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TRIBUNAL NEWS

The major items in the Australian Broadcasting Tribunal's agenda for this year are:

1. Enquiries into the grant of full commercial television licences to serve Australia's remote areas, providing television by satellite. The first hearing, into the Western Australian licence commenced on 20 February, 1985. A general hearing on all licences is scheduled on 19 March, 1985 in Sydney.
2. An enquiry into the grant of a third commercial television licence in Perth, for which eight sitting weeks have already been allocated this year.
3. Renewal of the licences for the three television stations in each of Sydney and Melbourne, which will take place from April to June this year.
4. The renewal of commercial radio licences in Sydney and Melbourne.
5. The beginning of hearings for the grant of supplementary licences. To date only the Canberra supplementary licence application has been referred to the Tribunal.
6. The renewal of all commercial radio and television licences for Tasmania.
7. The grant of new public radio licences.
8. Review of standards, with the priority projects being the review of television standards relating to the advertising of alcohol, Australian content on radio, public broadcasting sponsorship directions and the provision of licensees of financial information.

Robyn Durie

IN ISSUE THIS

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Study to Examine Future Direction of Commercial Broadcasting

On 18 February, 1985 the Minister for Communications, Mr Michael Duffy, announced that his Department would undertake a special study into the future direction of commercial radio and television services in Australia.

Mr Duffy said the study would be undertaken by the newly formed Forward Development Unit of the Department of Communications in co-operation with the broadcasting industry, unions, consumers and other interested parties. He said he would approach interested organisations to discuss what form consultations might take.

Mr Duffy said:

> "The study will examine major questions relating to the development of the industry, which have not been fully addressed since the introduction of television almost thirty years ago,
>
> ...
>
> The industry is again on the brink of a new era in communications. During the last twelve months the Government has made major decisions on the expansion and extension of commercial radio and television services through the Supplementary Licence Scheme and Remote Commercial Television Services (RCTS)."

The Minister referred to his statement to Federal Parliament on 10 October, 1984, in which he announced the Government's decision to introduce RCTS using AUSSAT's satellite system to provide commercial services to remote communities and isolated homesteads -

> "At the time I foreshadowed the need to review the development of commercial broadcasting in the next decade in the light of the new generation of technology involving such concepts as full direct broadcasting to homes and high definition television.
>
> The new technology promises great benefits - among them the possibility of equalising radio and television services throughout Australia. We are determined to provide as wide a range of services to all Australians as we can possibly achieve.
>
> The main thrust of our policy is to equalise services by making available, in the long term, three commercial television services and adequate commercial radio services to all communities. We need to identify scenarios for change which will eventually provide a basic level of service to all Australians, wherever they live and work. We hope that this will be even better than the package of two television services and six radio services potentially available to remote Australians after the launch of the AUSSAT satellites in the second half of 1985."

Mr Duffy said that new developments would provide the potential to upgrade commercial broadcasting. However, the basic question was, how to do this without damaging the existing system?

> "The broadcasting system is a dynamic entity which cannot be frozen while we take time out to examine its future. Existing broadcasting policies are to continue during the period of the study and planning and licensing processes under way, such as supplementary licences, will not be halted."

(Cont'd PAGE 8)

The Tribunal's RCTS Licensing Inquiry

Direct broadcasting by satellite (DBS), when it comes, will be able to serve individual homes directly from a satellite without any retransmission from a ground station, as well as communities by local retransmission. DBS is potentially valuable for Australia because of its geography. But it would create problems for existing commercial services by threatening the present separation of service areas into distinct markets. The Government has made it clear that no generally available commercial DBS will be permitted until its effects have been studied and decisions reached on policies to deal with them.

When the first-generation Australian satellite system was designed, a form of 'grade 2 DBS' was decided upon to deliver ABC services to remote areas, called the Homestead and Community Broadcast Satellite Service (HACBSS). It will not meet the international specifications for a DBS service, which require higher power than the Australia satellite can provide; but, even with a second-grade picture, it will give services to the outback, which, to people who have never had any, will be much better than nothing: ABC television and three radio services to remote communities and individual isolated homesteads; at costs reckoned to be quite affordable.

