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ACLA SEMINAR PAPERS

Amendments Relating to RCTS Licences

The amending Act introduces a new regime defined as "Remote Licences" by a proposed new s81(4A) in the Act. Did the draftsman understand the irony of this abbreviation? Such licences may only be issued to a corporation or consortium of corporations formed within the Commonwealth.

Interestingly, s81(6) is amended to apply that sub-section to remote licences. The effect of this is that where a remote licence is held by a consortium of companies the shareholdings must be equal.

No explanation for this is given in the Minister's second reading speech or the explanatory memorandum with the Bill and this may reflect the fact that there probably is none. In its First Report on RCTS at p448 the Tribunal says it "is concerned about the possible implications of (this amendment) and recommends that ... consideration be given to the removal of remote licences from the ambit of s81(6)(a) of the Act."

Of course, the effect of the provision will be to make participation by small regional operators in RCTS consortia difficult, if not impossible. It is to be hoped that the Tribunal's recommendation will be accepted.

The Amending Act proposes remote television licences and remote radio licences within the structure of remote licences.

A remote licensee will be empowered to serve a designated service area with a defined service. How this will be done technically will be specified in the technical operating conditions (TOC's) attached as conditions of the licence. Of course, the satellite up and down links will

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have to be included in the TOC's. These TOC's incidentally will be included in a new concept called a licence warrant (s89D).

The Bill also addresses the special problem created by the fact that most RCTS signals will be received by individual household TVRO's (Television Receiver Only) or community owned and operated TVRO's and retransmission facilities. It introduces the concept of a retransmission or rebroadcast licence by amendment to the definition in s4 and by making provision for the grant of these licences (by amendment to s81).

A retransmission licence will permit a broadcasting service or services, by use of a telegraph line, to be retransmitted (s80(1)(d) and the technical conditions attaching to specify the design, siting, installation, maintenance or operation of the telegraph lines and other equipment or facilities to be used for or in connection with the transmission of programs pursuant to the licence.

A rebroadcasting licence (which confusingly covers both radio broadcasting and television) permits retransmission in accordance with the specifications attached to the licence, by means of a radio communications transmitter.

Thus apparently the Government has established a whole new licence regime to deal with the problem of the remote community. However, as is so often the case, the Act puts the technical means in place but does not begin to grapple with the much larger problem of what use is to be made of the technology.

If simple retransmission of a single signal was the only purpose perhaps the problem would be insignificant. However, the Act now contains the brave new world of s99A - local programming. Here the Tribunal is enjoined to permit the broadcast of "different programs from different ... transmitters" subject to such conditions (if any) as it determines. Yet again the Tribunal is left with the hard issues.

In the W.A. RCTS inquiry and subsequently at the RCTS general inquiry the breadth and range of these issues began to be explored:-

(a) Can a community decide to block out some incoming programming and, if so, on what basis?

(b) How will such decisions be made by the community? e.g. if the aboriginal section of a community wish programming to cease during a ceremonial occasion or if the local parents group want a program blacked out because of excessive sex or violence how will the interests of the rest of the community be balanced?

(c) If majority rule is to apply, will the mid-day movies and soaps overrule the special purpose and often narrow cost educational programming promised for RCTS?

(d) If locally produced programming is introduced who will be responsible for its content in terms of the program standards and defamation, privacy, trade practices and self-regulatory law and requirements?

(e) If ad hoc local insertion or straight out switching off is occurring how will the principal RCTS licensee be able to guarantee an audience to his advertiser, without whom there will be no service?

In its First RCTS Report the Tribunal isolates two alternatives to deal with these issues:-

1. Permits could be granted by the Tribunal to community organisations and those organisations could then be solely responsible for the content of the programs broadcast; or

2. The licensee is responsible for all programs broadcast and no separate permits are required.

There is not time tonight to consider the pros and cons of these proposals. Suffice it to say that the Tribunal appears to favour the big brother approach of the remote licensee being responsible but protected by statutory amendments requiring the Tribunal in considering the impact of breaches of standards at retransmission points to have regard for "the capacity of a licensee in all the circumstances of the breach to prevent the occurrence of such breach".

Briefly, so far as ownership and control of remote licences is concerned s92V has been introduced. This sub-section effectively empowers the Tribunal to suspend the effect of s92(1) and s90C which you will recall prescribe maximum numbers of licence interests which may be held.

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Area Inquiries and Local Origination of Programmes

I have comments to make on two subjects for which provision was made in the legislation recently passed: area inquiries and local origination of programmes.

Area Inquiries:

The Public Broadcasting Association of Australia ("PBAA") has always believed area inquiries are necessary if broadcasters are to be publicly accountable, and it still does. It regards a licence as having the qualities both of property and of a public trust. The licence is the public's investment in the broadcasting operation, and the public requires an adequate dividend to be paid or withdrawal of the investment may be considered. When the legislation of 1977, on which today's procedures are still based, was first put in place, the Minister's second reading speech was eloquent on the Government's intention that broadcasters should be publicly accountable. Among other things, the Government sought

> "... industry and public involvement in broadcasting administration, particularly in the licensing area."

and also the following:

> " Firstly, we believe that the broadcasting frequency spectrum is a valuable public resource.
>
> ... the planning and administration of broadcasting should be designed in a manner which will enable it to be responsive to the needs of the community.
>
> ... the public will have substantial access to the inquiry and deliberative activities of the Tribunal.
>
> ... broadcasters will be made to account, at renewal hearings, and in public, for their programming performance."

It was the joint misfortune of the public and of the Tribunal chairman, Bruce Gyngell, that they believed Eric Robinson's rhetoric, and thought the new legislation really had provided for 'substantial access', and for broadcasters to 'account, at renewal hearings ... for their programming performance'.

After the Sydney television renewal hearings of March/April 1979, both were sadder and wiser. There was no rush to change the Act; that was wise, because hasty action would probably have been bungled. The trouble with the 1977 amendments was that the Green Inquiry, though recommending public accountability, never thought that the Fraser Government would have a bar of it. That is the reason for the marked discrepancy between the imaginative philosophies spelt out in the first part of the Green Report and the uninspiring proposals at the back end. When the Government said, 'Yes, give us public accountability, and we want a Bill in six weeks' the Department was shocked and amazed; they had nothing prepared, and had to improvise. The result we know.

The Present Process:

What we eventually got by way of improvement was the Undertaking, in the 1981 legislation. The primary mechanism for assessing the adequacy of the public dividend has been the Tribunal's review at renewal time of the licensee's compliance with the Undertaking - in particular, 'adequacy and comprehensiveness' in the service.

