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ACLA NEWS

JULY ACLA LUNCHEON: BRIAN WHITE OF RADIO STATION 2UE TO SPEAK

This Bulletin is the Australian Communications Law Association's official journal. However, contributions from non-members alike are welcomed.

In April ACLA held a cocktail party to welcome the new chairman of the Australian Broadcasting Tribunal, Ms Dierdre O'Connor. This function was highly successful.

In June a luncheon was organised in the Menzies Hotel in Sydney at which Mr Ron Brown, the Executive Director of SBS television spoke about the aftermath of the Connor Report on the SBS.

Another luncheon is presently being organised for July, at which the speaker will be Mr Brian White, Managing Director of radio station 2UE, discussing radio networking. The venue will be the Menzies Hotel in Sydney. Inquiries should be addressed to Ros Gonczi on 660-1645. ACLA members will shortly receive notice of this luncheon.

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The *Communications Law Bulletin* welcomes articles, case notes, letters, news items, notes on recent publications, details of forthcoming events and other contributions. Forward all correspondence and contributions to:- **Editorial Board, P.O. Box K541, Haymarket, N.S.W. 2000.** Registered by Australia Post — Publication No NBH 4474.

AN OUTLINE OF THE NEW PUBLIC INQUIRY PROCEDURES OF THE AUSTRALIAN BROADCASTING TRIBUNAL

Introduction

The law which governs the major powers of the Australian Broadcasting Tribunal ("the Tribunal") has gone through major changes in the last five years. Some of these changes relate to the criteria by which the Tribunal exercises its powers. Others relate to the procedures which are applicable in the various processes. It is this latter area which has undergone major recent surgery, comprising amendments of the Broadcasting Act 1942 ("the Act") and the promulgation of a new set of inquiry regulations.

To put the changes in a proper perspective, it is necessary to look back to the beginnings of the Tribunal's public inquiry processes. Apart from the Self-Regulation Inquiry of 1977, the Tribunal's first major forays into the public inquiry field were in the licence renewal inquiries for the Adelaide and Sydney commercial television stations in late 1978 and early 1979. These inquiries were regarded as unsatisfactory by almost everyone who took part. The applicable procedure was ill-defined in the Act and the Tribunal members lacked the kind of experience or legal background that would have enabled theme to fashion new rules quickly from scratch. Blame for the confusion which arose in Adelaide and Sydney is commonly levelled at the Tribunal, which was unable to achieve a generally acceptable balance between the competing interests at inquiries, and the licensees, who sought protection in folds of silk and detailed legal argument. However, a large measure of the responsibility lay with those who were responsible for the drafting of legislation which failed to provide a proper framework for the holding of public inquiries.

The problems with the Act were recognised by the Federal Government soon enough, and the whole question of the Tribunal's inquiry procedures was referred to the Administrative Review Council ("ARC") for consideration and report. The ARC reported in early 1981, with a series of recommendations intended to improve the effectiveness of the Tribunal's inquiry processes and provide for greater control over the procedures by the Tribunal. The proposed procedures were based on one uniform inquiry process applicable wherever the Tribunal proposed to exercise a substantive power. The whole process was a detailed mix of statute, regulations and administrative arrangement, with (at the risk of over-simplifying matters), three main features:

- greater reliance on documentation;
- elimination of technical rules about who could participate; and
- confining of oral hearings to issues best dealt with at such hearings.

The Government endorsed these recommendations in 1984, and the new inquiry system was implemented in part by the Tribunal's own practices, and in greater part by the Broadcasting and Television Amendment Act 1985. However, the real framework for the inquiries is embodied in the new Australian Broadcasting Tribunal (Inquiries) Regulations (1986), which appeared in the Commonwealth Gazette of 22 May, 1986.

The Role of the Tribunal

To understand how the inquiry procedures are intended to operate, it is important to understand what kind of body the Tribunal is. Above all, the Tribunal is an administrative agency, not a court. It can exercise a number of substantive powers on application (such as grant and renewal of licences, determination of program standards and approval of share transactions), and (in many cases) it can itself decide to commence an inquiry.

The inquiry process is the means by which the Tribunal informs itself before it exercises a power. An inquiry is not a trial, nor is it a kind of boxing match with the Tribunal acting as referee. The important point is that the inquiry is held for the Tribunal's benefit, and the Tribunal should control the manner in which it informs itself, provided that it properly discharges the duties placed on it by the Act. The two main duties that the Tribunal must fulfill are the following:

- to make a thorough investigation into all matters relevant to an inquiry; and
- to be both expeditious and just,

including the duty to comply with the rules of natural justice.