But with the satellites each carrying four high-power transponders (30 watts) as well as 11 of low power (12 watts), there is the technical capacity in two satellites to provide for a second HACBSS; each HACBSS requires four of them, concentrated onto four zones (western, central, north-east and south-east Australia). How a second HACBSS should be used has been a matter of contention for several years. The major east coast networks proposed instead to use one 30W transponder each to deliver networked television to all Australia; to do this, a national beam would have had to be used instead of a zone beam, substantially increasing the costs of ground receiving terminals.

Government policy on RCTS

In a statement in the Parliament on 10 October, 1984 the Minister for Communications, Mr Duffy, announced that the Government had decided not to approve the provision of network-based remote-area services, but to license Remote Commercial Television Services (RCTS) on a zonal basis as a second HACBSS. The networks would still, of course, be able to use the satellite for programme distribution; they could do this with 12W transponders, but it would be a matter for the satellite company, AUSSAT, to decide on a commercial basis to whom it would lease the 30W transponders not required by the ABC. It is in fact expected that the networks will lease one 30W transponder each, leaving only one immediately available for an RCTS in one of the four zones. However, AUSSAT now expects to launch the third Australia satellite in mid-1986 instead of 1988, which will increase the total number available to 12.

Because the present licensing provisions of the Broadcasting and Television Act are not suitable for licensing the RCTS services, the Minister announced that he was directing the Australian Broadcasting Tribunal under s18 of the Act to inquire into applications for RCTS licences and recommend which applicants should be licensed. Legislation to be introduced in the current parliamentary session will empower the Minister to grant licences to the applicants it recommends.

Other major changes to the Act will soon alter its basis from technical (the licensing of individual transmitters) to a service

base, so that it will licence broadcasting services and treat transmitters as just delivery tools. As part of the technical operating conditions, the transmitter arrangements (including translators) will become routine matters for the Minister under his planning powers, not licensing matters for inquiry by the Tribunal. Then, licensing of satellite services will be possible using the same basic licensing procedures as terrestrial services (and in the future cable, subscription TV and other kinds of delivery-process, if decided upon).

Though the RCTS inquiry is not being conducted under ss 81-84 of the Act, the Minister's announcement said that 'the Tribunal will, of course, follow procedures similar to those for the grant of existing licences'. The service areas are defined to include the whole of the zones covered by the satellite spot beams, but excluding the service areas of existing commercial television stations; transmissions will be encoded to limit their availability to the areas intended. The services are to be fully commercial and 'free-to-air'; no subscription is to be charged, and the Minister was specific in excluding any possibility of modifying that requirement later. The licences will authorise operators to establish ground retransmission facilities; the invitation to apply for licences nominated 37 places where their provision is to be obligatory, and elsewhere provision by communities of self-help retransmission facilities will be facilitated by the Governement.

The existing ownership and control provisions of the Act will not apply, though its other provisions will. The Tribunal will be able 'to determine such ownership or control restrictions in regard to RCTS licences as it believes desirable in the public interest'; it may also refuse to recommend the grant of an RCTS licence if it considers that advisable in the public interest. Both existing licensees and new interests are eligible to apply, or join consortiums; however, the Minister's announcement said that 'the Tribunal should reject any application for an RCTS licence which clearly exacerbated concentration of ownership or control in the service area', and that 'licensees which already hold dominant positions ... might be well advised to concentrate upon zones where they do not already have a licence'.

The Minister's statement singled out for attention the needs of Aboriginal communities, often a large part of the potential audience.

The advanced B-MAC transmission standard, recently adopted for the ABC's HACBSS, is to be used for RCTS services, and consequently four independent sound channels and a data channel will be available as well as the television and its stereo sound. The Minister's statement made no reference to any Government policy for the use of the sound channels, other than to observe that RCTS licensees could 'negotiate arrangements with AUSSAT for the sale of radio Satellite Program Services (SPS) to existing commercial licensees'.

The Tribunal's Inquiry: the West First

The inquiry is in progress as this is written mid-March, with the Division constituted by the Chairman, David Jones, and Members Julie James-Bailey and Russel Perry. The Tribunal received nine applications for RCTS licences: two for the Western Zone, three for the Central Zone (South Australia and the Northern Territory), one for the North East Zone (Queensland), and three for the South East Zone (NSW, Victoria and Tasmania). It also received 41 submissions, some general and others relevant to particular applications. Seven of the applicants comprise or include in consortiums existing commercial television licensees. The Tribunal is to report on the Western Zone applications by May 1, on the others by August 1; the timing reflects the

success of Western Australia in securing the allocation of the one remaining 30W transponder on the first pair of satellites (after the networks have taken one each, as is anticipated).

