the meaning assigned to it by Rule 4(1)(c).

(2) In these Rules a reference to a section or a subsection is a reference to a section or a subsection of the Act.

3. (1) There shall be charged by the Controller in respect of each matter mentioned in column 2 of Schedule 1, opposite a reference number mentioned in column 1 of that Schedule, the fee set out in column 3 of that Schedule opposite the mention of that reference number.

(2) Fees shall be paid in the currency of the State and in any such manner as may be approved by the Controller.

4. (1) Other than in relation to an application under Rule 27, a petitioner who makes a reference or application to the Controller shall furnish the following items to the Controller and he or she shall not consider an application or reference as having been made to him or her unless he or she is duly furnished with those items:

- (a) the name and address of the petitioner;
- (b) the name and address of the respondent;
- (c) original and one copy of a signed statement (in these Rules referred to as a “statement”) which contains a reference to—

- (i) the section of the Act pursuant to which the reference or application is being made,
 - (ii) the material facts on which the petitioner relies in making the reference or application, and
 - (iii) the relief sought;
- (d) original and one copy of each of the documents mentioned in paragraph (2) as the context requires;
- (e) the fee payable pursuant to Rule 3 in respect of the reference or application.

(2) There shall be furnished to the Controller in respect of each reference or application made under the section of the Act specified in column 2 of Schedule 2, opposite a reference number mentioned in column 1 of the Schedule, the document mentioned in column 3 of that Schedule opposite the mention of that reference number.

5. As soon as may be following receipt of all of the items mentioned in Rule 4(1), the Controller shall furnish a copy of—

- (a) the original signed statement mentioned in paragraph (c) of that Rule, and
- (b) each of the documents mentioned in paragraph (d) of that Rule,

as the case may be, to the respondent.

6. A respondent who wishes to contest a petitioner's reference or application shall, within 28 days of receipt of copies of the documents mentioned in Rule 5 from the Controller, furnish the following items to the Controller:

- (a) a counter statement (in these Rules referred to as a "counter statement") replying to the statement furnished under paragraph (1)(c) of Rule 4 and setting out the extent to which that statement is admitted or disputed together with a copy of the said counter statement;
- (b) the fee payable pursuant to Rule 3 in respect of the counter statement.

7. Unless the Controller otherwise directs, a respondent who fails to furnish items referred to in paragraph (a) or (b) of Rule 6 within the period referred to in that Rule shall be deemed not entitled to so furnish them and the Controller shall be entitled to presume that the respondent does not intend participating in the application or reference and the Controller shall proceed with the application or reference accordingly.

8. As soon as may be following receipt by the Controller of the items referred to in Rule 6(a) and (b), he or she shall furnish a copy of the counter statement to the petitioner.

9. (1) Where, having considered the statement and other information furnished by a petitioner or respondent the Controller is of the opinion that it is necessary, he or she may request by notice in writing that the following is furnished to him or her by the petitioner or respondent within the period of time referred to in the notice:

- (a) further statements or counter statements;
- (b) books, records or other documents; or
- (c) the work to which the application or reference refers.

(2) In this Rule “record” other than in relation to a work, includes, in addition to a record in writing—

- (a) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph,

and any reference to a copy of a record includes—

- (i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied therein, and
- (iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript together with such a still reproduction.

10. (1) If the Controller is furnished with the items mentioned in Rule 9 in accordance with his or her request by one or both parties to the application or reference within the period referred to in the notice then the Controller shall, if he or she considers it appropriate, immediately furnish copies of same to the other party to the application or reference, as the case may be.

(2) If the Controller is not furnished with the items mentioned in Rule 9 in accordance with his or her request by one or both parties to the application or reference within the period referred to in the notice, then, unless the Controller otherwise directs, the person from whom the statements or information were

requested shall be deemed not entitled to so furnish them and the Controller shall be entitled to presume that the person does not intend participating in the application or reference as the case may be and the Controller shall proceed with the application or reference accordingly.

11. (1) If the Controller—

- (a) is satisfied that it is necessary having considered documents furnished pursuant to Rules 4, 6 or 9, or
- (b) having received a request for an oral hearing from a petitioner, respondent or, if appropriate an applicant who has been made a party to the proceedings pursuant to Rule 22, consents to do so,

he or she may fix a date for hearing the petitioner, respondent or, if appropriate an applicant who has been made a party to the proceedings pursuant to Rule 22, or a person who he or she is satisfied to hear on their behalf in relation to the application or reference.

(2) If the Controller—

- (a) is not satisfied that it is necessary having considered documents furnished pursuant to Rules 4, 6 or 9, or
- (b) does not receive a request from a petitioner, respondent or, if appropriate an applicant who has been made a party to the proceedings pursuant to Rule 22, for an oral hearing,

he or she may make his or her decision in respect of the application or reference without hearing the petitioner, respondent or, if appropriate an applicant who has been made a party to the proceedings pursuant to Rule 22, or a person acting on their behalf in relation to the application or reference.