The courts have recognised that thorough and just investigations are not necessarily expeditious, and there has been some recent judicial head-scratching over where the line is to be drawn in respect to the obligation to investigate (see TVW Enterprises Ltd v ABT (No 2) (1985) 61 ALR 79, per Forster J; TVW Enterprises Ltd v ABT (No 3), 7 February 1986, per Muirhead J).

The object of the new procedures is to give the Tribunal the means to make better use of inquiries than was previously the case. However, the new legislation also requires the Tribunal to hold inquiries in many cases where they were not previously required. The inquiry as a useful tool has become the inquiry as a mandatory obligation. Of course, the "new" inquiry is a different beast to the "old" inquiry. Nevertheless, the question most commonly asked remains: will the new inquiry process speed up inquiries and reduce costs, or will it simply bog the Tribunal down in a morass of technical procedures, or bury it under a mountain of paperwork?

The answer to this question will come only with experience, but a run-through of the process may help to crystallise some thoughts on the matter. The following explanation is not intended to be a definitive legal explanation, but rather a readable guide to the detailed provisions.

Initiation of Inquiries

One of the new features of the inquiry process is that inquiries can be initiated by members of the public or the industry, as well as by the Tribunal and the Minister. If a person applies to the Tribunal for it to exercise a "substantive power", then the Tribunal must hold an inquiry into the requested exercise of the power: s17A-17C. In these cases, the basic requirement is that an application must comply with the regulations. This is not necessarily as onerous as it may sound. In summary, the regulations say that an application shall:

(a) be in accordance with the appropriate "approved form" (although the Tribunal can allow someone to make an application in a different form, subject to any conditions that the Tribunal may determine);

(b) indicate the relevant power of the Tribunal;

(c) outline the grounds for the application, and any other information that is required by the approved form;

(d) be signed or have the company seal properly affixed; and

(e) be lodged with the Tribunal, together with copies of other documents relied on by the applicant.

There is an additional (and controversial) requirement for applications from unincorporated associations. These applications must state the objects of the association (if any) and the name of each member of the association (if 20 or fewer members) or the name of each officer of the association (if more than 20 members).

All these requirements are subject to the qualification that strict compliance is not necessary.

The Tribunal can reject an application if it does not comply substantially with the requirements of the regulations, if it does not contain sufficient information on which to base an inquiry, or if it is scandalous, vexatious, frivolous or an abuse of the Tribunal's procedures. If it refuses an application, the Tribunal must give the applicant concise reasons for so doing.

The Inquiry File

When an application is accepted, the Tribunal must open an inquiry file. This marks the commencement of the inquiry. Similarly, if the Tribunal decides to hold an inquiry on its own initiative, it must open an inquiry file. The inquiry file is the master record of what takes place in the inquiry.

The Tribunal is under a duty to place all documents relevant to the inquiry on the inquiry file. This is a continuing duty throughout an inquiry. There are four classes of documents which do not need to be placed on the inquiry file:

(a) documents which are covered by a confidentiality direction;

(b) submissions which do not comply with the regulations, or are irrelevant, scandalous, vexatious, frivolous or an abuse of the Tribunal's procedures;

(c) staff legal advice or opinions, excluding staff opinions about the interpretation of the Act or the regulations; and

(d) published documents available to the public - the Tribunal need only put on the file a short notice outlining the matters in such documents which are to be taken into account, and specifying where such documents are available to the public.

The inquiry file must be made available for public inspection at the Tribunal's central office (in Sydney) and at other places determined by the Tribunal. In the case of licence grant or renewal inquiries, the Tribunal has to try and ensure that the inquiry file is available at a place within the (proposed) service area of the licence.

Notices to Licensees and Applicants

Once an inquiry is commenced, the Tribunal must notify any affected licensee that is not already a party to the inquiry (see below). If the inquiry affects more than one licensee (such as where it concerns the possible determination of program standards) and the relevant licensees are members of one of the three main industry associations (i.e. FACTS, FARB, or PBAA), the Tribunal can instead notify the relevant association.

The obligation to notify applies also in relation to submissions lodged in the inquiry. The Tribunal must notify affected licensees (or their industry association) of the relevant submissions lodged and, as far as practicable, ensure that the notified licensees receive copies of those submissions (unless the Tribunal has refused to take the submissions into account because they are, for example, frivolous or an abuse of Tribunal procedures). Usually, this will be by a direction that persons lodging submissions should also serve a copy on the licensees.