Following a preliminary hearing in Sydney on February 1, the Tribunal announced it would hold a general hearing commencing in Sydney on March 19 to receive evidence and submissions not related to a particular application or zone RCTS. Thirteen bodies were given leave to give evidence and make submissions relating to their written submissions. Because this hearing will be relevant to the Western Zone hearing but could not practicably precede it, the Tribunal reserved the two final positions in the order of proceedings for the Western Zone applicants.

In the Western Zone hearing which opened in Perth on February 20, the Tribunal accepted evidence and submissions from Calpurnicus Pty Ltd on why a licence of the type contemplated should not be granted (cf the Act's procedures for existing licences in s83(6)(d)). Calpurnicus maintained that the proposed RCTS service cannot be viable and that a licence should not be granted; that its own proposals for the provision of services for some locations by normal terrestrial means have been dismissed as unviable, but that the proposed RCTS service, which would encompass the same locations among others, would itself be unviable. This is, so far, the only submission by an existing licensee against the granting of an RCTS licence. The Tribunal also sought evidence from CAAMA, a central zone applicant, on the needs of Aboriginal communities.

Both Western Zone applicants have acknowledged that they are relying on an undertaking by the State Government to underwrite the transponder costs with $2 million annually; one applicant has stated that its application is dependent upon that support. In his statement on October 10 the Minister said that the RCTSs were a step towards equalisation of services and that 'RCTS licences will therefore attract those entrepreneurs who wish to take a strategic position in the broadcasting system. However, they are unlikely to be highly profitable in the short term ...'. Evidence in other applications of dependence upon State or other governmental help, whether with transponder costs or through provision of large amounts of costly educational or other programming, has created a cloud of doubt on viability over much of the RCTS project. Further Tribunal hearings will either dissipate the cloud or confirm its gloomy presence, with uncertain results.

Further Hearings

The Tribunal expects to hear the North East Zone application in April and the Central and South East Zone applications in May. In the North East an RCTS consortium of existing regional operators with one Brisbane station proposes to rely heavily for viability on Brisbane-originated programming for the RCTS, and on substantial use of RCTS programming by the existing regional stations as a kind of Queensland SPS (Satellite Program Service).

In the Central Zone, there have been discussions which could lead to the consolidation of the three applicants into a single consortium. With the smallest unserved population of any zone, this seems the best hope of viability; even so, it may depend largely on the federal Government's apparent willingness, still not quantified, to give substantial financial support to the development of Aboriginal radio and television services. A high proportion of the potential audiences in the Central Zone are Aboriginal; the Central Australian Aboriginal Media Association (CAAMA), already an effective radio broadcaster, has been making television programming in Alice Springs, at present distributed on video cassettes with no other outlets available.

The South East Zone is the one most likely, on the face of it, to have prospects of viability

in a reasonably short period.

The Sound Channels

The omission of any general policy for the employment of the four sound channels, which (with a data channel) are technically parcelled up as a package with the B-MAC television signal, was strongly questioned by educationists as well as public broadcasters. The Department of Communications' response to the prwas some options for Remote Commercial Radio Services (RCRS); these have been criticised by both public and national broadcasters for their failure to address the needs of remote areas for non-commercial radio services. To develop remote-area broadcasting policy by biting off a piece at a time of the fields still undefined may be bureaucratically convenient, but it progressively closes off options for those kinds of service left unconsidered - which are likely to be the non-commercial ones.

Potential providers of public radio services are arguing for separate licensing of radio channels for remote areas, with full regard for the Government's expressed concern for avoiding concentration of ownership or control; that is, RCTS licensees should not themselves be operators or controllers or radio services as well. The legal prohibition of third-party traffic through subleasing of satellite capacity should enable AUSSAT Pty Ltd to hold, through leasing-back, all the necessary resources for the provision of radio services and avoid putting RCTS licensees into a monopoly position which they could be tempted to use exploitively.

Further developments will be reported in future Communications Law Bulletins.

