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Audiovisual Copyright

The Federal Attorney-General is responsible for the policy and administration of the Copyright Act 1968. For the past two years the Attorney-General's Department has been reviewing audiovisual copying provisions of that Act. This article, prepared by officers of the Department, reports on the progress of the Review to date.

The commencement of the Review was announced by the then Attorney-General, Senator Peter Durack, Q.C., on 12 July 1981.

Senator Durack said that recent technological changes had introduced faster, cheaper and simpler methods of audiovisual copying in respect of which the Copyright Act made inadequate provision regarding copyright owners' rights.

He noted that a report published in 1981 by a non-government specialist committee convened by the Australian Copyright Council had isolated problems and proposed solutions but had also revealed substantial differences of approach among various interests.

Particular problem areas mentioned in that report included domestic audio and video copying, (i.e. home taping), the needs of schools, colleges, universities and libraries for access to audiovisual productions, and the difficulties of ensuring appropriate remuneration for copyright owners.

Senator Durack said that the then Government was not committed to any views which had been expressed and that the aim of the review was to recommend proposals which would provide a fair balance between the interest of copyright owners and those of users of audiovisual materials.

Interested persons and organisations were invited to make their views known to the Attorney-General's Department by 30 November 1981. That date was subsequently extended to 31 December 1981.

The Department received 193 submissions, some well after the closing date, together with the results of an extensive survey by recording and music interests of domestic audio copying in Australia. Copies of all these were deposited with the National, State and ABC Reference Libraries for public inspection.

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Contempt of Court inquiry

On 4 August 1983, Mr Justice Hope, the Royal Commissioner into Intelligence and Security matters involving Mr David Combe, gave a strongly worded warning to newspaper, radio and television journalists about the law of contempt as it affects Royal Commissions.

This warning draws attention to an important inquiry which the Commonwealth Attorney-General, Senator Evans, has asked the Law Reform Commission (Cth) to undertake.

The Commission is to prepare a report on the law on contempt of Federal and Territory courts, tribunals and commissions.

Work on the project began in earnest in July 1983 when Professor Michael Chesterman, a Professor of Law in the University of New South Wales, commenced his term as a full-time Member of the Commission.

The terms of reference given to the Commission are wide. It has been asked to consider the legal principles relating to all forms of contempt, as applied by Federal and Territory courts, State courts exercising Federal jurisdiction and tribunals and commissions created by or under Commonwealth laws.

The Attorney-General also instructed the Commission to have regard to the provisions of Article 14

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In the press release accompanying the reference, he expressed the view that the reference raised "important issues concerning the proper administration of justice, the right to free speech and the need to protect the integrity of the legal process".

There are a number of reasons why a review of contempt of court is appropriate at the present time, quite apart from Mr Justice Hope's reminder.

The issue received a lot of publicity, following the imprisonment of Mr Norm Gallagher, the secretary of the Builders' Labourers' Federation, after a conviction for contempt for having asserted that the Federal Court had acceded to union pressure in acquitting him of an earlier charge of contempt.

The High Court dismissed Mr Gallagher's appeal (**Gallagher v Durack** (1983) 57 ALJR 191). However, in the course of his dissenting judgment, Murphy J expressed serious concern about the state of the law of contempt in this area. He said (at p 194): "As stated by this court, the law of criminal contempt in scandalising courts is so vague and general that it is an oppressive limitation on free speech. No free society should accept such censorship".

Another recent High Court decision on contempt brought forth a similar degree of disagreement within the Court as to the proper scope of contempt law.

In **State of Victoria v Australian Building Construction Employees' and Builders' Labourers Federation** (1982) 56 ALJR 506, it was argued by the Federation that proceedings being taken for its deregistration under the Conciliation and Arbitration Act 1904 were prejudiced by the continuance of a Royal Commission into its activities. The High Court held that there was no evidence of prejudice of this nature, but the Court was divided four to two.

The issues raised in these two recent authorities on contempt, along with many others, have been discussed in important law reform reports in England and Canada.