If an inquiry follows after an application from a person, that person is also entitled to be notified of relevant submissions lodged, and, as far as practicable, to receive copies of those submissions.

Decision Without Advertisement

In some cases, it will be possible for the Tribunal to make a decision simply on the basis of an application and such other information the Tribunal has in its possession about the relevant issues. This can only be done if the Tribunal is satisfied that it has made a "thorough investigation" into all the relevant matters in such cases, so that in practice the use of this option will be limited to fairly minor and straight-forward applications. The regulations specifically say that decisions of this kind cannot be made in the case of licence grants, or renewals for licences other than re-broadcasting or re-transmission licences.

Where the Tribunal makes a decision in such cases (either granting or refusing the application under investigation), it must notify the applicant and affected licensees, and publish a notice which gives particulars of its decision, and state where and when the inquiry file can be inspected.

Advertising the Inquiry

Where the Tribunal commences an inquiry on its own initiative, or determines that an application cannot be dealt with quickly, the Tribunal must, within 28 days of opening the inquiry file, advertise the fact that an inquiry has commenced. The advertisement must in every case appear in the Commonwealth Gazette and the Tribunal's own newsletter, ABTEE. Where the inquiry concerns the grant, renewal, suspension, or revocation of a licence, or the determination of program standards, or any other matter that the Tribunal thinks is of significant public interest, the advertisement must also appear in at least one newspaper. If the inquiry concerns a particular area or place, the newspapers chosen should include one which circulates in that area or place. The advertisement must specify:

(a) the relevant particulars of any application;

(b) the issues to be considered in the inquiry;

(c) the places and times for inspection of the inquiry file; and

(d) the closing date for lodgment of submissions.

The closing date for submissions must be at least 42 days after the date of the Commonwealth Gazette in which the adver-

tisement appears. However, the Tribunal has the power to extend this period to allow a late submission to be accepted.

Submissions

The regulations lay down some basic requirements for submissions. The essential requirement is that they be in the form of a "document". This includes audiotape, videotape, computer disc, and on paper. In the case of documents which are not on paper, the Tribunal can impose conditions, e.g. that any videotape must be in Beta format, or any computer disc must be in particular format. Submissions on tape or disk etc must also be accompanied by a statement (whether on a sticky label or separately) which identifies the submitter and the inquiry to which the submission relates, and outlines the content of the document. A submission has to be signed or otherwise executed.

Submissions must indicate the nature of the decision, recommendation or direction (if any) that the submitter wants the Tribunal to make in the inquiry. A submission must also outline any matters relied on in support of it, although where a submitter wishes to rely on a published document, it is only necessary to name the document, outline what part of it is relied upon, and specify a place where it is available to the public.

Submissions from unincorporated associations must contain the same kind of information about membership as do applications (see above under heading "Initiation of Inquiries").

The Tribunal can reject a submission if it does not comply with the requirements of the regulations, or if it is irrelevant, scandalous, vexatious, frivolous or an abuse of the Tribunal's procedures.

Parties to the Inquiry

Once all the submissions are in, the Tribunal will usually be able to determine the final list of parties to the inquiry. The Act no longer contains the notion of an "interest" as a qualification to be a party. Instead, the parties to an inquiry are:

(a) the applicant (if any);

(b) any person who has lodged a submission which has been accepted by the Tribunal; and

(c) any other person that the Tribunal directs should be a party in the public interest, because of special circumstances.

Parties to inquiries do not have unlimited rights of participation. Subject to normal principles of natural justice, the Tribunal can direct that the participation of any party be limited to, for example, specific matters raised in that party's submission.

The Documentary Phase

Eventually, the Tribunal will have before it a series of inquiry documents which will usually include an application, one or more submissions, and supporting documents.

At this stage, several things can be done:

(a) the Tribunal could move directly to a decision if it were satisfied it had all the information it needed before it;

(b) the Tribunal could require any party to lodge additional documents, and reply to any other documents lodged;

(c) the Tribunal could restate the issues to be considered and readvertise;

(d) the Tribunal could join the inquiry to another inquiry;

(e) the Tribunal could suspend the inquiry until a future date set by the Tribunal.

All of these steps could be taken in various orders, and perhaps more than once. The object is to get as much of the relevant information in documentary form as possible.