Michael Law

Children's Television Standards

On 14 December, 1984 the Full Federal Court handed down its decision in the case of Herald-Sun T.V. Pty. Limited v The Australian Broadcasting Tribunal (unreported, G241 of 1984). The decision followed the hearing of an appeal on the application by 15 commercial television stations pursuant to the Administrative Decisions (Judicial Review) Act 1977 (the "ADJR Act") in relation to the amended Children's Television Standards, the Pre-School Children's Television Standards and the amended Television Program Standards. Each of these had come into force from 1 July, 1984. The particular standards which were the subject matter of the proceedings were Children's Television Standards (CTS 3(2)(b), CTS 8, CTS 9(2), CTS 9(3), CTS 10, CTS 13(1), CTS 13(4), CTS 13(5), CTS 33).

CTS 2 laid down the criteria for a "C" or children's programs. CTS 3 provided that a licensee might not transmit programs except "C" programs during "C" time (4 pm to 5 pm Monday to Friday). The appellants took particular objection to CTS 3(2)(b). CTS 3(2) provided that during "C" time a licensee might only transmit programs which were "C" programs as defined in accordance with CTS 2(a) and representative samples of which had been classified by the Tribunal as complying with those criteria CTS 8 related to the duration of a "C" classification, CTS 9 to the classification of programs as "State of Origin 'C' and", CTS 10 to provisional "C" classifications. CTS 13 dealt with Australian children's drama. Its effect was that each licensee was to transmit recently made Australian children's drama which fulfilled certain criteria. CTS 33 related to reviews of "C" classification decisions.

The matter was heard at first instance by Wilcox J, who dismissed the application. He said that the primary issue in the application was the meaning of the word "standard" in paragraph (d) of s16(1) of the *Broadcasting & Television* Act 1942 ("the B&T Act"). That section provides, inter alia, as follows:-

> "(1) The functions of the Tribunal are ...
> (d) to determine the standards to be observed by licensees in respect of the broadcasting or televising of programs;
> ...
> (f) to determine the hours during which programs may be broadcast or televised by licensees; ..."

The Full Federal Court upheld his decision, although Morling J dissented in relation to the validity of CTS 3(2). Morling J said that that provision was not properly described as a standard, either the context of, or separately to, the B&T Act. It was more in the nature of censorship. He said that in substance the effect of the paragraph was that a program was only a "C" program if the Tribunal said it was. Accordingly, it gave an overriding power of censorship to the Tribunal in respect of programs transmitted between 4 and 5 pm on weekdays. If it were valid the Tribunal could determine what would be transmitted in times other than "C" time.

McGregor J took as the meaning of "standard" a "determined means of comparison or evaluation" (derived from the little known Ballentine's Law Dictionary). He said that this was supported by the decision of Beaumont J in Saatchi and Saatichi Compton (Vic.) Pty. Limited v Australian Broadcasting Tribunal (unreported, 23 November, 1984). On page 11 of His judgment in that case Beaumont J said:-

> "... the ordinary meaning of "standards" and its context suggest that it is the quality of the product, rather than its quantity, that is the subject matter of the Tribunal's power of determination under s100(4)."

Unfortunately, despite referring to the Saatchi & Saatchi case, no member of the Court dealt with the relationship between sections 16 and 17 of the B&T Act and s100 - a result of the piecemeal amendment of the Act. Section 100(4) provides as follows:

> "A licensee shall comply with such standards as the Tribunal determines in relation to the broadcasting or televising of advertisements."

That is a regulatory provision but there would appear to be no reason in principle why the Tribunal should deal separately with programs and advertisements.

McGregor J in his judgment went on to say that the provisions of CTS 3 assisted the Tribunal to ensure that, in accordance with its responsiblity under the Act, licensees were providing programs in accordance with the Tribunal's standards. A failure to evaluate programs prior to transmission might well be thought to be inconsistent with this policy. What CTS 3 was doing was to allow an evaluation or an assessment to be made as to whether the program as indicated Davies J in relation to CTS 3 and 33 said that if s16(1)(d) stood on its own, he may have been inclined to say that the determination strained the authority of the Tribunal. However, he said that the power in s16(1)(f) gave the Tribunal the right to determine more than the opening and closing hours of television transmission. In fact it enabled the Tribunal to determine the hours during which particular types of programs might or might not be telecast.