In England, the Phillimore Committee published a lengthy and thorough report in 1974, and several of its recommendations were adopted in 1981 in the Contempt of Court Act. A shorter report by the Law Reform Commission of Canada on **Contempt of Court** (CLRC 17, 1981) traverses much the same ground as the Phillimore Committee.

The inquiry by the Law Reform Commission (Cth) is not likely to be an easy one.

In commenting on the reference when it was first announced, the **Sydney Morning Herald,** in an editorial on 9 April, remarked: "Given the history of past reviews, the exercise will be carried out with thoroughness and intellectual rigour. But whether this will be enough to solve the problems inherent in the nature of the law remains to be seen. It will be something of a miracle of jurisprudence if this is achieved. At the heart of the law of contempt two fundamental rights in a free society are in conflict: the right to the due process of law and the right to free expression. .... The law on contempt is a legal thicket that does not easily lend itself to simplification. If the ALRC can put forward a doctrine that is modern, relevant and judicious to the competing interests involved, it will have done the community a service".

It is not difficult to predict some of the issues which will give rise to controversy.

Arguments are likely to be put to the Commission, that the **sub judice** rule is not necessary in modern society.

It has been suggested in the USA, where very limited versions of the rule apply, that there is no clear evidence that jurors, or, for that matter, judges, are significantly influenced by pre-trial publicity in the media when they are faced with the task of deciding particular issues in the courtroom.

At the other extreme, it is likely to be asserted that a number of recent cases in Australia, in particular the Chamberlain case, have shown how dangerous it is to allow the media to give wide publicity to a case before its trial, and how important it is to tighten the safeguards against undesirable publicity in order to ensure that accused people receive a fair trial from an unbiased judge or jury.

Another area of potential controversy is that of the procedures applicable in the contempt case.

The view has been strongly put that it is wrong to allow judges to decide cases of contempt arising out of conduct in their own courtroom.

In these situations, they are likely to be not only the judge, but also the chief witness, the prosecutor and, in a sense, the victim.

The counter-argument is that to allow the judge to hear a contempt charge in this situation is a useful and important reinforcement of the court's authority and prevents any possible embarrassment arising from the hearing of the case by a fellow judge who may have very different views about the seriousness of the allegedly contemptuous conduct.

Gallagher v Durack itself raises issues on which a wide divergence of views can be found.

It has been asserted in a number of recent sources, notably a pamphlet by the United Kingdom National Council of Civil Liberties, titled *Changing Contempt of Court* (1981), that there is no longer a need for a separate offence of 'scandalising the court'.

Other offences and remedies dealing with the same subject matter, notably defamation in its criminal and civil forms, are alleged to be adequate to deal with remarks critical of the work of the courts, to be more precisely defined and to be governed by more appropriate procedures.

This argument may be contrasted with the approach of the majority of the High Court in the Gallagher case and there are, of course, numerous intermediate viewpoints which have to be taken into account.

Similarly controversial is the question of sentencing. Doubts were expressed, by Senator Evans, amongst others, as to whether the sentence of three months' imprisonment imposed on Mr Gallagher was not unduly severe.

Audiovisual Copyright — progress report

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On 27 July 1982 the Department published an Issues Paper which brought together all issues raised in submissions and summarised the main arguments presented for and against proposals for changes in the laws.

The paper classified issues under four headings: Private and Domestic Copying, Educational Copying, Library Copying and Miscellaneous Uses.

Private and Domestic Copying. The main questions raised were whether it should be lawful for a person to record broadcasts and copy pre-recorded audiovisual materials for his own private use, and if so whether remuneration should be payable to copyright owners.

Various suggested royalty schemes for payment for private and domestic copying were described in the Paper.

Educational Copying. Educational interests were concerned about who could copy broadcasts for educational purposes, what could be copied and what uses of such copies should be permitted.

Similar issues were raised concerning the copying of other audiovisual materials, as well as the circumstances in which such copies could be made, the material which could be copied and whether only part or all such material should be able to be copied.