Conferences and Hearings

During the documentary process, or at the end of it, the Tribunal may decide that the documentation alone will not give it the information it needs to reach a decision. In that case, it can hold a conference or a hearing. Conferences and hearings can be held at any time to examine various aspects of the inquiry.

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INTERNATIONAL FILM CO-PRODUCTIONS

Breaking New Ground?

Very few feature films or television programs are made in Australia as co-productions. The lack of international film co-productions has largely been due to the availability of finance under Division 10BA of the Income Tax Assessment Act for the programs conforming with the Australian content requirements of the Australian Broadcasting Tribunal. Further, the government statutory film bodies responsible for investment in film production had discouraged international film co-productions or co-production treaties largely because of a desire to develop an indigenous film and television production industry.

The development of the Australia film and television production industry has lead to a greater degree of sophistication in the way films are packaged, financed, produced and distributed.

The increased sophistication of the film industry in Australia combined with a growing concern about the restrictiveness of the Australian content requirement in Division 10BA has led producers to negotiate for international co-productions in part as a higher stage of development in the industry.

Options for Co-Productions

There are essentially two options available for a co-production, one being government regulated co-production under the Australian Film Commission ("AFC") and the other being free market co-production.

AFC International Co-Production Policies

In November 1985 the AFC announced its international co-productions policy which is essentially designed to allow investors to claim Division 10BA taxation deductions for investment in qualifying international co-production films.

The legal basis for the AFC co-productions policy is to be found in s3 (1)(c) of the Australian Film Commission Act, s124ZAA(1)(b) and s124K(1)(b) of the Income Tax Assessment Act.

All three provisions are essentially designed to allow for international co-productions based on agreements or arrangements between governments and/or agreements or arrangements between statutory authorities of governments. If the government of Australia, or an authority of the government of Australia enters into an arrangement or an agreement with a foreign government or authority to produce an "eligible" film (as defined in Division 10BA) the relevant minister shall provide a Provisional Certificate and, as the case may be, a Final Certificate stating that the film is a qualifying Australian film for the purposes of Division 10BA of the Income Tax Assessment Act.

The AFC has elected a "one off" approach to film co-productions, with the key assessment criteria for the AFC being; quality of the project, subject matter, extent of Australian participation, background and expertise of the overseas parties, source of production moneys, and the scope for international distribution.

The AFC has established a very complex and dense system of qualification and approval for projects which at times requires considerable negotiations over certain grey areas.

To obtain support of the industrial unions and associations involved in film and television production an arrangement was entered into among the various industrial groups whereby the AFC would essentially bind its acceptance of programs and design agreements to the terms and conditions of the industrial arrangement.

The industrial arrangement requires, inter alia, "that there be a balance of majority Australian creative participation and financial equity over the life of the programme". Other requirements include that Australian creative equity is commensurate with Australia financial equity. All these terms have not yet been defined in a way which provides certainty to the co-producers.

Where the composer is Australian, the musicians engaged shall be Australian and the recording facilities shall be located in Australia. Further, all crew and cast members working in Australia must be fully financial members of the relevant Australian union or association.

Once the producer has met the various requirements of the industrial agreement, plus satisfied the various policy objectives of the AFC, he or she must then negotiate with the foreign authority and foreign co-producers in relation to their international requirments and policy objectives.

This procedure is complex, and requires considerable attention to detail. The rewards at the end of the day however

should be considerable given that Australian investors should qualify for Division 10BA deductions in the film. One would also expect that the film's access to international markets would be enhanced and thus introduce the potential for some "blue sky" returns.

Free Market Option for International Co-Production

Free market co-productions are less dependent on formal structure and approval mechanisms of industry and government bodies than formal treaty co-productions. These co-productions are normally multiple party deals or arrangements using a wide variety of financing techniques more akin to what we now understand as standard practice for larger budget film productions.

International co-financing ventures may take advantage of Government tax incentives, below the line co-financing arrangements, direct Government subsidies, barters for distribution markets, currency based and exchange based deals, discounting of various banking facilities and other such mechanisms.

The project is generally packaged on the basis of a relationship between the subject matter and territory, but certainly not the nexus which is usually required in formal co-productions or treaty productions.

1. Canada

For example, Telefilm Canada, together with the Canadian Government Film Development Fund and CTC (Government owned network) are able to make use of direct investment secured against taxation incentives to Canadian investors at 100% over 2 years. Co-ventures of this nature may require twining of Canadian based film and Australian based film for the co-venture.