This decision has not put to an end the debate on Children's Television Standards. The appeal in the Saatchi & Saatchi case is still pending. Its outcome will

be decided later this month by the Full Court. The High Court has granted special leave to appeal to the appellants in the Herald-Sun case. The appeal will be heard later this year. It is hoped that one of the appeal Courts will rule definitively on the correct meaning of that word within s16 and s100 of the B&T Act.

Robyn Durie

Commercial Broadcasting Future

Con'd from PAGE 2

Mr Duffy said industry and the Government must work together, so that commercial broadcasters could come to terms with technological change while maintaining their current levels of performance.

> "It will be necessary, particularly, to think creatively about the role of local broadcasters. Their roles may be subject to major change."

The Minister said employees of broadcasting organisations, consumers of broadcasting services and others who had legitimate concerns about the future of commercial broadcasting, would also have opportunities to contribute to the study, as well as the broadcasters.

> "This study is only the first phase in a process of public debate; the Department will report quickly, and the report will be made available to the public for comment before the Government makes decisions," he said.

The Government recognised that, despite some blemishes, the commercial broadcasting system had performed well.

The Minister said:

> "It is our intention to build upon this solid foundation to make the system work even better; by seeking the full co-operation of existing licensees we expect to identify options which maximise the opportunities now available to us without threatening what has been a very successful system."

Terms of reference of the study are as follows:

Draft Terms of Reference for the Study on the Future Direction of Commercial Broadcasting in Australia

A study on the Future Direction of Commercial Broadcasting will be undertaken within the Department of Communications (DOC), by the Forward Development Unit in consultation with industry, unions, consumer groups and other interested organisations, culminating in a report to the Minister by 30 June, 1985 which will:

1. study possible impacts of new technologies upon the commercial radio and television broadcasting system; and
2. identify long term options for structural change in the commercial broadcasting industry; in the context of the Government's long term objective of equalising broadcasting services. It is intended that future planning should:

- continue existing broadcasting policies while the Study proceeds;
- make available three commercial television channels and adequate commercial radio services to all communities;
- provide adequate opportunities for commercial television licensees in the smaller capital cities and regional centres to participate in programming decisions;
- discourage any further concentration of media ownership and control.

The study to be prepared by Forward Development Unit will:

- determine the technologies for study on the basis of its own expertise, but include satellite delivery systems and those systems currently described as enhanced, improved, extended and high definition television;

- pay particular attention to technological convergence and the possibility of multi-channel re-transmission facilities involving both radio and television services;
- concentrate on two time frames
  - medium term future (1988 to 1997)
  - long term future (1997 onwards)
- not recommend options or argue for particular policies, but identify the implications of adopting particular systems for Government policy; and
- not operate as an inquiry and not seek submissions from interested parties.

The Unit, which is headed by Mr Peter Westerway, is to report by 30 June, 1985.

Robyn Durie

CASE NOTES

Saatchi & Saatchi Compton (Vic.) Pty. Limited v Australian Broadcasting Tribunal and Actors Equity 23 November, 1984.

Young & Rubican Cowdrey Pty. Limited v Australian Broadcasting Tribunal 8 February, 1985.

These two cases both concern the power of the Australian Broadcasting Tribunal ("ABT") to determine "standards" in connection with television advertisements.

The ABT purports to determine standards pursuant to s100(4) of the Broadcasting & Television Act, which provides:

> "(4) A licensee shall comply with such standards as the Board determines in relation to the televising of advertisements".

The ABT has published Television Standards and, in paragraph 39 of those Standards, requires that all television advertisements must be produced in Australia, but may include a proportion not exceeding 20% of the duration of the advertisement of pictorial matter photographed outside Australia or sound recorded outside Australia with various provisos and conditions.

The ABT sought to investigate an advertisement prepared by Saatchi & Saatch (the advertising agency) which included foreign produced material. The agency sought a review of that decision under the Administrative Decisions (Judicial Review) Act.

Beaumont J held that the reference to "standards" in s100(4) only permitted standards relating to the quality of the product, rather than its quantity. In his Honour's view, in the exercise of its powers under s100(4), the ABT may regulate the content what is regarded as socially desirable or acceptable, but may not restrict the location at which television advertisements may be produced to sites within Australia, because that restriction does not purport to deal in any way with the quality of what may be televised.