Other educational issues included the performance of sound recordings and films for teaching purposes, the making of adaptations for use by students with learning disabilities, whether the fair dealing provisions of the Act should extend to audiovisual materials, the making of slides and overhead transparencies, the electronic storage, retrieval and transmission of copyright materials for educational purposes, and the special needs of isolated students and multi-campus institutions.

Various schemes for licensing educational copying, for payment of royalties and for facilitating voluntary arrangements for educational copying were also described.

Library Copying. Submissions covered copying of audiovisual materials for library users, copying for preservation of items of special historical or cultural interest, copying of unavailable materials for other libraries, copying of unpublished materials for research purposes and copying in order to change an item to a more convenient or useful material form.

Also raised were the needs of certain special groups: handicapped users, parliamentary libraries and educational resource centres.

Extension of the existing compulsory legal deposit provision to cover films and sound recordings was proposed, as were various schemes for licensing copying and for remunerating copyright owners.

Miscellaneous Uses. Those covered included broadcasts for the print handicapped, the needs of intellectually handicapped persons, cable television, acts done for judicial proceedings, closed circuit video in motels, the recording of church services and statutory provisions relating to evidence, offences and penalties.

The Issues Paper also contained invitations to interested parties to make supplementary submissions by 31 October 1982 and to register an interest in oral consultations with the Department.

Some 133 supplementary submissions commenting on material in the Issues Paper or in other submissions were received and copies of these were also deposited with the abovementioned libraries for public inspection.

Following the change of Government in March 1983, the new Attorney-General, Senator Evans, approved continuation of the Review and the holding of consultations with the forty organisations which had registered an interest in so doing.

At the time of writing (August 1983), the Department was well advanced with that series of discussions. It was likely that a second, shorter round of meetings with groups of opposing interests would be held in September to explore areas of consensus or compromise concerning possible amendments to the Copyright Act.

Following completion of these meetings it was expected that the Department would be in a position to formulate recommendations to Senator Evans, who is scheduled to make a major speech on the subject of the Review to a meeting of the Australian Communications Law Association and Copyright Society of Australia on 11 November 1983.

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and Article 19 of the International Covenant on Civil and Political Rights, which respectively guarantee the right to a fair trial in the determination of any judicial proceedings and the right to freedom of speech.

A final question which has attracted a wide range of views in recent years is whether there should be any liability under the **sub judice** rule for contempt in the absence of intention or negligence.

It is, for instance, a moot question whether it is desirable to punish editors of newspapers for the publication of comments which might prejudice the fair trial of a case, when they had no knowledge of the actual comments or their significance and could not have obtained such knowledge even with the exercise of reasonable care.

As well as conducting research into contempt law and related subject matters, the Law Reform Commission (Cwth) plans to consult a wide range of interested groups and individuals, notably judges, magistrates, members of tribunals and commissions, practising lawyers, the police, civil liberties groups and representatives of the press and broadcasting media. Following its now standard practice, it will publish a series of research papers and a discussion paper, before proceeding to prepare its final report.

MICHAEL CHESTERMAN

INTERNATIONAL SATELLITE TELEVISION

Sydney solicitor Martin Cooper concludes a two-part report on papers presented to a Los Angeles communications law symposium.

PAPER 3 — ISSUES RELATING TO INTERNATIONAL REGULATION OF DISTRIBUTION MEDIA

Veronica Ahern is a Washington lawyer who was until recently Director of the Office of International Affairs within the National Telecommunications and Information Administration of the U.S. Department of Commerce. Prior to that she had worked in the FCC's Common Carrier Bureau and done extensive work on the U.S. approach to international telecommunications regulations.

The U.S. position in relation to the allocation of orbit "slots" for broadcasting satellites is that "a flexible" attitude should be adopted and that an a priori plan to allocate specified places in space to particular countries should be rejected. She described countries which advocate such an a priori plan as "extremist" (which, incidentally, includes Australia!).