2. Norway

In Norway investors are entitled up to 100% capital write-off from investment in films provided the film has obtained a guaranteed minimum return against the negative cost of production of the film of up to 40%.

3. New Zealand

New Zealand tax incentives are based

on a 45% capital write-off of the entire moneys expended in relation to the film whether direct or not and may include, expenditure on prints, marketing and advertising. New Zealand has previously provided a limited amount of money to Australian projects on the basis of expenditure upon items not attractive to investors in Australia.

4. United Kingdom

Although the Eady Scheme is no longer available in the United Kingdom, the "Business Expansion Scheme" has been retained such that an investment of up to £40,000 per tax payer per year may be tax deductible.

5. Other Territories

Various other countries have capacity for direct investment in film projects or can provide other indirect assistance for film projects on the basis that they are to be made, produced or in part involve sub-territories which offer such incentives.

Exchange rate, or currency deals may be available in certain territories where the value of the currency in the territory which undertakes the filming or the part production of the film is such that it is advantageous to bring foreign currency into the territory. Currency deals, combined with direct subsidy and tax incentives, enable the promoter to package the projects larely without direct government intervention.

Conclusion

Although no films have yet been financed or even packaged under the AFC's co-production policy hopefully eligibility of tax deductions under Division 10BA in relation to co-productions will become available as both producers and administrators become more familiar with international financing, production, and administrative requirements in relation to co-production film making.

Michael Frankel

NEWS

GOVERNMENT ABORIGINAL BROADCASTING COMMUNICATIONS POLICY

In late November the Minister for Aboriginal Affairs, Mr Clyde Holding, and the Minister for Communications, Mr Michael Duffy, gave details of the Government's decisions on the recommendations contained in "Out of the Silent Land", the report prepared by the task force on Aboriginal and Islander broadcasting and communications.

The major points contained in those decisions were:

- a study into the feasibility of providing satellite reception facilities to Aboriginal communities would be made;
- appropriate measures for Aboriginals to manage the programming of broadcasts to their communities would be developed;
- there would be encouragement of Aboriginal production of radio and television programs; and
- the accelerated expansion of telephone services.

The Ministers noted that the Government:

(i) was looking to the ABC to increase its involvement with Aboriginal broadcasting;

(ii) had endorsed the development of independent Aboriginal broadcasting associations at Alice Springs, Darwin, Townsville, Thursday Island and in the Kimberleys.

The Government also noted that:

(i) the Central Australian Aboriginal Media Association in Alice Springs had been granted funds to enable it to develop its Aboriginal video television capacity; and

(ii) high frequency inland radio services would begin in the Northern

(Con'd p.19)

COPYRIGHT BILL

In late January the Attorney-General, Mr Lionel Bowen, announced that the Government had approved the introduction of several amendments to the Copyright Act. The Bill is expected to be tabled in Parliament in the Autumn sittings and until such time its details will not be known. However, according to the Attorney-General's media release, the Bill will address the following areas:

- the piracy penalties will be significantly increased;
- new offences will be created;
- the Act will be extended expressly to cover satellite broadcasts;
- the onus of proof of ownership of copyright will be facilitated and, in prosecutions, also proof of the defendant's knowledge that he is dealing with pirate copies;
- access to audiovisual materials for the handicapped, libraries and archives will be increased;
- "fair dealing" in audiovisual materials for the purposes of criticism or review and reporting news will be permitted; and
- the Federal Court costs rules will be applied to the Copyright Tribunal.

It is only in the area of piracy penalties that details have been provided. The thrust of the proposed amendments is to create a new category of corporate piracy offences and to provide much heavier fines in this category. For example, in the case of the video piracy, the present maximum fine of $1,500 per infringing copy upon first conviction will remain for individual offenders, but for first convictions for corporate offences, the maximum level per infringing copy will be $7,500. Imprisonment up to two years will also be made available as an alternative to the fine for an individual's first conviction. For subsequent convictions, the maximum fine for individuals will remain at $1,500 per infringing copy (with the option of imprisonment increased from two to a maximum of five years), whereas the new maximum fine for corporate offences will be $1,500 per infringing copy.

The fine limits will also be increased. For convictions in the Federal Court, the maximum fine will be $50,000 for individuals and $250,000 for companies. This compares with the present limit of $10,000. In other courts, the fine limits will be $10,000 for individuals and $50,000 for companies compared to the present $1,500.