Accordingly, the ABT had no power to enforce a determination of standards pursuant to s100(4).

Interestingly, his Honour apparently conceded that the ABT could impose conditions in terms of paragraph 39 of the Television Standards to any relevant licence which it may issue, pursuant to the ABT's powers under s16(1)(e). In the present case, it appears that no such condition was imposed by the ABT on any licensee.

In the Young & Rubican case, the advertising agency unsuccessfully sought interlocutory orders against the ABT, restraining it from seeking to prevent the broadcasting by television stations of a foreign made advertisement for Volvo motor vehicles. The Volvo advertisement did not comply with the ABT's standards since it contained more than 20% overseas content.

The ABT had sent a telex to

(Con'd PAGE 12)

Record and Video Rental Meeting
(UNESCO Headquarters, Paris, November 1984)

From 26 November - 30 November, 1984 the Secretariat of UNESCO and the International Bureau of WIPO covered jointly a meeting of a "Group of Experts" on the rental of *phonograms and videograms*.

The mandate of this group was to examine the copyright problems arising from the rental of phonograms and videograms.

The experts invited in their personal capcity were nationals of Cameroon, Egypt, India, Japan, Mexico, Switzerland, USSR and USA. States which were parties to the Berne or UCC Conventions were invited and delegations from 25 countries including Australia attended. Also in attendance were representatives from one intergovernmental and 14 international non-governmental organisations.

The major document considered was a study prepared by the International Federation of Phonogram and Videogram Producers. The meeting also considered comments on this study received from Governments, and draft guiding Principles of Copyright Protection relating to the Rental and Lending of Phonograms and Videograms.

The IFPI study ranged over such topics as an assessment of the rental market; legal means of controlling rental (Distribution Right, Suing Retailers for authorising or inducing private copying); commercial means of controlling rental; public lending right and recent legislative developments.

The most relevant of the recent legislative developments were those of Japan and USA.

JAPAN

In Japan limited legislation which came into force on 2 June, 1984 provides that a person intending to lend a phonogram to the public for profit will first have to obtain permission from the right owners until one year after the first sale of the phonogram in Japan. Rental to the public for profit without such authorisation constitutes an infringement. Rights owners may thus either authorise (under such conditions as they choose) or prohibit rentals within the first year of release. However, excluded from the scope of the legislation are phonograms not produced by Japanese nationals or first fixed in Japan. Representations have been made to the Japanese Government to increase the protection afforded, and in particular to extend protection to foreign repertoire.

USA

In the USA by contrast much wider and more satisfactory legislation has been enacted: The The Record Rental Amendment of 1984 came into force in October 1984. Before the enactment of this new legislation the classic "First Sale Doctrine" of the Copyright Law allowed a person who purchased a phonogram to rent, lend or lease it without the consent of the owners of the copyright in the sound recording or the underlying musical work(s).

The New Commercial Rental Right

The new law amends the First Sale Doctrine to prohibit commercial record rentals - even after the first sale of a recording - unless authorised by the copyright owners. Thus a record retailer must obtain a licence under the new law in order to rent phonograms to the public on a commercial basis.

Evasive Schemes

Furthermore, the Record Rental Amendment applies to evasive schemes such as "sale and buy back" schemes and "preview" sales. It also extends to record "clubs" which lend records to mem-

bers without charging a direct rental fee while indirectly deriving rental income from a periodic membership or subscription fee.

Educational and Library Exemption

The new law does not apply to the non-profit activity of a non-profit library or educational institution.

Penalties for Infringement

Infringements are subject to civil infringement remedies provided by existing copyright statute. Criminal penalties are not applicable.

Anti-Trust Considerations

The new legislation does not require copyright owners to authorise commercial record rentals. Rather, each copyright owner of a sound recording is free to decide whether or not to permit rentals, so long as the decision does not otherwise violate the anti-trust laws.