But this has not rectified the situation created in the 1979 Sydney hearings, and maintained since, whereby 'the public' has virtually no meaningful part to play in the total licensing process. The ability to write letters to the Tribunal and read about its decisions in the newspapers does not constitute public participation; nor does squirming around for a week in the Tribunal's inquiry room on the most uncomfortable chairs in Sydney, keeping your ears open and your mouth shut.

The PBAA regards the area inquiry as essential. In its view, the purpose is to provide a forum where the public can recover its right to speak, without having to fight duels with QCs to sustain that right, and without being constrained within very narrow concepts of relevance. The area inquiry has also been credited with a role in streamlining and simplifying the renewal process, enabling the Tribunal to dispense with many of the public hearings

it finds necessary today. We accepted that secondary role at first; now, we do not believe that the two can be combined without fatal damage to the working of the whole process.

Finding the Right Procedure:

The challenge is to make the area inquiry work - and a starting-point is to look at the lessons of the past seven years. Whenever a commercial licence is at risk, the licensee will always bring in his lawyers to use every available means to limit the debate to the matters stated as relevant in the Act. Everyone (including us) complained vociferously about that in 1979; but I think they were being unrealistic (encouraged by the Minister's exaggerated claims for his legislation). Sam Simon, the American communications and public interest lawyer who was in Australia in 1979, commented that we were trying to do too many things with our renewal inquiries, a view that impressed many of us who heard him, who had been complaining too.

There is a risk now that we will make the same mistake again and ruin the area inquiry by trying to make it do too many things. The idea that it will be held between the receipt of renewal applications and Tribunal decisions on them, and will be one of the factors in the decision whether to hold a public hearing on a particular renewal, presumably came from the Tribunal, in the hope it could eliminate many of its present individual renewal hearings. But if an area enquiry is held in that way, at that time, it will confirm the view of James Malone of FACTS, stated in another place, that an area inquiry seemed to him to be a form of committal hearing for a licence renewal. If that view comes to be taken by commercial licensees, the lawyers will be in and - for all practical purposes - the public will be out.

If an area inquiry is held well away from the time when licence renewals are due - ideally, midway between renewals - it will be relatively free of that risk. There may be some lawyers around, but the connection between what is said and done in the area inquiry and the next renewal will be far less significant, and licensees will not have the same need to be on the defensive. If specific complaints are made about a licensee, there is time for a station either to rebut the criticism or to take action to remedy the matter complained of. The Tribunal will be in a better position, one would think, to deal firmly with any attempt to restrict the scope of debate unreasonably, and the basic purpose of the area inquiry will be attainable. If the lawyers tried to narrow the area inquiry as they did the renewal inquiry in 1979, the Tribunal could probably be helped with specific legislation which - with area and renewal inquiries separated in time - would be unlikely to be disallowed as contrary to natural justice.

The Benefits:

The Tribunal will still benefit in many ways from area inquiries. Apart from the gains in terms of hearing from the public, and giving the public, broadcasters and the Tribunal a chance to interact in a relatively informal situation, it should still be possible to diminish the number of public renewal hearings. They will no longer have to carry alone the role of providing the public element in 'public accountability'. With public area inquiries, it will only be necessary to hold a public renewal hearing when a quasi-judicial rather than an administrative matter has to be dealt with, one which as a matter of equity and public policy ought to be conducted in public.

The effect of holding area inquiries midway between renewals is that some degree of review is conducted more frequently. The present three-year period for licence renewals would put that at every 18 months; arguably, that is burdensome and too often to be really fruitful. If licence renewals were for four or five years, the interval between reviews would become two years or two-and-a-half. The Tribunal still has powers (such as imposition of a licence condition) which could be exercised, in case of real need, between renewals.

Perhaps the greatest potential benefit, if unquantifiable at this stage, is the creation of a kind of occasion when broadcasters can meet their public in a situation which is not structured so that it is bound to become confrontational. It will be possible for a licensee to admit that something is not right or could be improved; we all know that such things happen to all of us - we are just not about to say so when our licence is on the table. Over time, more temperate review of broadcasters' performances could do as much to improve broadcasting as throwing

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The Broadcasting and Television Amendment Bill

The commercial television industry has generally welcomed the change to service based licences and has supported the Government's desire to bring broadcasting legislation up to date so that it more adequately relates to the technological developments which have or are about to take place.

While acknowledging these important developments - the biggest single change to our broadcasting law since the introduction of television - it must be said that there is still plenty of scope for improvement. Our broadcasting legislation remains clumsy and convoluted to put it mildly and while the task of re-writing the Act is formidable it should, indeed must eventually be undertaken.

Tonight I want to concentrate on two aspects of the Bill - the shift to regulations to deal with Tribunal inquiry procedues and the introduction of area inquiries. I will also briefly address an aspect of the amendments foreshadowed for the August session of Parliament.

Regulations:

The Department has indicated that the regulations to be introduced for uniform inquiry procedures will follow the recommendations of the Administrative Review Council which were previously adopted by the Government.

While the Department has undertaken to consult with the industry and others on the thrust of these regulations, it will not be until their precise wording can be studied that we can fully comprehend the new procedures to be adopted. Certainly we have had the opportunity to study the Administrative Review Council's recommendations but these provide us with only the broad outlines, many questions remain unanswered.

I believe it is in the interest of the Tribunal, the Government, the industry and the general public to clear the air as quickly as possible. Certainly we in the industry are entitled to know the details of these matters which so directly impact upon us.

Area Inquiries:

It is in the matter of area inquiries that the industry has its main reservations. Our apprehension is, I believe, understandable because we have been kept very much in the dark about their real purpose and the Tribunal's intentions.

The concept of area inquiries was first raised in the Green Report, that Report suggested that renewal hearings should be held on an area basis, that all licences in a given area should expire simultaneously and that a single hearing should consider the performance of all radio or television stations in that area. It is important to remember that the Green Report envisaged that the policies and performance of the Australian Broadcasting Commission would be subject to public inquiries conducted by the Australian Broadcasting Tribunal and further that only if a prima facie case was established for denying renewal should a licensee be required to defend his performance during the preceding period at an individual hearing. There is little resemblance between those recommendations and the situation as it appears to apply today

The concept of providing a general forum for members of the public to put their views about broadcasting generally rather than about licensee's performances specifically was mooted by the Gyngell Tribunal. It envisaged that there would be a clear separation in time between the area inquiries or "town meetings" and licence renewal proceedings. The Gyngell Tribunal concept envisaged an informal process whereby members of the public could bring before the Tribunal and broadcasters matters of a general nature which would not be relevant in the context of considertion of an individual station's licence renewal. The industry had little difficulty with this concept providing the area inquiries were well distanced from any licence renewal within the area.