Two other items of special interest are the Government's intention to extend the Act expressly to satellite broadcasts and to provide "fair dealing" for audiovisual materials for the purposes of criticism or review and reporting news.

As to the intention to cover satellite broadcasts, any number of options are available and not all of these will yield a definition of "broadcast" that is consistent with the definition in the Broadcasting Act. It may be the case, that the Government intends only to include a satellite transmission within the definition of "broadcast" where that transmission is used to effect a transmission to the public, that is a broadcast.

Whilst this will remain a matter of speculation until the Bill is tabled, the extension of the fair dealing provisions to audiovisual materials is clear. The first comment is that whilst fair dealing for the purposes of criticism or review and reporting news will be applied to audiovisual materials, the fair dealing provision for the purposes of research and study will not be so applied. It may have been felt that a "research or study" fair dealing provision might be overly relied upon by educational institutions. Alternatively, it may be a case of doing nothing in the educational area until the entire educational package is resolved. Although it had been expected that the Bill would provide this package, this proved to be an area of such difficulty and disagreement that the proposals were dropped from the Bill.

However, the proposed fair dealing provisions will clearly be frequently utilised. If "audiovisual material" includes a broadcast, broadcasters will be entitled for the purpose of reporting news to use the "exclusive" broadcast materials of competing broadcasters. In addition, one can imagine that there may be considerable scope for over use by educational institutions as far as copying for the

(Cont'd on p20)

CONTINUATION OF THE PERTH SAGA

On 10 February, 1986 Mr Justice Muirhead delivered judgment on what may be the last of the cases arising from the Tribunal's inquiry into the third licence in Perth (at least until the report is prepared), TVW Enterprises Pty. Limited v Australian Broadcasting Tribunal & Ors (No. WAG 5 of 1986).

Towards the end of the inquiry TVW Enterprises Pty. Limited ("TVW") had sought to introduce evidence of its proposals for an "alternative television service, for the Perth television area. This proposal was endorsed by the other incumbent licensee, Swan Television and Radio Broadcasters Ltd. This was placed before the Tribunal in late 1985 and proposed a localised non-profit community television station owned through a government commission or statutory body and drawing upon members of the community to direct and establish operating policies.

In their ruling on 22 January 1986 rejecting the evidence, except for that relating to the preferences of the public and the effect on potential alternative sources of the grant of a commercial licence, the Tribunal made the following points. First, as this proposal had not been mentioned in TVW's original submission about the grant of the third licence it could not be said that there had been reasonable notice of TVW's proposal. Secondly, the Broadcasting and Television Act 1942 ("the Act") required the Tribunal to proceed with thoroughness, justice and expedition. There was some injustice and hardship in requiring the applicants at a late stage to meet what was in essence a substantial addition to the case against the grant of a licence. Justice and expedition would not be served by allowing the evidence to be given. The Tribunal also noted that it was not hearing an application for the grant of a public television station nor had the Minister called for submissions in this regard. There was evidence from the Department of Communications that there were no plans at present to call applications for public television licences.

The Tribunal concluded that it would hear evidence about public attitudes to additional television services and the effects which the grant of a commercial licence might have on alternative television generally, rather than the specific TVW proposal.

The specific decisions concerning which review was sought were:

(a) "the Tribunal would not investigate a specific proposal by the applicant for an alternative television service for the Perth metropolitan area ("the alternative television proposal");

(b) the applicant would not be permitted to adduce evidence as to its alternative television proposal;

(c) the decision of the Tribunal as to whether or not to investigate the applicant's alternative television proposal was relative to an assessment of justice and expedition;

(d) that the likelihood or feasibility would not in itself be a reason for refusing to grant a further commercial television licence;

(e) that the Tribunal is not required by s83(6)(d) to be persuaded that a new commercial television licence is required in preference to all other forms of television service but rather that the grant of such licence would not be in the public interest."

Muirhead J referred to Forster J's decision in TVW Enterprises Limited v Australian Broadcasting Tribunal & Ors (1985) 61 ALR 79, one of the earlier Perth decisions. In that case it had been held that the Tribunal was obliged, in deciding whether or not it should refuse to grant a licence of the kind contemplated in the Minister's notice, to consider the choice of frequency set out in the Minister's notice. TVW relied on this decision to say that the Tribunal should receive and consider evidence referring to the desirability, public need for, and feasibility of establishing a television service of a different nature to that provided by a commercial television station.

