

Supplementary Licence Seminar

The Federal Government's attitude to the question of ownership of radio and television stations was outlined at a recent seminar.

The Minister for Communications, Mr. Michael Duffy, addressed the Supplementary Licence Seminar held by the Federation of Australian Commercial Television Stations (FACTS) in Sydney on February 2, 1984.

Here is an extract from that address:

"As you know, the Government sees dangers to the Australian community in the concentration of ownership in too few hands. We are committed to the proposition that the greatest possible diversity of choice in programming ought to be available to audiences, wherever they live.

"We are not going to achieve that diversity of choice if one individual or company controls all the media in particular areas. True diversity of choice requires that at least some media outlets are truly competitive and independent of each other.

"When we were in Opposition we argued that a serious flaw in the then government's supplementary licence scheme was that it had the potential to worsen the concentration of media ownership in a number of regional areas. In this I am referring to situations when a town's television stations, radio stations and press might be controlled by the same people. There is a real cause for concern even when those people own most of the media.

"You will say to me — and you will be right — that the sheer economics of your industry sometimes make it impossible to have services in small towns and cities without such concentration of ownership and control. We accept this and where it is unavoidable, we do not propose to take corrective action. However, we will seek to take corrective action wherever possible. For example:

- My Department, in processing applications for supplementary licences, is giving priority to those

intended to serve areas which are also the subject of expressions of interest for independent commercial services.

- THE Broadcasting and Television Act is being amended so that it will be an explicit requirement that concentration of media ownership be taken into account by the Tribunal in decisions about granting supplementary licences or in recommending that I invite applications for independent licences.

"While I am discussing questions of ownership let me clear up a particular point. In my recent speech to the parliament, you will recall that I left the door open for further discussion regarding a possible future offer of two supplementary licences. It is important to stress here that such an offer would only emerge from a

future review of the supplementary licence scheme.

"I should make it quite clear that the granting of two supplementary licences to one station is not contemplated in this current round of applications. We want to get the major exercise up and running before looking closely at that issue.

"In the few weeks since my ministerial statement, some 13 television stations and 11 radio stations have lodged expressions of interest in supplementary licences. This is a faster take-up rate than we expected and is encouraging, especially from the viewer and listener's point of view.

"It is also relevant to the development of supplementary licences that we intend to introduce service-based licensing and regulatory legislation.

"Under a service-based approach, a licensee will be authorised to provide a service to a community, or a number of communities, in a specified area — just as it will be authorised with regard to a supplementary licence. This is a clear departure from the existing basis, under which each transmitting facility is licensed separately and we have 14 different types of licence. Licensees will, of course, be obliged to provide adequate and comprehensive services to communities in their service areas.

"Most of you here today would be aware that my Department in consultation with the broadcasting industry, has developed guidelines for the definition of service areas. Formal negotiations are now under way with individual stations. To date, ten

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LOCALISM POLICY UNDER SCRUTINY

In late December, the Minister for Communications, Mr Duffy, announced the Government would conduct a wide-ranging review of the policy of localism in Australian radio and television.

The Review is examining the extent to which localism should be maintained, and in what form, in the continuing development of the Australian broadcasting system.

While localism is of most significance to commercial broadcasters, the Review will also examine its relevance to other broadcasters (such as public radio stations) and the extent to which localism has created, or might create, a barrier to the establishment of new broadcasting services.

The Review is being conducted by Mr James Oswin, a senior officer with the Department of Communications, and is expected to be completed by the middle of the year. The findings are expected to form the basis of a Ministerial Statement and policy guidelines, to be issued by the Government in the second half of 1984.

The essence of localism is that stations are licensed to cater, as far as practicable, for the particular needs and interests of the audience within their respective service areas. The policy was designed to encourage the development of local programming (whether produced or purchased by stations), local ownership or control of stations and local advertising.

MAIN ISSUES

The main issues being examined by the Review are:

- A: To what extent should radio and television broadcasters:
- (i) broadcast locally produced programming;
 - (ii) broadcast locally originated programming;
 - (iii) broadcast local advertisements;
 - (iv) broadcast advertisements sold by an outside source; and

(v) be owned or controlled by members of the local community?

B: To what extent has the policy of localism created, or might in future create, a barrier to the establishment of new broadcasting services;

C: What impact will the introduction of satellite-related broadcasting services and supplementary licences have on the localism policy?

The issues are expressed in terms most relevant to commercial broadcasting, but are intended to apply, as appropriate, to the other broadcasting sectors and to metropolitan and non-metropolitan stations.