The U.S. attitude to the 1979 WARC Conference which allocated radio frequencies and to the 1983 Conference which will allocate satellite slots is that the geostationary orbit is virtually unlimited in dimension and need only be regulated to avoid interference. The regulations should not go beyond this.

The U.S. fears that those who advocate an a priori plan under which, for example, Malta would receive the same allocation of "slots" as would Great Britain, is simply a mechanism by which the telecommunications under-privileged would exploit the telecommunications privileged. Ms. Ahern threatened darkly that the U.S. may well withdraw from the International Telecommunications Union, which was created by international convention in 1932 to regulate frequency use, if the U.S. did not "get its way" in relation to the allocation of satellite orbits.

Professor Arved Deringer is a former member of the European Parliament who now practises law in Cologne, West Germany. Professor Deringer described the situation in relation to the regulation of international telecommunications in Europe as "chaotic".

He pointed out that there are 10 sovereign States, (disregarding Lichtenstein, San Marino and Monacco) in an area the size of that part of the United States which extends from the east coast to the Mississippi River. Each of these sovereign States wishes to protect its local culture, regulate the use of its air waves and profit from the access to a public monopoly.

To date the European Court has been disappointing in its approach to broadcasting issues — e.g. the French ban on liquor ads on television was struck down because it was discriminating as between member States rather than for any reason of fundamental policy (apparently, the ban applied to spirits but not to wine which was seen as favouring France as against the European countries).

Equally, the European Court has held that a ban by the Belgium government upon advertising on cable television (even in circumstances where the program is sourced outside Belgium) is acceptable on "public interest" grounds.

In the area of copyright, the European Court has permitted single country deals for film distribution.

The national courts of European countries have tended to apply national law to broadcasting transmissions even when sourced outside the boundaries of the nationality of the Court.

In Germany the Courts have applied what is called the "effects doctrine" which says in effect that the German Court need only look to the effect of a transmission when determining whether German law is infringed by a foreign sourced transmission.

Thus, an advertisement originating in France which violates German anti-trust law will be punishable by a German Court. The ramifications of this kind of attitude are ridiculous.

The third speaker on this subject was Stuart White, solicitor of Sydney who outlined exhaustively the Australian Aussat program, the general Australian broadcasting regulatory system and speculated upon whether a signal sent from a direct broadcasting satellite is "broadcasting" as defined in the Broadcasting and Television Act — i.e. a signal "intended for direct reception by the community" and, if not, whether it would then be regulated by the Wireless Telegraphy Act.

Mr White considered the Constitutional power of the Federal government to control both broadcasting satellites and international transmissions and expressed the view that, given the Foreign Affairs power and the Wireless Telegraphy power in S.51 of the Constitution there was ample constitutional power for licensing and regulation of international and direct broadcasting satellite transmissions.

In question time, Ms Ahern gave a useful definition which is that the difference between a common carrier and a broadcaster is that the former is not concerned with content.

PAPER 4 — TRANSPORTABLE CONTRACTS — HENRY GOLDBERG WASHINGTON LAWYER

This Paper was a most detailed and comprehensive analysis of the nature of the contracts to acquire transponders on U.S. satellites. A draft contract was circulated for discussion.

In essence the U.S. approach has been to sell the transponder (which is equipment for moving a signal from the receiver to the transmitting antenna on a satellite) and to back this with a "service agreement" under which the operator provides the satellite platform for the transponder over a stated period of time. The price of the transponder varies from satellite to satellite and depending upon the power but is really controlled by free market forces. The service contract averages out at about $50,000 per annum.

Payment for the transponders is made in advance and title does not pass until after the launch of the satellite. Failure of a launch is very carefully defined by the number of transponders on the satellite which actually function. The satellite launcher has extensive rights to substitute and to relaunch.

Performance is measured by the power levels of the signals sent by the transponders on the ground and the conflicting interests of the parties are that the buyer wants performance

reliability (rather than compensation for failure of performance) and the seller wants an unfettered ability to operate the satellite, to prevent interference between transponders, to stop illegal operations and breach of FCC (or similar national) regulations and no liability for consequential loss or force majeure.