Muirhead J disagreed. He did not think that the public interest considerations in s85(6)(d) required, rather than permitted, the Tribunal to admit the material in dispute as a matter of law, on the basis that public interest in an alternative service and the feasability of

establishing it was or might be relevant to the inquiry. Accordingly, it was not a matter which the Tribunal was bound to investigate within The Queen v The Australian Broadcasting Tribunal & Ors; Ex parte Hardiman & Ors (1980) 144 CLR 13.

Muirhead J replied to TVW's points as follows:

(a) there was no rigid rule as to what weight ought to be given to the factors of thoroughness, expedition and justice. In this case justice had not been sacrificed to expedition; as Mr Justice Aickin thought may have been in the case of Barrier Reef Broadcasting Limited v Minister for Post and Telecommunications and Anor (1978) 19 ALR 425.

(b) the Tribunal did not take into account irrelevant considerations.

(c) it was not correct to say that in assessing the public interest factors under s83(6)(d) of the Act that the Tribunal must submit evidence to enable a comparison to be made between the nature of the television service specified in the the Minister's notice and realistic alternative forms of television that might be prejudiced by the grant of the third commercial television station. Such a broad proposition would tend to turn the inquiry into a section 18 inquiry, without a wide range of other parties who might be interested in being put on notice or being given the opportunity of making submissions; and

(d) there was no legislative requirement to investigate alternative services when dealing with an inquiry into a Ministerial notice relating to a commercial station.

In conclusion Muirhead J drew attention to the importance of expedition in matters of this kind. It is to be hoped that someone took this into account.

The Perth hearings have now concluded. A report is not expected before June.

Robyn Durie

AFTERMATH OF THE CONNOR REPORT

On 25 March the Government announced a package of decisions following the report of the Special Broadcasting Service Review Committee ("the Connor Report").

That report was completed in December 1984 and tabled on 25 March 1985.

The major decision is to replace the existing SBS with the Special Broadcasting Corporation ("SBC"), with its own legislation and statutory charter.

This will have the great advantage of giving the SBS flexibility over staffing matters, planning, programming and administrative arrangements. It is hoped that the legislation will be introduced in the 1986 autumn parliamentary session and become operational on 1 July 1987.

Amongst the recommendations from the Connor Report which the Government has adopted are:

- that the ABC and SBS should co-operate, share resources, co-ordinate programming and exchange personnel;
- That a national program packaging unit be set up to provide language programs to public, commercial and other statutory broadcasters;
- that ethnic broadcasting stations be included within the "special interests" public broadcasting classification;
- that the SBS be subject to the same tendering procedures on television production as the ABC;
- that SBS staffing terms and conditions be removed from the Public Service Board control and senior executive positions be widely advertised and open to general competition.

Amongst the recommendations rejected were:

- the holding of a further inquiry to consider the integration of the ABC and the SBS;
- reduction of the membership of the SBS Board;

- a review of the decision to expand SBS television on UHF only; and

- expansion of SBS television on the basis of at least equivalent coverage to that of the ABC and commercial television stations in a particular area.

NEWS

THE FDU AM/FM CONVERSION REPORT

The Minister of Communications, Michael Duffy, has now released the Forward Development Unit's ("FDU") report Future Directions for Commercial Radio ... Interim Report: AM/FM Conversion.

In this report the FDU identified three options. The first is to allow all commercial stations to convert.

The second is to allow regional commercial stations in competition with an FM station to convert.

The third is to allow no conversion. In relation to this the FDU noted that radio in Australia was already enjoying the benefits of deregulation.

The FDU said that conversion was not as simple as it might first appear. The question of "commercial viability" was one which lay at the root of proposals for conversion. They said that it was not possible to demonstrate the truth or falsity of the proposition that FM was a clearly superior mode. Nor was it possible to conclude that AM broadcasters would be made unprofitable, let alone unviable, if they were denied conversion. They said that given over 230 AM main stations were involved it was not necessary to take sides in the conversion issue to conclude that wholesale conversion of existing stations was essentially a long term option.

The FDU stated that the debate about conversion was in fact a debate about a closed versus an open system of broadcasting, regulation versus deregulation. For that reason it was important for the Government to determine its priorities. It also noted that freedom to change program formats at will could be under question as a corollary of conversion.