Written submissions must be lodged by 31 March 1984. Oral discussions with those making submissions may be sought.

An information paper is available from the Review, which can be contacted at the Department of Communications, P.O. Box 970, North Sydney, NSW 2060. (Telephone: (02) 922 9111).

Wireless Telegraphy Act under challenge

The validity of the Wireless Telegraphy Act 1905 is being questioned following the seizure by the Department of Communications of microwave links allegedly used to transmit television signals from TCN-9 Sydney to QTQ-9 Brisbane unlawfully.

The existence of the links was brought to public attention by Ian Reinecke and Julianne Schultz in *The Phone Book* (1983). According to the authors, the signal was picked up off air outside Sydney and transmitted via a series of microwave dishes erected on poles and towers located about 50 kilometres apart on high points of the terrain to Brisbane.

In 1983, officers of the Department's Radio Frequency Management Division seized two of the links, one just outside Sydney and one in the Razorback area.

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stations have applied to the Department to have their service areas defined.

"Let me stress that both the application for supplementary licences and the definition of service areas are two-way processes. The Department will not be combining the roles of advocate and judge, but will be very dependent upon the industry for the technical information mentioned in my ministerial statement.

"So far as the definition of service areas is concerned, cooperation between the licensee, neighboring licensees, and the Department will be essential. Unless it occurs, we will all be frustrated by irritating delays while papers are pushed backwards and forwards.

DEPARTMENT'S PRIORITIES

"The Secretary of the Department of Communications, Mr. R.B. LANSDOWN, addressed the seminar, and, in doing so, summarised priorities of his Department in processing supplementary licence applications and associated service area definition proposals:

- ABSOLUTE priority will be given to processing supplementary licence applications for areas where formal Expressions of Interest from potential independent commercial licenses have been received and substantial concentration of media ownership and control already exists.
- THOSE applications forming the second priority grouping will be from areas where there is also an Expression of Interest for an independent commercial service.
- GENERALLY speaking, priority applications will be processed in accordance with the date they are accepted by the Department.
- THESE priorities can, of course, always be altered by the Minister pursuant to his planning powers. The Department will ensure within this priority framework that lower priority applicants are not unduly delayed by the system, which if rigidly applied could result in their being constantly pre-empted.

Department of Communications Directory

The table lists Divisions, Branches and some Sections of the Department's Central Office, together with the name and telephone number of the officer in charge of each unit. The information is largely based on the Commonwealth Government Directory (July 1983).

Broadcasting Division advises on broadcasting policy and planning and the Minister's responsibilities under the *Broadcasting and Television Act 1942* (both in relation to planning and the provision of services by the ABC and SBS).

Communications Development Division advises on policy aspects of the demand for, and potential means for supply of, communications services and the development of standards for the introduction of new technologies.

Corporate Policy and Projects Division advises on policies and projects where more than one communications system is involved and is responsible for various operational functions such as legislation, information and management services.

Radio Frequency Management Division advises on the Minister's responsibilities under the *Wireless Telegraphy Act 1905*, the *Wireless Telegraphy Regulations Act 1970* and international agreements relating to the use of the radio spectrum.

Space Telecommunications and Postal Policy Division advises on the Minister's responsibilities under the *Postal Services Act 1975*, *Telecommunications Act 1975*, *Overseas Telecommunications Act 1946* and the Memorandum and Articles of Association of AUSSAT Pty. Ltd.

DEPARTMENT OF COMMUNICATIONS — CENTRAL OFFICE

Secretary .. R.B. Lansdown (64 4994)

Deputy Secretary .. E.E. Payne (64 4939)

BROADCASTING DIVISION	COMMUNICATIONS DEVELOPMENT DIVISION	CORPORATE POLICY AND PROJECTS DIVISION	RADIO FREQUENCY MANAGEMENT DIVISION	SPACE TELECOMMUNICATIONS & POSTAL POLICY DIVISION
P.B. Westerway (64 4696)	D.R. Eyles (64 4649)	A.F. Guster (64 3095)	M.R. Ramsay (64 4601)	V.J. Kane (64 3742)
Broadcasting Policy Branch R. Smith (64 4946)	Communications Applications Branch N. O'Doherty (64 4649)	Management Services Branch B. Johnman (64 3483)	Operations Branch C.W. Pike* (03. 609 1570)	External Relations Branch D. Large (64 3741)
Station Establishment & Operations Branch A.T. Garner* (03. 609 1641)	Communications Systems Branch R.P. Mere (64 3221)	Policy Analysis and Co-ordination Branch J.P. Coleman (64 3717)	Planning & Development Branch J.N. McKendry 64 4635)	Finance and Regulatory Branch J.D. MacLean (64 3260)
Station Planning Branch A. Norris* (03. 609 1671)		Information and Public Relations Section G. Barrow (64 4690)		Services and Standards Branch Dr E.N. Cain (64 4999)
		Legislation Section A. Blunden (64 3198)		
		Broadcast Planning Task Force V.H. Jones (64 4192)		