Later, under the chairmanship of David Jones, the Tribunal conducted a series of town meetings which were well attended by the industry. These were informal in nature and while the Tribunal had a loose agenda of matters to be covered, members of the public were encouraged to canvass any issues of interest to them. A few of these meetings attracted wide public interest, most very little.

They appeared however to be heading in the right direction in that members of the public were able to get off their chests matters troubling them and it was significant that many of the questions related not to broadcasting practices but to the procedures of the Tribunal itself.

Following the Administrative Review Council's study of Tribunal procedures, particularly those relating to licence renewals, the Council made a series of recommendations. The majority of its members recommended that the Tribunal be empowered to make a decision on a licence renewal without a public hearing where no relevant opposing submission or application had been received or where no substantive issues of controversy or public concern had arisen. Mr Justice Kirby, in a dissenting view, recommended that in every case of an application for grant or renewal of a licence there should be a hearing in public.

A compromise was struck and a two tiered structure of public inquiries proposed. It envisaged that renewal inquiries would be subject to uniform inquiry procedures while area inquiries were to be introduced to consider the adequacy and comprehensiveness of broadcasting services provided in the different areas of the country. It was envisaged that these inquiries would not be subject to the uniform inquiry procedure but that they would be conducted in public. This recommendation was adopted by the Government.

Our difficulty is that as yet we are unclear about the nature and purpose of area inquiries. What are their objectives? How are they to be conducted? What criteria will be established for assessing the adequacy and comprehensiveness of the various services available and what will flow from them? How will the legitimate interests of licensees be protected from unfounded accusations?

Certainly we have an overall guide to the purpose of area inquiries in the new s18(A) of the Act. However, I remind you that the criteria formerly contained in s83(5) of the Act has been removed as a consequence of the amendments. No longer will it be necessary for the Tribunal to take into account "the nature of the community to be served in pursuance of the licence": "the diversity of the interests of that community". Now, in accordance with the provisions of 18(A), the inquiry will be held into the adequacy and comprehensiveness of the broadcasting services provided by licensees to the community in the area having regard to the nature of any broadcasting service provided in that area by the Corporation or the Service, and to such other matters as the Tribunal considers relevant.

The Minister has expressed the hope that the introduction of area inquiries ultimately will reduce the number of inquiries, particularly renewal inquiries, presently necessary but both the Minister and the Tribunal see area inquiries as having a direct relationship with licence renewals. I think it inevitable therefore that matters relating to the performance of individual licensees and to the ABC and SBS will be introduced at area inquiries. Comparisons will be made, perceptions of inadequacies about the performances of individual licensees, the ABC and SBS will be submitted.

One must therefore ask a series of questions. Will the area inquiries be informal and non legalistic in line with the ARC's proposals? Will they cast participants in adversary roles? If so, how will an individual licensee, the ABC or SBS be defended? How does the Tribunal propose to test allegations? Will proceedings be privileged?

It may be that the Tribunal will say that prior to taking any such allegations into account at licence renewal it will vett the evidence. In the meantime of course the accusations will have been made in public. Licensees, the ABC and the SBS will not have the opportunity to cross examine and the unsubstantiated allegations will be widely canvassed in the media. I ask, is this fair and reasonable?

If on the other hand contrary to the ARC recommendations, area inquiries are to be conducted on a more formal and legalistic basis, it is difficult to imagine what real benefits will flow.

Finally, and perhaps most importantly, just what is expected to be achieved as a result of an area inquiry?

Let me speculate that the Tribunal detects a deficiency in the adequacy or comprehensiveness of services in that it finds that there is a section of the community which has not been adequately served by a particulr form of programming. For instance I read with interest last Friday that drastic cuts to educational programs on ABC radio and television are expected to be announced by the Federal Government. It is not beyond the scope of one's imagination to consider that the lack of such services may be raised at an area inquiry. Who will be regarded by the Tribunal as being deficient in such cir-

cumstances? Will it be the ABC, perhaps the SBS? Will it be licensees in general or specific licensees and would the Tribunal propose to determine how such deficiencies could be overcome?

The Tribunal can hardly direct the ABC or the SBS to provide a particular service and even if it were to suggest they should in a subsequent report to the Minister, what then?

Alternatively, will the Tribunal place conditions upon individual commercial licensees to provide particular programming to overcome a perceived difficulty. Again, will it nominate a particular licensee to fulfill the apparent need or will it require parallel programming to be provided by all licensees rather than single out an individual one.

In these days where the discussions of "carts" are topical it appears that both the Government and the Tribunal have definitely put the cart before the horse.

Thankfully the provisions relating to area inquiries are to be separately proclaimed. FACTS believes most strongly that they should not be proclaimed until such time as the procedures, and especially aims and objectives have been thoroughly thought through and the multitude of questions which currently exist are satisfactorily answered.

August Amendments:

I now direct my attention to the desire of the Minister to amend the Act during the Budget Session to overcome perceived difficulties which flowed primarily from the Saatchi and Saatchi decision.

Initially I should make it clear that FACTS supports the Australian production industry and therefore supports the principles which were enunciated in the "standard" quashed by the Courts. The old "Standard" was however fraught with administrative difficulties. Both the Tribunal and licensees had to rely on information provided by others as to the amount of overseas footage used and whether Australian crews had been used in overses shoots. I put it to you that even if an Australian crew worked side by side with an overseas crew it would be extremely difficult for either the Tribunal or licensees to know with the certainty required by the Act whether the footage shot by the Australian crew was that used in the finished product or whether, in whole or in part, it ended up on a cutting room floor.

The restrictions on use of imported material in commercials or the requirements that Australian crews be used in overseas shoots are improperly placed in broadcasting law or broadcasting Standards. Unless it is the broadcaster who imports the material or who sends a "ghost crew" overseas, why should the broadcaster, and only the broadcaster be held responsible for abiding by rules which restrict or prohibit such action.

It is difficult to envisage the Broadcasting Act providing the Tribunal with punitive powers over agencies, production houses, or advertisers but surely it is these organisations who are importing the material, who are manufacturing the goods. It is they therefore that should be regulated, and if they breach the regulations, punished - not the user of the finished product, the broadcaster.

I submit therefore that it is unlikely that any changes to the Broadcasting and Television Act will provide any solution to this problem and that some more appropriate form of legislation should be considered. One does not, for instance, control the importation of motor vehicles or motor vehicle parts through the Motor Traffic Act. It would hardly be reasonable for a licensed driver of a motor vehicle to have his licence restricted and be forced to drive on "P" plates because a vehicle manufactured had used in excess of the prescribed number of imported parts in assembling the vehicle.