12. The Controller shall give not less than 10 days notice to the petitioner or respondent or, if appropriate, applicant who has been made a party to the proceedings pursuant to Rule 22 (unless they consent to the giving of shorter notice) of the time fixed under Rule 11(1) for hearing the parties and—

- (a) a person who intends to appear at the hearing shall give notice to that effect to the Controller and pay the fee payable pursuant to Rule 3 in respect of it no later than 7 days after receipt of the notice from the Controller, and
- (b) where a person does not so notify him or her or does not pay the fee referred to in paragraph (a), then the Controller shall be entitled to presume that the person does not wish to appear at the hearing and the Controller may act accordingly.

13. (1) The procedure at a hearing shall be such as the Controller may determine.

(2) The Controller may postpone or adjourn a hearing as he or she thinks fit.

14. The Controller shall make his or her decision in relation to an application or reference in a timely manner and shall inform the petitioner, respondent or, if appropriate an applicant who has been made a party to the proceedings pursuant to Rule 22 of the decision.

15. The Controller, having considered the documents furnished to him or her under Rule 4 in relation to a referral of a licensing scheme to him or her by an organisation under section 151, 152, 267, 268, 342 or 343, may if he or she considers it necessary, notify the organisation of such evidence as is required by him or her in order to satisfy him or her that the organisation is representative of the class of persons that it claims to represent.

16. (1) Where a person intends to apply for special leave of the Controller to make an application pursuant to a section mentioned in paragraph (2), then the person shall—

(a) notify—

(i) the Controller, and

(ii) the other person to whom the order, agreement or previous determination, as the case may be, in relation to which the application for special leave is being made refers, of his or her intention to so apply and the reasons therefor,

and

(b) pay to the Controller the fee payable pursuant to Rule 3 in respect of the application.

(2) The sections pursuant to which the application for special leave may be made are sections 38(12), 126(3), 153(3), 155(2), 160(2), 208(7), 269(3), 271(2), 276(2), 299(3), 344(3), 346(2) and 351(2).

17. A person or organisation (in these Rules referred to as the “applicant”) who is not a petitioner or respondent may apply to the Controller to be made a party to proceedings and shall furnish the following to the Controller—

(a) the name and address of the applicant,

(b) the name of the relevant proceedings,

(c) a statement pursuant to Rule 18, and

(d) the fee payable pursuant to Rule 3 in respect of the application.

18. The applicant shall furnish an original and 2 signed copies of a statement to the Controller which sets out the material facts relied upon in claiming that

the applicant has a substantial interest in the matter the subject of the proceedings in respect of which the application is made, and the reasons why he, she or they should be made a party to the proceedings.

19. Where the Controller receives an application from an applicant he or she shall notify the following of the statement referred to in Rule 18 and furnish a copy of same to them:

- (a) in the case of a licence or licensing scheme referred to the Controller under section 151, 152, 153, 267, 268, 269, 342, 343 or 344, the licensing body,
- (b) in the case of any relevant proceedings before the Controller, the petitioner and the respondent.

20. The licensing body, petitioner or respondent, as the case may be, if they wish to object to the applicant becoming a party to the proceedings, having considered the statement furnished to them under Rule 19, shall within 14 days of the statement being so furnished notify the Controller of their objection, and in so notifying the Controller shall furnish—

- (a) the fee payable pursuant to Rule 3, and
- (b) a statement outlining the reasons for their objection to the Controller together with a copy thereof.

21. If the Controller is not furnished with an objection pursuant to Rule 20, then, unless the Controller otherwise directs, the person to whom the statement was furnished under Rule 19 shall be deemed not entitled to so furnish an objection and the Controller shall be entitled to presume that the person does not so object and the Controller shall proceed with the application accordingly.

22. The Controller having considered the statement furnished pursuant to Rule 18 and any objection furnished pursuant to Rule 20 may, if he or she is satisfied to do so, decide to make the applicant a party to the proceedings.

23. The Controller shall make his or her decision in relation to an application pursuant to Rule 17 in a timely manner and shall inform the applicant, licensing body, petitioner or respondent, as the case may be.

24. A petitioner, respondent, or applicant shall furnish an address for service in a Member State of the EEA to the Controller.

25. An application, reference, communication to, or attendance at a hearing before the Controller under these Rules may be made by an agent or a legal representative who resides or has a place of business in the State or in a Member State of the EEA other than the State and is duly authorised by the petitioner, respondent or person or organisation on whose behalf the application, reference, communication or attendance is made, and where a document relating to any such application, reference, communication or attendance is served upon or

addressed to an agent or legal representative authorised as aforesaid, the document shall be deemed to be served upon or addressed to the person by whom he or she is so authorised.

26. (1) An appeal on a point of law arising from a decision of the Controller may be brought under section 366 no later than 4 weeks after the date of the decision.

(2) The person appealing the decision of the Controller shall so notify the Controller as soon as may be after the appeal is brought and furnish the Controller with a copy of the appeal.

(3) On receipt of a notice under paragraph (2) the Controller shall suspend the operation of the order made by him or her which gives effect to the decision being appealed.

(4) Where the operation of an order of the Controller is suspended under paragraph (3), then, while the order remains suspended, sections 156, 161, 272, 277, 347 and 352 shall not have effect in relation to the order.

