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Copyright & the Media: some issues worth noting

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RELEVANCE OF COPYRIGHT TO MEDIA HOUSES

Copyright is of primary concern and relevance to the electronic and print media, owing to the fact that they are major producers and consumers of copyright material by way of the content they create, transmit and publish.

Media houses are daily at risk in their normal course of operations for possible infringement of copyright owned by third parties. They must therefore be acutely aware of the types of uses that require prior permission from third party copyright owners and those uses that are permitted under law without a license. Media houses should adopt copyright risk management techniques to guard against unwitting or deliberate infringement, which could prove costly for their businesses.

PERMITTED USES

Instances where a media house's use of material does not require the authorization of the copyright owners include (i) where the material is already in the public domain, the copyright having expired, and (ii) where the use of the work amounts to fair use/ fair dealing. Where material is used in accordance with fair dealing the user should acknowledge the source of the material and credit the respective authors and/or copyright owner/s, except in the case of reporting of current events by broadcast, film or cable this being one of the few instances where moral rights do not apply. Other limited exceptions to copyright infringement include (1) use of material for the purposes of teaching, instruction and examination. (2) recording of broadcasts for program control (3) recording of broadcasts for archival purposes and (4) recording of broadcasts for the purpose of time shifting.

USES REQUIRING A LICENSE

For uses over and above fair dealing and other exceptions under Law, permission should be sought from the copyright owner for use of the material in question particularly where the user seeks to embody/modify the work or a substantial portion thereof in material being generated by the user.

Clearance to use the material should be obtained in the form of a written license from the copyright owner/s or an agent duly authorized by the rights owner.

The Intellectual Property Service Centre (IPC) a non-governmental body is developing a rights clearance service that offers local users of literary and artistic works a central facility to obtain clearance for both local and foreign material.

PUBLIC PERFORMING RIGHTS

The public performing rights under Jamaica's Copyright Act 1993 are the rights to perform in public or in the case of a sound recording, film, broadcast or cable programme, to play or show the work in public. The public performing rights also extend to the right to broadcast the work. These rights impose an obligation on electronic media, to seek a license to cover the media's transmission of local and foreign music. However these rights particularly where they concern non-dramatic musical works are not effectively managed or licensed on an individual basis, as it is virtually impossible for a TV or Radio Station to locate all the rights owners of each and every musical work and secure written licenses prior to playing all those works. Hence the international practice is for these rights to be administered by collecting societies on behalf of a group or groups of right owners.

COLLECTING SOCIETIES

In Jamaica there are four collecting societies, which have emerged since the Copyright Act of 1993, each concerned with the administration of different types of rights under the Law. The societies are (i) the Jamaica Association of Composers, Authors and Publishers (JACAP) (ii) the Jamaican Musical Rights Administration Society (JMRAS) (iii) the Jamaica Performers Administration Society (JPAS) and (iv) the Jamaican Copyright Licensing Agency (JAMCOPY).

JACAP administers the public performing rights of composers, authors and publishers in their musical works. JACAP succeeded the local agency of the

PRS (UK) and is a member of the international organization called CISAC. JMRAS is concerned with the administration of the rights of record producers and has some local record companies as its members. JPAS is concerned about administering the rights of performers in their live and fixed performances as granted under the Copyright Law. JAMCOPY administers the reprographic rights of authors and publishers of works in print media, which concerns licensing the right to make multiple copies/photocopies of such works. Each society, even where formally established by Law, must be legitimized by the mandate of its members, which can take the form of written contracts of authorization, assignments of rights, agency agreements or powers of attorney. The members of the society ought to be vested with the relevant rights under the Law in the first place in order to issue a proper mandate to the society. Reciprocal arrangements between the local society and counterpart societies abroad afford the local society the opportunity to license both local and foreign repertoire.

ROLE OF THE COPYRIGHT TRIBUNAL

Copyright licensing in Jamaica must accord with the Copyright Act. The Copyright Tribunal, established under the Copyright Act, is a de facto regulator of local collecting societies. Among other things, the Copyright Tribunal's role is to hear and determine matters brought before it in respect of the terms of a license or licensing scheme being offered by a collecting society to a user group. The user entity is entitled to commence proceedings before the Tribunal, wherever the parties cannot themselves settle the terms of the license or licensing scheme.