David Morgan

VICTORIAN JUDGEMENTS BULLETIN

The Victorian Judgments Bulletin is a fortnightly reporting service of the Judgments of the Supreme Court of Victoria. It is a sister publication to the NSW Judgments Bulletin, and reports all appeal cases of the Victorian Supreme Court.

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Freedoms Under the Bill of Rights

The proposed Bill of Rights is contained in the Australian Bill of Rights Bill 1985 is substantially the same as the draft proposed by the previous Attorney-General, Senator Gareth Evans. However, it will not operate to override new State law or the law of the Northern Territory. For a five year period federal legislation, which is inconsistent with the Bill of Rights, will be invalid to the extent of any inconsistency unless it expressly overrides the Bill of Rights. In addition, any common law contrary to the intention of the bill will be overridden. After the five year period has expired, Federal laws in force at the time the Bill is proclaimed will be examined and to the extent they are inconsistent with the Bill of Rights they will be invalid.

Unlike Senator Evan's model, the Bill will not give any rights to seek declarations. In addition, no one will be able to approach the Courts seeking damages because their rights have been violated. It will only be able to be raised once the matter is before the Courts and then, as a shield and not a sword.

The fact that the Bill will not override State law clearly opens it to criticism that most of the potentially rights breaching legislation is under State jurisdiction.

The rights covered by the proposed Bill of Rights include:-

- equal protection under the law;
- participation in public life;
- freedom of expression, thought and conscience;
- freedom of association and the right of peaceful assembly;
- special protection for minorities;
- privacy and family rights;
- freedom of movement; and
- due process.

If the implementation of the Bill of Rights in overruling Commonwealth law causes grave public inconvenience or hardship, then an order can be sought from the Court keeping the law in question in force for up to three months after the declaration, to give Parliament the chance to amend it.

The Bill of Rights will take effect as an ordinary act of Parliament, rather than as a constitutional amendment, as is the case in the United States. Accordingly, it can be amended or repealed.

Set out below is an extract from clause 8 of the Bill which is headed

"Australian Bill of Rights"

Division 1 - General

Article 1

Entitlement to rights and freedoms without distinction

1. Every person is entitled to equality before the law and to the human rights and fundamental freedoms set out in this Bill of Rights, irrespective of distinctions such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Men and women have the equal right to the enjoyment of the human rights and fundamental freedoms set out in this Bill of Rights.

Article 2

Effect of Bill of Rights on existing rights and freedoms

A right or freedom existing under, or recognised by, any other law shall not be taken to have been diminished or derogated from by reason only that the right or freedom is not set out in this Bill of Rights.

Article 3

Permissible Limitations

1. The rights and freedoms set out in this Bill of Rights are subject only to such reasonable limitations prescribed by law as can be demonstrably justified in a free and democractic society.
2. A right or freedom set out in this Bill of Rights shall not be limited by any law to any greater ex-

tent than is permitted by the International Covenant on Civil and Political Rights.

Division 2 - Non-Discrimination

Article 4
Equal protection of the law

1. Every person has the right without any discrimination to the equal protection of the law.

2. The right to the equal protection of the law set out in paragraph 1 includes, but is not limited to, the right to such protection without discrimination based on race, colour, national origin, sex, religion or political opinion.

3. Nothing in this Bill of Rights affects the operation of any earlier or later law by reason only of the fact that the law discriminates in favour of a class of persons for the purpose of redressing any disabilities particularly suffered by that class or arising from discrimination against that class.

Article 5
Rights of Minority Groups

Persons who belong to an ethnic, religious or linguistic minority have the right, in community with other members of their own group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Division 3 - Fundamental Political Rights

Article 6
Right of participation in public life

Every Australian citizen has the right and shall have the opportunity:-

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors; and

(c) to have access on general terms of equality to public employment.

Article 7
Freedom of expression

Every person has the right to freedom of expression, including the freedom of the Press and other media of communication, and the freedom to seek, receive and impart ideas or information of any kind in any form, without interference and regardless of frontiers.

Article 8
Freedom of thought and conscience

Every person has the right to freedom of thought and conscience, including the right to hold opinions without interference.

Article 9
Freedom to have or adopt a religion or belief

Every person has the right to have or adopt a religion or belief of that person's choice without coercion of any kind, and to manifest that religion or belief in worship, observance, practice and teaching, whether individually or in community with others or whether in public or private.

Article 10
Right of peaceful assembly

Every person has the right of peaceful assembly.

Article 11
Freedom of association

Every person has the right to freedom of association with others, including the right to form and join trade unions for the protection of that person's interests.

Division 4 - Privacy and Family Rights

Article 12
Right to protection from arbitrary interference

1. Every person has the right to:-

   (a) protection of privacy, family, home and correspondence from arbitrary or unlawful interference; and

   (b) protection from unlawful attacks on honour and reputation.

2. For the purpose of giving effect to the right referred to (above) and without limiting the nature and extent of that right, a search or seizure is unlawful unless:-

   (a) made pursuant to a warrant issued by a judge, magistrate or justice of the peace upon reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search, who or what is to be searched and what is to be seized;

   (b) made pursuant to a law authorising search or seizure, where search or seizure as so authorised is a necessary element in the proper administration or enforcement of revenue laws or the reasonable regulation of an activity.

   (c) made pursuant to a law authorising search or seizure where there is a compelling need for immediate action; or

   (d) in the case of a search - made with free and voluntary consent and after the giving of a warning as to the consequences of giving consent to the search.

Article 13
Right to marry and found a family

Recognising that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State -

(a) every man and woman of marriageable age has the right to marry and to found a family; and

(b) no marriage shall be entered into without the free and full consent of the intending spouses.

Article 14
Rights of the child

Recognising that every child has the right to such measures of protection as are required by the child's age -

(a) every child is entitled to the fundamental rights and freedoms set out in this Bill of Rights to the greatest extent compatible with the age of the individual child;

(b) every child shall be registered immediately after birth and shall have a name;

(c) every child has the right to acquire a nationality; and

(d) the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions is to be respected.

Division 5 - Freedom of Movement

Article 15
Rights of persons in Australia

1. Every person lawfully in Australia has the right to freedom of movement and choice of residence.

2. A person who is lawfully in Australia but is not an Australian citizen shall not be required to leave Australia except on such grounds and in accordance with such procedures as are established by law.

Article 16
Right to enter Australia

Every Australian citizen has the right to enter Australia.

Article 17
Right to leave Australia

Every person has the right to leave Australia.

Division 6 - Life, Liberty and Criminal Process

Article 18
Life, liberty and security of person

1. No person shall be deprived of life, liberty or security of person except on such grounds, and in accordance with such procedures, as are established by law.