Compulsory Licensing

If the copyright owner of the sound recording elects to authorise commercial record rentals, the rights of the owners of copyright in the underlying music are subject to a system of compulsory licensing similar to the existing mechanical licence. By complying with this compulsory licensing system, a recording company may authorise commercial record rentals without the consent of the music copyright owners. The recording copyright owner, in order to obtain a compulsory licence, is required to pay the music copyright owners a royalty fee for each authorised rental transaction. This fee is in addition to any fee paid under the mechanical licence. The royalty formula in the new law provides that the owners of copyright in the sound recording and the underlying musical work(s) share any rental revenues from a particular recording in the same proportion as they share revenues from the sale of that record under the mechanical licence. The recording copyright owner may also enter into a voluntary licence with the music copyright owners and negotiate a rental royalty.

Conclusions of the Meeting of Experts

After five days of discussion and lively exchange of views the experts gathered at Paris:

1. expressed the view that authors should enjoy, under copyright law, an exclusive right to authorise the rental or lending of phonograms or videograms embodying or constituting their works;
2. further expressed the view that where phonograms or videograms are not considered to be original works or authorship, but where they are recognised as particular subject matters of protection under copyright laws or where their producers are protected by a specific right at least against the unauthorised copying of their phonograms and videograms, the producers of phonograms and videograms should, without prejudice to the rights of authors, have a similar exclusive right;
3. recognised that some exceptions to the said rights may be desirable in certain special circumstances;
4. recognised further that the soliciting and granting of licences may, especially where the number of right holders is great, require legislative measures which facilitate the negotitations of licences and their implementation, measures preferably resulting in the collective administration of the rights;
5. recommended that further studies should identify various alternatives for modalities and mechanisms for such negotiations and such administration;
6. further recommended that such studies should deal separately with phonograms and videograms and should deal also with the uses (copying, performance, etc.) to which rented or loaned copies may be put;

7. finally recommended that the Secretariate consider the desirability of extending the studies also to the rights of performing artists.

Victoria Rubensohn

Case Notes

(Con'd from PAGE 9)

television commercial licensees indicating that if the Volvo commercial was televised, the matter would be considered by the ABT at the next review of the particular station's licence. Although the ABT sent a subsequent telex making it clear that, in view of the Saatchi & Saatchi decision, it was a matter of individual judgment as to whether, pending the outcome of an appeal of that decision, the commercial should be televised, Morling J found that the licensee should not have any uncertainty in Saatchi's case pending the hearing of an appeal to the Full Court.

The ABT has appealed from the decision of Saatchi & Saatchi to the Full Court and that matter should be heard in the near future.

However, the Australian Government has indicated that it will, if necessary, amend the Broadcasting & Television Act to empower the ABT to make Television Standards regulating content of programmes, in order to overcome the Saatchi decision. The precise terms of any amendment have not been disclosed. However, it would seem that prompt legislative action will be taken, in the event that the Full Court affirms Beaumont J's decision. **Stephen J. Menzies**

BOOKS IN BRIEF

Freedom of Information - Peter J. Byrne

This recently published book is an analysis of the Commonwealth Freedom of Information Act and the Victorian Freedom of Information Act. As well as providing an explanation of the provisions of the Acts, it includes a practical guide to using them. (The Law Book Company Limited)

The Rights of Journalists and Broadcasters - Geoffrey Robertson and Andrew Nicol.

This book is a comprehensive guide to media law in the United Kingdom. Although parts of it relate to areas of law where Australian law has diverged from that of the U.K., such as contempt of court, official secrets and company law, there is still in the book a large amount of material which is of interest and assistance to Australian practitioners. These areas include defamation, obscenity, breach of confidence and copyright.

As those who are familiar with the hypotheticals run on the Channel 9 "Sunday" program are aware, Geoffrey Robertson is highly articulate. He, together with his co-author Andrew Nichol, has produced a book which not only conveys an immense amount of information without becoming stodgy, but is also extremely readable. Oyez Longman)

The Law of Intellectual Property - Staniford Ricketson

This book was published late last year and was written by Sam Ricketson, a senior lecturer in law at the University of Melbourne. It is the only comprehensive guide to industrial and intellectual property in Australia and is useful both as a student's text book and for practitioners. Despite the numbering system so dear to the heart of the Australian publishers, this book is also easy to read and contains useful sections dealing with areas such as the relationship between intellectual property rights and consumer protection under the Trade Practices Act 1974, the registration of business names and a comparison between the new UK Patent Act and our current Australian Act. It is lengthy (over 1200 pages) but an invaluable tool. (The Law Book Company Limited)