DIRECT BROADCASTING SATELLITES

Speakers were Mr Francis Fox, Minister of Communications, Canada, Mr Richard Wiley, a Washington lawyer and former chairman of the Federal Communications Commission and Stanley Hubbard, president of the United States Satellite Broadcasting Company and Hubbard Broadcasting Company.

Mr Fox indicated that Canada favoured cable over direct broadcasting satellite systems because it enabled greater control of transborder transmissions. To this effect, plans are afoot to have 60% of Canadian homes cabled within a very short period but the Minister conceded that it would be necessary for Canadian cable operators to provide programming which was sufficiently attractive to Canadians to dissuade them from acquiring domestic satellite reception dishes to obtain programming from American direct broadcasting satellites. At present, Canada does not propose to impose any artificial barriers to the entry of trans-national transmissions.

Canada has a major constitutional battle raging as to whether the States or Federal government have the right to control cable broadcasting.

The State of British Columbia is proceeding to license cable operators without reference to the Federal Government and other States will probably follow suit. The Federal government is desperately concerned about this action because of its potential for loss of revenue to the Federal government and for the encouragement which it may give to Quebec nationalists and other special interest groups.

Mr Hubbard, whose company received (on 4th November, 1982) the first authorisation from the Federal Communications Commission to operate a direct broadcasting satellite, argued that **DBS** would be able to offer greater diversity of programming because it can appeal to the whole country at once. Narrow cast programming had not worked on cable systems because the audience in each cable area was not sufficiently large to justify minority programming.

In Mr Hubbard's view, where CBC cable failed as a provider of minority culture programming, a similar channel on a direct broadcasting satellite could well be viable.

This view was challenged by several speakers including Mr Henry Geller, director of the Washington Centre for Public Policy Research, who said that at the introduction of each development in television transmission, diversity of programming has been the principal justification offered. In no case had the promise been realised.

Mr Geller saw no reason why direct broadcasting satellite space would be occupied by minority programming when aiming for the middle ground had consistently proved the most profitable for operators.

Mr Fox also pointed out that Canadians wanted to adopt a two-way interactive cable system as soon as possible. He conceded that nobody had devised a mechanism to protect the privacy of the consumer in a two-way system, but was confident privacy could be protected by technical means.

SIGNAL RECEPTION — PIRACY

Michael Flint, a London solicitor delivered a comprehensive paper analysing the copyright issues involved in satellite transmission of television programming.

- In order to establish piracy it is necessary to establish copyright. Therefore the first question is: which legal system should apply to determine the copyright owner? The law of the up-link country, the receiving country, the country of the program making or the country which owns the satellite?
- It is clear that no law applies to the satellite itself except by international treaty. There is one treaty called a convention relating to program material disseminated by satellites (generally called the Satellite or Brussels Convention) which has only been ratified by six countries. However, this treaty only applies to point-to-point transmission and not to direct broadcasting satellites. Furthermore, the treaty does not extend to control anybody above the first receiver of a satellite-transmitted program.
- Mr Flint then examined the impact of article 33 of the Berne Convention (to which the United States is not a party) upon the protection of authors' rights in international transmissions. The Convention clearly regards the point to point transmission by satelite as broadcasting but distinguishes recording and re-broadcast from immediate transmission. Where the programming is live the Berne Convention will not apply. Note that the Berne Convention can only be used to protect an author's rights if he can persuade his state of nationality to take the matter to the International Court of Justice on his behalf. The proceedings would have to be against another state which was a signatory to the Convention.
- Re-transmission of a signal received from a satellite will only be protected if the signal itself is protected. The Berne Convention article II will be breached by a re-transmission if there is copyright in the material making up the original program.
- If a film is taken off satellite and re-transmitted without permission there is a clear breach of copyright, under Australian law, if re-transmitted through cable or over-the-air. If, however, the re-transmission is through a private citizen such as to hotel guests without charge, the problem is more complicated but protection can probably be obtained by relying on the law relating to public performance of works.