(5) The Controller shall inform the persons directly affected by it by notice in writing of the suspension of the operation of the order and shall cause a notice to be published in the Patents Office Journal of every order so suspended.

27. (1) A petitioner who applies to the Controller for an order under section 254 shall furnish the items mentioned in paragraph (2) to the Controller and the Controller shall not consider an application under that section unless he or she is duly furnished with those items.

(2) A petitioner shall furnish the following items to the Controller:

- (a) the name and address of the petitioner;
- (b) a statement in the form of an affidavit in duplicate of the basis upon which the application is made, the material facts on which the petitioner relies in making the application (including the title of the recording of the performance (if known), any information regarding the name of the performer (if known), the name of the composer or author, as the case may be (if known), the age of the work and the date of its creation (if known), and whether it was previously made available to the public (if known)) and the purpose for which the right to reproduce the work is sought;
- (c) the recording of the performance which is the subject of the application; and
- (d) the fee payable pursuant to Rule 3 in respect of the application.

(3) No more than four weeks before making a decision in respect of an application under section 254, the Controller shall publish a notice in the Patents Office Journal of the making of the application which shall include a short

description of the recording or work as considered appropriate by the Controller.

28. Unless otherwise provided for in these Rules, the Controller may fix such times as he or she thinks fit for the submission to him or her of any statement, counter statement, books, records, recordings of performances, documents or other matter to which these Rules refer, which he or she may require in relation to an application or reference, and the Controller may alter as he or she thinks fit such times as have been so fixed.

SCHEDULE 1

Rule 3(1).

| Reference Number (1) | Matter (2) | Amount (3) |
|-------------------------------------|---|-----------------------|
| 1 | Reference or application by Petitioner under Rule 4 | €500 |
| 2 | Counter statement by Respondent under Rule 6 | €380 |
| 3 | Hearing under Rule 12 | €40 |
| 4 | Application for special leave under Rule 16 | €250 |
| 5 | Application to be made a party under Rule 17 | €250 |
| 6 | Objection under Rule 20 | €60 |
| 7 | Application under Rule 27 | €500 |

SCHEDULE 2

| Reference Number | Section of Act under which Reference or Application made | Document |
|-----------------------------|---|---|
| (1) | (2) | (3) |
| 1 | 38(4) or (9) | Proposed agreement |
| 2 | 38(11) | Order made by the Controller under section 38 (7) or section 38 (10) |
| 3 | 126(1) | Agreement (if any) on foot of which it is claimed equitable remuneration is payable |
| 4 | 126(2) | Agreement (if any) in place or determination of Controller |
| 5 | 151 | Proposed licensing scheme |
| 6 | 267 | Proposed licensing scheme |
| 7 | 342 | Proposed licensing scheme |
| 8 | 152 | Licensing scheme |
| 9 | 268 | Licensing scheme |
| 10 | 343 | Licensing scheme |
| 11 | 153 | Proposed licensing scheme or licensing scheme as appropriate and Order made by Controller |
| 12 | 269 | Proposed licensing scheme or licensing scheme as appropriate and Order made by Controller |
| 13 | 344 | Proposed licensing scheme or licensing scheme as appropriate and Order made by Controller |
| 14 | 154 | Licensing scheme |
| 15 | 270 | Licensing scheme |
| 16 | 345 | Licensing scheme |
| 17 | 155 | Licensing scheme and Order made by Controller |
| 18 | 271 | Licensing scheme and Order made by Controller |
| 19 | 346 | Licensing scheme and Order made by Controller |
| 20 | 158 | Proposed licence |
| 21 | 274 | Proposed licence |
| 22 | 349 | Proposed licence |
| 23 | 159 | Licence |
| 24 | 275 | Licence |
| 25 | 350 | Licence |
| 26 | 160 | Licence or proposed licence where appropriate and Order made by Controller |
| 27 | 276 | Licence or proposed licence where appropriate and Order made by Controller |

| Reference Number | Section of Act under which Reference or Application made | Document |
|-------------------------|---|---|
| (1) | (2) | (3) |
| 28 | 351 | Licence or proposed licence where appropriate and Order made by Controller |
| 29 | 208(5) | Agreement (if any) on foot of which it is claimed equitable remuneration is payable |
| 30 | 208(6) | Agreement (if any) in place or determination of Controller |
| 31 | 299(1) | Agreement (if any) on foot of which it is claimed equitable remuneration is payable |
| 32 | 299(2) | Agreement (if any) in place or determination of Controller |
| 33 | 254 | Documents referred to in Rule 27 |

GIVEN under my hand,
28 January 2009

JIMMY DEVINS.

Minister of State at the Department of Enterprise, Trade and Employment.

I, BRIAN LENIHAN, Minister for Finance, hereby consent to the making of the foregoing Rules insofar as they relate to the fees chargeable in respect of proceedings before the Controller.



GIVEN under my Official Seal,
19 January 2009

BRIAN LENIHAN.
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Rules prescribe the procedures to be observed and the fees payable in relation to proceedings before the Controller of Patents, Designs and Trade Marks under the Copyright and Related Rights Act 2000 (No. 28 of 2000).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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