2. No law shall authorize the arbitrary arrest, detention or imprisonment of any person.

3. No person shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 19
Slavery and servitude

No person shall be held in slavery or servitude or be required to perform forced or compulsory labour.

Article 20
Right to be informed of reasons for arrest and charges

Any person who is arrested shall be informed at the time of the arrest of the reasons for the arrest, and shall be informed promptly and in detail of any charges in a language which that person understands.

Article 21
Right to consult with lawyer and to remain silent

Any person detained in custody has the right to remain silent and the right to consult with a lawyer.

Article 22
Hearings, release and trial

1. Any person arrested or detained on a criminal charge shall be brought promptly before a judge, magistrate or justice of the peace.

2. No person awaiting trial shall be unreasonably deprived of the right to release on giving a guarantee to appear for trial.

3. Any person arrested or detained on a criminal charge has the right to be tried within a reasonable time.

Article 23
Right to test lawfulness of detention

Any person deprived of liberty has the right to take proceedings before a court for the determination of the lawfulness of the detention and to be released if the court finds that the detention is not lawful.

Article 24
Presumption of innocence

Any person charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 25
Right to fair hearing

In the determination of any criminal charge, or of any rights or obligations in a suit at law, every person has the right to a fair and public hearing by a competent, independent and impartial tribunal.

Article 26
Rights of accused relating to trial

Every person who is charged with a criminal offence has the right:-

(a) to be informed of the right to obtain legal assistance;

(b) to communicate with a lawyer;

(c) to receive legal assistance without cost if the interests of justice so require and the person lacks sufficient means

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(CONT'D FROM PAGE 30) Amendments Relating to RCTS Licences...

The circumstances in which the Tribunal may do this are set out in s92V(2) and (3) and leave a very wide discretion to the Tribunal.

Ironically, special mention is made of control by foreign persons and yet the first remote licence has been handed to a Canadian citizen.

Further, paragraph (4) of s92V constitutes new definitions of "control" and "interest". Since the present definition of "control" in s90(1) and of "shareholding interest" in s90(2) have been left intact we now have the curious position of the same term being differently defined in different parts of the Act.

Quite transparently this is undesirable and leaves those considering and advising upon the Act in the potentially confusing position of having to constantly define which definition they are referring to. Errors will occur.

The s92V definition of "interest" is breathtaking in its width and I would suggest, perhaps meaningless because of that. The definition depends upon three terms which are defined in the Act - i.e. "shareholding interest" which is defined by the Amendment Act 1985, ."a voting interest" and "financial interest" by the Amending Act 1984. However, these expressions are inclusive but exclusive. Presumably even wider interests are envisaged - perhaps being politically or economically powerful in the licence area?

The grant of remote licences is to be controlled by a new provision, s83(da), which is substantially in the form of the normal grant criteria, but it does require particular attention to be given to the continuing viability of overlapped service areas. A particular person may be refused a licence on this basis, even though another person might be considered by the Tribunal to be suitable to be licensed for that remote licence.

This has significance for remote licence consortia. If available this might well have been a significant factor in Western Australia. Yet again the structure is put in place after the horse has bolted.

The remote licence provisions do little more than establish a structure which the Tribunal is left to flesh out. Perhaps this is consistent with current trends in broadcasting law and policy. One cannot help but wonder in light of the confusion reigning across the whole field of broadcasting at the moment, whether this is a proper exercise of the function of government and truly in the interests of the people of Australia.

Martin Cooper

RECENT CASES

Federal Court Judgement on the Third Perth T.V. Licence

Foster J of the Federal Court in July issued a judgement dealing with ten appeals from decisions of the Australian Broadcasting Tribunal ("ABT") arising out of the hearings of the applications for the third commercial television licence in Perth.

In his judgment, Foster J made it clear that the two existing Perth licensees, STW-9 and TVW-7, had the right to:-

1. Participate fully as interested parties to the enquiries; and

2. Attack and attempt to demolish the individual cases of the applicants.

His Honour also made it clear that the viability of the applicants was a relevant issue for consideration, and that the choice of frequencies and the suitability of each on technical and public interest grounds should be considered by the ABT.

In His judgement, Foster J criticised the ABT for "sacrificing justice to expediency" in its handling of the inquiry. He said:-

> "The inquiry is the only public forum, indeed the only forum of any sort in which public interest in these matters may be advanced by anyone other than those officials advising on the matter and in which the matter of choice of frequency may be debated."

On the question of commercial viability, it would appear that the ABT has to find a middle ground when assessing the applications. The applicant must have sufficient financial technical and management capabilities to stay in business, but not be extremely successful and thus have a drastic impact on the existing licensees. If His Honour's decision stands it could be the wealthiest licensees, who have the most money to withstand competition, who will be able to attempt to dem-

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(CONT'D FROM PAGE 32) Area Inquiries & Local Origination...

the book at licensees.

We therefore propose that, first, area inquiries be held as nearly as possible midway between licence renewals, and, secondly, that the term of a renewal be increased to four or five years. The Tribunal could be expected normally to grant licences initially for five years, unless for special reasons that was too long, when two-and-a-half years would not be unreasonably short.

Local Origination of Programmes:

The new provisions in s99A of the revised B&T Act allow for local origination of programmes on subsidiary transmitters. They are probably traceable to concerns expressed some years ago by Aboriginal communities that the sudden arrival of metropolitan-style television, when many of them had not even been used to radio services, would be extremely disruptive of traditional culture and mores. The first reaction was increased pressure for Aboriginal radio services; some progress has been made, including the establishing of CAAMA in Alice Springs as a capable Aboriginal broadcaster and production house.

With provision proposed (and now made) for local origination of programmes, commercial broadcasters especially began to observe the possible problems. FACTS was concerned at the commercial implications of interruption of delivery of advertisements. FARB raised a possibility that limited 'local origination' could expand until effectively a new station had come into being, without the operation of any of the normal processes of ministerial planning and Tribunal licensing.

The PBAA supports the provision for local origination, but acknowledges that there is some reality in these problems for the commercial sectors. The concern of FARB about the bypassing of normal procedures is one requiring thought; the argument (if we understand FARB correctly) is not that the development ought not to occur, but that it should occur subject to properly determined processes.

Because its stations are not normally competitive with each other in the way commercial stations are, the public sector is inherently more easily able to accommodate concepts such as local origination without strain. For this reason, the PBAA asked that provision be made (and it has been) to proclaim the introduction of local origination separately for each type of licence, allowing the process to begin on public stations even if there are still unsolved problems for other sectors.