INTERNATIONAL COPYRIGHT ISSUES

A panel, including Mr Edward Mosk, well-known Los Angeles copyright lawyer, Professor Melville Nimmer and Professor Cohen Jehoram of Amsterdam University, dealt with the international copyright issues raised by direct broadcasting and point-to-point distribution of programs by satellite.

Professor Jehoram said that with

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point-to-point distribution the originator or up-link party was not "broadcasting" within the meaning of that term in the Berne Convention which terms broadcasting as "for public reception". If this view was correct, the ground station must be the broadcaster for Berne Convention purposes and the effect of this was to immediately eliminate one of the accepted author's rights i.e. the right to "authorise" the broadcast of his work.

Professor Jehoram suggested the solution might be to create an international convention whereby the primary liability for copyright would lie with the ground station and there would then be a secondary liability of the originator if recovery from the ground station operator was not possible. This solution clashes with the provisions of the Berne Convention and Professor Jehoram also believes that it may be too radical to be acceptable to the international community. A compromise could be to place liability entirely upon the originator for point-to-point transmissions.

So far as direct broadcasting satellites are concerned, broadcasting is undoubtedly occurring within the definition of that term in the Berne Convention.

Although opposed by the United States, United Kingdom, Japan and West Germany (Australia, Canada and France abstaining) the United Nations General Assembly by a vote of 107 for and 13 against on the 10th December, 1982 passed a resolution calling upon states to show international responsibility for satellites operated by their nationals.

The ITU principal established at WARK in 1977 was repeated i.e. no state should permit direct broadcasting satellites operated by its nationals to enter air space of another country except by agreement.

These resolutions raised problems which include, can you ask nationals of one country to comply with broadcasting standards of another? This issue is currently being considered by the Council of Europe.

Professor Nimmer gave a brief, lucid explanation of U.S. copyright law as it might apply to satellite transmissions.

Under U.S. law, picking up a satellite signal and passing it on is illegal under S605 of the Communications Act and S111 of the Copyright Act unless licensed by the copyright owner. U.S. law defines these rights in terms of public performance and not broadcasting and therefore the question becomes: where is the performance? Also, is a rebroadcast another performance? This depends on the doctrine of "second transmission" developed in the 1920's to deal with hotels reusing radio programs (Brandeis J., in the 1931 case of **Fortnightly -v- United Artists** held that transmission to a cable service was not a performance and virtually overruled **Buck -v- La Salle Hotel** which had found that a hotel use of program material was a fresh performance).

Subsequent U.S. Supreme Court cases have "moved" the line between the broadcasting side of the equation and the viewing side of the equation backwards and forwards.

The most important recent case has been the **Teleprompters** case which involved distant signal reception and said that the reception of the satellite transmission of a local station program was on the "viewers' side of the line" and not a broadcasting activity.

In the U.S., a compulsory licence now applies by statute to distant signal transmissions and direct broadcasting satellites S111C of the 1982 Copyright Act provides a compulsory licence only to broadcasts by stations authorised by the Federal Communications Commission. S111(A)(1) covers apartment houses and gives a general exemption before multi-point distribution through such buildings. However it is an infringement (S111 (b)) if the signal "is not made for reception by the public at large" — i.e. breaking into closed circuit transmissions is illegal. S111(B) seems to allow U.S. law to encompass the satellite treaty but Professor Nimmer says in fact this is not so because he believes direct broadcasting satellites is not a closed circuit anymore than a theatre is not a public performance because you have to pay to get in. He believes that the Supreme Court will say that direct broadcasting satellites are a public performance, if asked to determine the issue.

On piracy of direct broadcasting satellite transmissions, Professor Nimmer does not believe that these are a public performance but there must be room to prevent such piracy by use of the provisions of the Federal Communications Act.

THE FUTURE

Three experts gave a "crystal ball" view of the future.