*Melbourne telephone numbers. All other telephone numbers are Canberra based, area code 062.

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At the preliminary hearings before magistrates in Sydney and Brisbane, counsel for the stations indicated that the question of the constitutional validity of the Wireless Telegraphy Act would be raised, on the ground that the Act breached the guarantee of freedom of "trade, commerce and intercourse" among the States contained in s.92 of the Constitution.

The cases were adjourned to April. It is expected that the magistrates will

determine the factual questions and then refer the questions of law to the High Court.

Issues likely to arise in the High Court case include whether the transmission of television signals comes within the description of "trade, commerce and intercourse"; whether restrictions on interstate trade should be based on wide discretionary licensing powers not limited by objective criteria; and whether the licensing scheme imposes no more restrictions

than are reasonably necessary to achieve acceptable objectives. (These matters are more fully canvassed by Mark Armstrong in *Broadcasting Law and Policy in Australia*.)

If the stations are ultimately convicted of the alleged offences, the question could arise whether the licensee companies were "fit and proper" persons to hold television licences under the *Broadcasting and Television Act 1942*.

BOOKS IN BRIEF

COMPUTER LAW (3rd Edition — paperback)

**By Colin Tapper
(Longman)**

Highly readable, this first paperback edition is of apparent benefit to anybody with an involvement in computers, quite apart from the lawyers.

Not least among its benefits is the concerted attempt Tapper makes to analyse the real issues regarding security of information held in large computerised stores, so that the "most breathtaking superficiality" of the popular media's coverage does not continue to obscure the dangers and abuses "... for which," Tapper says, "there are no adequate remedies, but (which) are more diffuse and subtle than the conventional wisdom allows".

Also of keen interest to all computer users is the sound practical advice Tapper gives, under the heading of "Preventive Measures", to protect the security of personal information held within computer systems.*

Lawyers particularly will note that this latest edition further advances Tapper's case that a scheme of protection of intellectual property needs to be devised to cope with the peculiar nature of the computer industry. In particular, in reviewing the most recent UK and US cases, the limitations of copyright protection for computer programs are further exposed.

The problems of admissibility of computer output in evidence and the (various) common law and statutory solutions — bearing in mind that there is no agreed definition of a computer — comprise a separate chapter in which the South Australian solution (Section 14 of the South Australian Evidence Amendment Act 1972) is singled out for praise.

*For an easy-to-read Australian guide on the problems of protecting information, *THE PROTECTION OF TRADE SECRETS*, by McComas, Davison & Gonski, Butterworths, is the answer. It includes a suitable preliminary letter to back-up the hopes of individuals who are about to "unveil" their inventions/ideas to corporate interests in anticipation of a handsome reward for their creative efforts.

GUIDEBOOK TO COMMONWEALTH FREEDOM OF INFORMATION (CCH)

This straightforward guide is based on (and reproduces in full) the Freedom of Information Act 1982 as amended to 1st January, 1984, including the amendments enacted by the Freedom of Information Amendment Act 1983 (which increased the right of access to documents, narrowed the width of exemptions, tightened the requirements on Government agencies which receive requests for access to documents, and strengthened rights of appeal) which came into operation on 1st January 1984.

The text incorporates the substantive parts of the 6 sets of Regulations made under the FOI Act 1982.

The guidebook is well indexed and a case table includes some unreported recent decisions.

Hot off the presses, to fill a practical gap in Australian legal texts, come not one but two 1984 books on Discovery:

THE LAW OF DISCOVERY

**By Bernard C. Cairns
(Law Book Company)**

DISCOVERY AND INTERROGATORIES

**By S.D. Simpson, D.L. Bailey & E.K. Evans
(Butterworths)**

For CLB readers, the main interests aroused by this topic are probably in the fields of defamation, copyright, trade marks and (to a lesser extent) trade practices.

Both volumes devote considerable space to Anton Pillar orders.