An idea canvassed by FARB would allow local origination with minimal restriction and regulation in remote areas, but not on translators in currently-served rural or regional areas (or, anyway, not without considerably more 'process'). At least one public radio service - that to Bathurst, currently being extended to Orange with a translator, with an understanding that a local Orange community station may in the future supersede the translator - makes FARB's proposal of interest to the public sector too.

It can be said that public broadcasters firmly support local origination; further, the idea should not be confined in its implementation to remote areas. For some time the merits of channel sharing have been argued by the PBAA, to lukewarm or cold reactions from other sectors. We maintain our view that, with suitable arrangements, diversity of choice and comprehensiveness can be well served in some circumstances by less rigid separation than has been customary of the various kinds of service - in both radio and television.

Michael Law

Federal Court Judgement...

(CONT'D FROM PAGE 40)

olish the individual cases of applicants. Those with less financial capability will be disadvantaged.

His Honour's conclusion was that the ABT, in its reasons issued on 3 April, 185, denied natural justice to the encumbant licensees. If this decision stands it will substantially reduce the ABT's discretion in the conduct of inquiries.

ACLA APOLOGY

Apologies are extended for the recall of Volume 5 No. 2. Unfortunately an error appeared in this edition.

A Survey of the A.B.T.'s Adelaide Television Licence Renewal Report

Some eight months after hearings into renewal applications for the renewal of the licences for Adelaide's three commercial television stations the Australian Broadcasting Tribunal ("ABT") has released its report.

The licences for SAS-10 and NWS-9 have been renewed for the maximum period of three years. The licence for ADS-7 has been renewed for two years and six months. The Tribunal stated that the shorter term of renewal of the licence for ADS-7 was based on its findings that the licensee's performance in the area of children's programs had not been satisfactory, that the licensee had failed to demonstrate that it had sufficiently considered and catered for the needs of the hearing impaired in the Adelaide community and that it had failed to adequately demonstrate a clear relationship between its information gathering processes, its information analysis processes and its program decisions.

The Adelaide licence hearings were of particular interest because they were the first time in a major metropolitan market in which the Tribunal tested the undertaking given in accordance with s86(10) of the Broadcasting and Television Act 1942 ("the Act") relating to the provision of an adequate and comprehensive service in accordance with the ABT's Policy Statement number 6 ("POS-06"). The ABT issued POS-06 in December, 1983. It outlined the principals which it would apply in respect of that part of the undertaking.

The Tribunal noted in its report the argument raised by the licensees that as the issue of POS-06 was so late in the licence period its usefulness as a guide in the manner in which the station should approach the assessment of compliance of the undertaking was diminished. This was rejected by the Tribunal, particularly in view of the fact that the section had been in the Act long before POS-06 was released.

Adequate and Comprehensive:

The Tribunal noted that the Australian television industry was a regulated oligarchy rather than a free market and thus market place forces could not be solidly relied upon to satisfy the public interest. Accordingly, the adequate and comprehensive undertaking was introduced. It noted that the Adelaide licensees had put to them the view that the McNair Anderson rating survey, when interpreted by an experienced programmer provided extensive feed back about programming preferences and varying habits of the Adelaide community. However, the Tribunal said that because market forces could not operate efficiently in the television context:

(a) a mass audience could be divided by providing similar programming; and

(b) a lack of direct payment for view meant that the market does not necessarily reflect preferences.

Thus it considered that the McNair Anderson services were unreliable for the purpose of ensuring the provision of adequate and comprehensive services.

The Tribunal said that it was clear from the working of the adequate and comprehensive undertaking that ascertainment was the rock upon which the undertaking was built. It involved two main aspects, gathering information about the circumstances of the market and applying this judgment when making program judgments. The first task was defining the geographical boundries within which the community resides. Then it was necessary to obtain an understanding of the goals and expectations of various sections of the community. The Tribunal found that very little material in relation to this ws placed before it by the licensees.

The three licensees had conducted joint research which the ABT found was narrow in its focus. Its questions related to program type, viewing and preference and so limited insights on the broader range of interests of the Adelaide communities. It also commented on the fact that the study was made at the end of the licence period. Accordingly, its findings could not have influenced the decision making in relation to the existing television service.

ADS-7 requested the ABT to issue detailed guidelines on ascertainment. The Tribunal declined to do so because of the following:-

(a) the approach was contrary to the general complaint of the industry that the Tribunal was too interventionist;

(b) it was within the capabilities of the stations to improve upon their current practices; and

(c) the Tribunal did not regard market reserch and other forms of acertainment as ends in themselves, but rather as tools.

The Tribunal said that in making a judgement about the adequacy and comprehensiveness of a particular service the following factors should concern it:-

(a) whether the licensee is properly informed about its market;

(b) whether the licensee is capable of analysing and applying the information;

(c) the soundness or otherwise of the process by which decisions about programming were made;

(d) whether or not all services compare to those provided in similar markets;

(e) evidence of any significant public concern within the areas of programming; and

(f) the way in which resources have been allocated to the acquisition and production of programs, bearing in mind the nature of the market.

Provision of Australian Programs and Encouragement of Australian Resources:

The second part of the undertaking given by the licensees is in relation of the provision of Australian produced programs and the encouragement of the use of Australian creative resources in connection with the provision of programs. The Tribunal noted that some licensees had relied solely on compliance with the ABT's Australian Content requirements as ensuring fulfilment of this part of the undertaking. The Tribunal noted that the information which it would have regard to in assessing compliance is as follows:-

(a) involvement in local production of the station's own news.

(b) contribution to other Australian television productions;

(c) involvement in local production by stations in providing news for other stations;

(d) contribution to Australian television productions;

(e) involvement in the development of television scripts and new program formats;

(f) involvement in co-productions of Australian film, television and other creative productions;

(g) support given to local film production and theatrical companies;

(h) extent of exposure given to the local film industry;

(i) employment of various categories of creative and technical personnel in conjunction with program production, including employment of new talent such as graduates of specialist production and media courses; and

(j) involvement in the cultural and creative life of the local community including assistance and exposure given to particular events, exhibitions, festivals etc.

It then went on to deal with each of the stations. The main common feature was criticism of means of ascertainment and the application of this to program decisions. Set out below are the ABT's comments relating to ABT-7, which are particularly important in view of the reduction of its renewed licence period.

ADS-7

(a) **Children's Programs:**
During "C" time ADS-7 had telecast only one Australian produced program "Wombat" and several old animal story programs such as "Lassie" and "Flipper". It had stated at its previous licence renewal that it had a policy of repeating "C" programs on Saturday mornings. This had been discontinued when the children's television standards were introduced in July last year. The replacement programming was cartoons, movies and sport. In making the decision to change the Saturday morning programming the ABT said that it did not appear that the interests of the Adelaide community were at all carefully considered by ADS-7. During the licence period ADS-7 had also disbanded its children program production unit. At its previous licence renewal particular attention had been drawn to this unit.