Robert Wold, as chairman of the Robert Wold Company which has been variously described as a company engaged in "electronic freight carrying" or the "Koboki" of international telecommunications.
(Koboki is the figure in traditional Japanese theatre who, dressed in black and trying to remain as unseen as possible, acts as a prompter and stage manager of the play.)

Mr Wold described how his company uses transportable earth stations to reticulate programming throughout the world. He described how the live transmission from the top of Mount Everest was effected late in 1982. His company frequently handles transmissions throughout the United States of programs such as "The Super Bowl" and is expanding into video conferencing and other private circuit activities.

Mr Henry Geller saw "pay" as the driving force behind the new technologies. "Pay" means film and this, Mr Geller believes, means a drop in program standards. He described the report of the Hunt Inquiry into cable television in the United Kingdom as "a very flawed document" in its view of a highly controlled cable system offering a whole new diversity of television programming to domestic users.

Mr Geller believes that satellites will, in the long term, only be utilised for delivery of "time sensitive programming" (e.g. sports and current affairs) whereas terrestial mechanisms including through fibroptic systems will be used for other forms of distribution of programming material.

He noted that the Canadians were trying to blanket the country with

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cable systems so as to dissuade people from incurring the cost of acquiring a domestic receiving dish to take advantage of trans-national transmissions.

Dr Joe Pelton described some of the developments occurring in the technology relating to satellites. He did not see inter-satellite links as occurring much before the end of the century because although the technology was there, the links required an enormous amount of power to transfer over short distances with low signal volume capacity.

He saw rapid development of conformal phase array antennas for domestic use as being one of the great advances to be seen in the near future. These antennas would allow both up-link and down-link transmission and could be (e.g.) incorporated in the roof of domestic houses. He was most optimistic about the future of digital compression techniques to permit the very rapid transmission of (e.g.) television programming.

Dr Pelton thought that the Japanese pursuit of high definition television would turn out to be the right direction for the future and very soon we should have 3-D digital television. This would mean the end of the use of celluloid film.

In the near future, video conferencing would be a standard part of business life. The use of space platforms for rebroadcasting and transmission facilities should be with us by the turn of the century as well as the use of high gain antennas in space to permit very low power signals to be retransmitted at higher power.

Direct broadcasting satellites would permit trans-national programming for special purposes (e.g. for U.S. forces overseas). This will lead to increased international programming and then international advertising.

COMMENTARY AND SUMMARY

To attempt a summary of such a comprehensive analysis of the current state of satellite television is virtually impossible, but some overall impressions were:

(a) Most commentators believe the problems of international piracy and copyright infringement through satellite transmission of television programming will be solved by technology rather than by the evolution of copyright law. This view appears to derive from the fact that international agreement on such issues is extremely difficult given the various legal systems involved and the conflicting interests of program-producing nations as opposed to program-consuming nations.

(b) On balance, it would appear that direct broadcasting satellites will be one aspect of international communications but point-to-point satellite transmissions and terrestial reticulation of program material will also remain very important.

(c) A major international row is developing over the allocation of satellite positions in space.

(d) There is reason to believe that the satellite will signal the dawn of truly international television programming and, perhaps, advertising. It is anticipated that this type of programming will commence with cultural programming such as opera and ballet, perhaps musical concerts in general and, of course, news and current affairs. (For example, a Japanese network currently crosses live to New York during its morning current affairs program each day where a Japanese reporter inserts material of current interest to Japanese deriving from America).

(e) Australia would appear to be making a major error if it pursues subscription television by way of over-air transmission as a stepping stone to cable television. Overseas experience would indicate that this is a waste of resources and fundamentally unappealing to audiences asked to pay for the service. The whole technology requires decisiveness and use of "state of the art" technology since progress is occurring so rapidly. If one sees the whole of human history in terms of one month, man was hunter and gatherer for all but one and one half hours of that month. Four minutes of that month represents the industrial period and only 12 seconds represents the era of satellites and post-industrial technology. This is truly simply the beginning and change can be expected to be extraordinarily rapid. To commit huge technological resources to the wrong decision could doom Australia to slip further and further behind in its utilisation of the new technologies.

(f) It would appear that when one considers that a geo-stationary satellite at the optimum orbit of 22,300 miles above the earth's surface can create a footprint to cover almost 60% of the earth's surface, the future for national control of television programming must be clouded. Given the difficulties experienced by, for example, the Australian Broadcasting Tribunal in attempting to maintain program standards, how much more difficult will this be when much programming is available to Australians from international satellites. One despairs of the international community's efforts to deal with this problem by treaty. Because of its geographic isolation, Australia enjoys a very privileged position in relation to regulatory matters and this position ought to be used to permit more rapid technological advance rather than as an excuse for inactivity.

(g) It is significant that no Australian government representative or interested party from Aussat or the Australian Broadcasting Tribunal was present at this very important conference. Such an absence of interest in international developments can only militate to Australia's disadvantage.

MARTIN COOPER

Data Communications Seminar

Rapid technological development has meant that disciplines like computing, telecommunications and broadcasting are converging at a time when the needs of their customers are diverging equally as rapidly, a lunchtime seminar on data communications law was told recently.

Technology was developing so rapidly the law had been unable to keep up, Mr Ian Tuckwell, development manager for Publishing and Broadcasting Ltd, said in speaking of problems confronting the area of data communications.

He said that compounding these problems was the fact that the business community was increasingly reliant on the telecommunications system; this was coupled with a too-high level of ignorance of the subject in the general population. A further, related, problem was the need to deliniate appropriately the boundaries of monopoly and competition.

Mr Tuckwell noted that there were three levels of regulation in the area: the Telecommunications Act, the Telecom (General) Bylaws, and the policies of the Commission and management.

Other speakers at the seminar which was held at the Masonic Centre, Sydney, on 7 September, 1983, by the **NSW Society for Computers and the Law** and the **Australian Communications Law Association,** were Dr Ray Freeman, Telecom District Manager, Sydney city district, Mr Mark Armstrong of the Australian Broadcasting Tribunal, and Mr Andrew McPherson, a Sydney solicitor.

Cigarette Advertising

Much public comment on the Australian Broadcasting Tribunal's Draft Policy Statement on the advertising on radio and television of cigarettes or cigarette tobacco **[(1983) 3 CLB 10]** is based on a misunderstanding of the document, according to the Vice-Chairman of the Tribunal, Mr Ken Archer.

"It is important to emphasise two points. First, the Tribunal is not creating any new rules. It is simply providing guidance to interested persons on the interpretation and administration of laws which were made by the Federal Parliament seven years ago", he said in a News Release (NR393).

"Second, the Tribunal's Draft Policy Statement does not concern the general issue of sponsorship of sport by tobacco companies. That is not a matter within the Tribunal's jurisdiction. Some recent press reports have suggested that the Tribunal is creating new regulations. In fact, the opposite is true. The Tribunal is responding to requests for guidance, and our Draft Policy Statement makes it clear that it is intended to avoid the need for any additional regulations", Mr Archer said.

COMING EVENTS

October 26	Contempt of Court Mr Justice Samuels A.C.L.A. luncheon (Sydney venue to be announced).
November 2	Information Privacy (12.30 Masonic Centre, Sydney) — N.S.W. Society for Computers & The Law lunch seminar.
November 11	Defamation and Copyright, Federal Attorney-General, Senator Gareth Evans, A.C.L.A. and Copyright Society luncheon (Sydney venue to be announced.)
November 16-17	Communications conference (Lakeside International Hotel, Canberra) — hosted by Department of Communications.
November 26	Uniform Defamation code proposal (10 am to 4 pm Regent Hotel, Sydney) — Media Law Association of Australia seminar.
December 7	Current Information Retrieval Technology (4-8 pm Masonic Centre, Sydney) — N.S.W. Society for Computers & The Law seminar and Christmas celebration.

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