The Tribunal said that whilst the transmission of "C" classified programs by a licensee ensured strict compliance with the children's television standards, such transmission did not necessarily indicate that the licensee was catering to the needs and interests of the children in the community it was licensed to serve. For it to be demonstrated that those interests were adequately served it must be established that a licensee knows and understands the nature of those needs and interests. The Tribunal was of the view that the transmission by ADS-7 in programs such as "Lassie" and "Flipper" was illustrative of the lack of the effort required by the licensee of a major commercial television station. It also found that ADS-7 had failed to demonstrate any cogent strategy with regard to its provision of children's programs. It failed to explain the processes whereby its programming in this area was seen to be suitable to satisfy the needs and interests of the children of Adelaide, or if any alternative program choices had been explored by ADS-7 in the light of the recent unpopularity of the "C" programs transmitted by it.

(b) **Close Caption Service:**
ADS-7 did not transmit any sub-titled programs, although the program "Sons & Daughters" was available in sub-titled form from ATN-7. ADS-7's response to the submission from the Australian Caption Centre was that it did intend to introduce a close caption service, but had needed the funds elsewhere. The ABT said that ADS-7 had not properly considered the interests of the hearing impaired members of the Adelaide community. It did not accept that the introduction of a close caption service should have waited on the expenditure of funds on other areas of the licensee's opertion. Its view was that the licensee's commitment to the provision of an adequate and comprehensive service should have caused the licensee to make resources available not only for improving its transmitter facilities and the replacement of the outside broadcasting unit, but also as a high priority, the introduction and proper technical maintenance of a close caption service for the benefit of hearing impaired members of the community which it was licensed to serve. In the event that the resources of the licensee prevented it from providing an adequate and comprehensive service the Tribunal said that it would be forced to carefully consider the extent to which the licensee continued to possess the financial capabilities necessary to effectively operate the station.

(c) **Ascertainment:**
ADS-7 gave evidence that its ascertainment procedures included direct contact with its varying audience, McNair Anderson rating surveys and specifically commissioned research. Unlike the two other Adelaide licensees it did not have an advisory or ascertainment committee to assist in programming decisions. Three pieces of research had been commissioned directly by ADS-7, together with the joint research of the other two Adelaide stations. The ABT came to the conclusion that ADS-7 had not been sufficiently active in researching the needs and interests of the Adelaide community during the licence period under review. It had apparently transmitted the programe "Wombat" (which is produced in Brisbane) on the assumption tht it was suitable for an Adelaide children's audience, on the assumption that the needs and interests of that audience would be identical or similar to those in Brisbane. The ABT stated that a licensee cannot rely on such assumptions. In a market such as Adelaide it requires specific and effective research into such matters. In reference to the licensee's reliance on McNair Anderson surveys the Tribunal noted the apparent inertia of ADS-7 in the face of poor "C" time ratings and the lack of rating surveys during the summer period.

Basing its conclusion on the three areas of children's programming, provision of services to the hearing impaired and lack of a clear relationship between information gathering and program decision making, the Tribunal was not convinced that ADS-7 had provided an adequate and comprehensive service during the period of the licence. As this was the first time in which the undertaking in re-

lation to adequate and comprehensive service had been tested in a competitive market the ABT was prepared to give ADS-7 the benefit of any doubt. It found compliance with the second level of the undertaking in relation to encouragement of Australian programs and it also was satisfied that the applicant continued to possess the financial and technical capabilities to effectively operate the station. Taking all these considerations into account the Tribunal was satisfied that the renewal of the licence accorded with the public interest.

In deciding on the length of time of renewal the Tribunal referred to its POS-05 - renewal of a licence for less than the maximum period. The two main factors referred to in that policy statement which were relevant here were the need for an earlier review of performance of the station and the need for a form of sanction to be imposed.

The ABT said that the circumstances did not justify a renewal for the full term. If the licence was renewed for the full term it would not be sufficiently clear to the licensee that the deficiencies indicated were significant ones, which required positive correction. Accordingly, the licence was only renewed for two years and six months.

Robyn Durie

Bill of Rights...

(CONT'D FROM PAGE 39)

to pay for the assistance;

(d) to have adequate time and facilities to prepare a defence;

(e) to be present at any proceedings relating to the offence and to present a defence;

(f) to examine the witnesses against the person;

(g) to obtain the attendance of, and to examine, witnesses for the person;

(h) to have the free assistance of an interpreter if the person cannot understnd or speak the language used in court;

(i) not to be compelled to testify or confess guilt; and

(j) in the case of a child to be dealt with in a manner which takes account of the child's age.

Article 27
No retrospective criminal offences or penalties

No person shall be convicted of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it occurred.

Article 28
Right of review of conviction and sentence

Every person convicted of a criminal offence has the right to the conviction or sentence reviewed by a higher tribunal according to law.

Article 29
No trial of punishment for the same offence

No person finally convicted or acquitted of a criminal offence shall be tried or punished again for the same offence.

Article 30
Rights when deprived of liberty

Every person deprived of liberty has the right to be treated with humanity and with respect for the inherent dignity of the human person.

So far as is practicable:-

(a) accused persons shall be segregated from convicted persons, and shall be treated in a manner appropriate to their status as unconvicted persons;

(b) accused children shall be segregated from accused adults; and

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Comments on the Forward Development Unit's Report

The Forward Development Unit (FDU) of the Department of Communications was instructed by the Minister for Communications in February 1985, to prepare a report on the Future Direction of Commercial Television in Australia. The original terms of reference for the Unit required it to report by 30 June, 1985 on both television and radio. By May it was decided that the FDU would concentrate on television and defer radio to a later date.

As identified by the Secretary of the Department of Communications, the primary focus of the Report was on the Government's announced intention to proceed to the progressive equalisation of television services. It is the Government's intention that the majority of regional areas should have three commercial television services in three years, but not later than 1990.

The recently published FDU Report has identified numerous options but despite "reality - testing" of the options the real work of equalisation lies ahead. In the words of R.B. Landsdown, "Both the Government and industry will need to invest substantial sums of money in order to ensure that additional commercial services are provided and that an appropriate planning and regulatory infrastructure is available" (para iv).

The options presented in the Report are numerous and do not necessarily apply throughout Australia. "Different approaches may be preferred in different areas, depending upon local circumstances" (para 2.5). Implementation is to be considered on a case by case basis, so that equalisation may be achieved effectively. It should be noted that the Report also points out that all three services may not be provided immediately or simultaneously. (para 2.8).

The Report claims to be able to suggest "... literally hundreds of structural options for future development" but the net result is two basic approaches. Before discussing the approaches it is important to highlight paragraph 2.13 which states, "It is no exaggeration to observe that the whole policy of equalisation rests upon financial considerations, for unless existing or new licensees can afford to establish and operate two new services, all else is academic".

The two basic approaches are referred to as: Approach A: Aggregation; and Approach B: Multi-Channel Services (MCS).

Approach A, Aggregation, provides a series of structural options including combinations of existing markets in order to allow three competitive commercial television services to be viable. Approach B, Multi-Channel Services (MCS), leads to a group of options all of which involve the provision of three services in existing markets (para 2.15).

The trade-off between the two approaches is described as competition versus viability. Approach A emphasises competition and is thus consistent with the Government's intentions of reducing the concentration of ownership and control. It provides viewers with a choice of services and allows for new licensees in the market (para 2.19).

On the other hand, Approach B allows regional commercial television licensees to provide three services in their existing markets. Therefore Approach B proceeds within the existing market structure.

The aggregation approach seeks to create markets large enough to support three competitive viable services, where the size of the market refers to population or television homes.

The FDU identifies 64 aggregation options ranging from expansion of regional television services into immediately adjoining service areas, through to Statewide networking. Unfortunately the FDU does not present its views on the options and, in particular, the Unit's views (if any) on the optimal market structure for Australian regional commercial television are not presented. Follow up reports are needed if this vital issue is to be properly addressed.

The FDU is conscious that the equalisation program places heavy demands on the regional stations' resources and would require substantial financing. The FDU Report estimates that capital costs for aggregation would be about $10 million on average per service.

The MCS approach is expected generally to cost the regional stations between $3 and $4 million less in capital costs.

On these figures the MCS approach seems to be preferred but it is difficult to avoid the impression that adoption of this course is attractive principally be-

cause it represents the line of least resistance; that is, MCS is the more conservative approach especially in its maintenance of regional monopolies.

Furthermore, MCS does not overcome the structural weaknesses associated with a large number of small regional markets. Although the FDU recognises that revenue projections will be critical in any assessment of viability, it does little more than summarise the widely varying estimates of its consultants and does not offer an independent analysis of the results.

In short, the FDU, mindful of the political priority, but with a longer term interest in securing a competitive and more efficient industry, suggests that the equalisation program proceed by means of a "migratory path" from MCS to aggregation. The mechanics of this path are as yet unannounced. Nevertheless, the recently announced study into ownership and control provisions of the Broadcasting and Television Act, which the FDU is now undertaking, is sure to provide a key to this process.

Dominique Fisher

Bill of Rights...

(CONT'D FROM PAGE 45)

(c) convicted children shall be segregated from convicted adults, and shall be treated in a manner appropriate to their age and legal status.

Article 31/1
No torture or inhuman treatment and no experimentation without consent

1. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. No person shall be subjected to medical or scientific experimentation without that person's free consent."

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RECENT PUBLICATIONS

Computer Software Legal Protection in the United Kingdom and Commonwealth -Henry Carr, ESC Publishing Limited (25 Beaumont Street, Oxford OX1 2NP, U.K.), 1985. A review of the current legal position of computer software under United Kingdom law.

Private Copying of Sound and Audio-Visual Recordings - Gillian Davies, ESC Publishing Limited (25 Beaumont Street, Oxford OX1 2NP, U.K.), 1984. Highlights the failure of existing copyright laws to provide protection from unauthorised reproduction of recorded music and films. This study of "off-air", "tape-to-tape" and "disc-to-tape" recording was prepared at the request of the European Commission.

Protecting Computer Technology: Europe and Asia Pacific - Longman Professional Intelligence Reports, 1985, (Longman Professional). Focuses on aspects of national and international law. Begins with an overview of intellectual property law in Europe. A summary of current data protection legislation in Europe is provided in Chapter Two. For the Asia Pacific region the Report focuses on Australia, Japan and Taiwan.

Protecting Computer Technology: The Americas - Longman Professional Intelligence Reports, 1985, (Longman Professional). The Report examines issues emanating from key countries such as the USA, Canada, Brazil and Mexico. Deals with the US Semiconductor Chip Protection Act. Also discusses issues associated with customs procedures, export controls and taxation.

Australian Broadcasting Corporation - Report of the Election Coverge Committee Federal Election 1 December, 1984, ABC.

Communications Up-Date - the Newsletter for the Media and Communications Council (this is available from GPO Box 4264 Sydney, 2001, and twelve issues appear a year).

Report on the Meeting of a Group of Experts on the Copyright Aspects of the Protection of Computer Software

UNESCO and WIPO (the World Intellectual Property Organisation) organised a meeting of a group of experts in Geneva between February 25 and March 1. The discussion at this meeting was basically on the protection of computer programs rather than other types of computer software. It was agreed that the protection of microchips should be dealt with separately and a meeting will be held on this subject in October of this year. Discussions of both the experts and the governmental attendees at the meeting reflected a general worldwide recognition of the pressing need for adequate protection of computer programs. Several participants pressed the view that international copyright conventions protected computer programs already, as literary works, and so required no further protection. Both the Berne and Universal Copyright Conventions provided adequate protection.

A number of participants argued that the protection of computer programs as such under existing international copyright conventions would promote the international circulation of programs without delay.

It was generally agreed that copyright provided the most effective protection, unlike patents, which provides protection not only against reproduction, but also against other forms of view such as telecommunications whilst allowing the free use of the methods or ideas embodied in the program.

Some participants did raise doubts as to the applicability of copyright saying that it would upset the delicate balance of creator's and user's interets as generally provided under industrial property laws. Others said that copyright protection did not leave enough room for the regulation of the international circulation of computer programs and automatic copyright protection should not be extended to them.

One issue which did emerge was the necessity of clarying what use of a program in a computer amounted to reproduction. The vexed question of whether the use of small portions of the program for minimal duration amounted to reproduction was not solved. Another issue which emerged was the opinion of some that the general term of copyright protection might be far too long for computer programs. Only few programs retained their commercial value for more than a couple of years.

One useful part of the report was an analysis of national legislation and case law annexed to the report. Australians would be interested to note that further studies are to be undertaken by our Government as part of an enquiry which will look into particular problems and additional developments at international levels. The inquiry will take four points into account:-

(a) international development;

(b) encouragement of use of computer programs;

(c) the fact that certain features of copyright law which are tailored to the fine arts might not necessary be applicable to computer programs; and

(d) the solution adopted must balance the interests of users and producers.

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