The Report again noted the Government's stretched resources. It stated that virtually all of the Department of Communications' resources would be devoted in the short term to planning for the equalisation of television services. This was the first priority. Secondly, resources would be allocated to planning the ABC's second regional radio network and the re-transmission of remote commercial television services. This would seem to indicate that the Department has not the desire or the ability to handle this issue at the present time.

It now appears that the FDU's report of its study on future directions for commercial radio in Australia has been postponed indefinitely.

REPRINT OF B & T ACT AND BROADCASTING ACT

The Federation of Australian Radio Broadcasters has arranged with the relevant authorities to print an updated, but unauthorised, edition of the Broadcasting Act and Broadcasting and Television Act, as it still applies. The cost of the Broadcasting Act is $19.00 and the cost of the Broadcasting and Television Act is $18.00. If anyone is interested in obtaining copies they should write to:

Mr M.J. Hartcher
c/- FARB
PO Box 294
MILSONS POINT 2061

or ring Yoland or Janice on (02) 929-4866.

NEWS FROM CANADA

MAJOR IMPROVEMENTS RECOMMENDED FOR COPYRIGHT LEGISLATION

Performers and writers stand to make substantial gains, if the recommendations of the parliamentary Sub-Committee to revise Canada's copyright laws are adopted.

The Charter of Rights for Creators released October 10, recommends 137 ways to support the rights of creators and give artists greater financial returns for creative work.

Among the recommendations are most of the items sought by the Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA") for writers and performers, including performers' rights.

"This is a substantial breakthrough for performers, for which ACTRA has worked for many years," says ACTRA president Bruce MacLeod. "We have lobbied government for over a decade now to provide this fundamental protection to performers. Performers' rights will give us legal ownership in our performances, and ensure that we can control how our performances are used and that we can secure fair compensation for different uses."

Mr MacLeod applauded the efforts of the ACTRA Performers Guild, which in the last six months has undertaken an energetic campaign for the inclusion of performers' rights in the revisions of the copyright legislation. "The Guild really went to work on this issue," said ACTRA's president, "and the report shows it paid off."

Besides recommending performers' rights, the all-party Sub-Committee on Copyright called for stronger moral rights to preserve the integrity of an artist's work and to prevent unauthorised modification or distortion of it; for retransmission rights to ensure that copyright owners of transmitted material share in the revenues produced by their work; for a "fair dealing" provision which limits the number and scope of uses of copyright material which are exempt from copyright provisions.

As well, it proposed a public lending right to compensate authors for the public lending of their works by libraries (though it recommended it be outside copyright law); a form of royalty to be paid writers when works are copied in places such as libraries; and broader powers for the Copyright Appeal Board (to be renamed the Copyright Board) to enable it to enforce the law and arbitrate disputes.

The Sub-Committee proposed tough new penalties for infringements of copyright law, with fines up to (Canadian) $1 million as opposed to the current (Canadian) $2,000 maximum.

In presenting the report, Sub-Committee chairperson Gabriel Fontaine outlined the basic principles which guided the deliberations of the five members. "The Sub-Committee thinks that because of the special contribution creators make to society they must be fairly rewarded for the continually increasing number and variety of uses of their work."

"This report recognises the obligation of any new Copyright Act is to support the rights of the creator," he said. "With the 137 recommendantions, we believe, the Copyright Act has the potential -given extensive revision - of becoming a Charter of Rights for Creators."

There is a shift in emphasis from reward for creative work to reward for risk taking which is a problem ... Copyright must be vested in the creator.

Lynn McDonald, NDP Culture Critic, filed a dissenting report, saying the recommendation on retransmission rights would result in a serious drain of resources to the United States. She said while the amounts are hotly contested, ranging from (Canadian) $11 million to (Canadian) $82 million, "when cultural dollars are as limited as they are and in a year of (Canadian) $100 million in arts cutbacks, one must question any recommendation that will result in an outflow of funds from the country."

She also said that while she believes many of the recommendations "would considerably improve the lot of creators" she is alarmed at the shift in emphasis of whom copyright is intended to serve - from the individual creator to the cultural enterprise, including large and profitable corporations, whose employees do the work. This is apparent in the recommendation for maintaining employer's rights where, she said, "the whole purpose of copyright is realigned from reward for creative work to reward for risk taking."

Ms McDonald said, "the understanding of copyright as a reward for creative work

must be retained."

ACTRA's Writers Guild has also expressed serious concern about this shift in emphasis.

"It is a major problem," according to Jack Gray, Chair of the Writers Copyright Committee. "Copyright must be vested in the creator, irrespective of whether he or she is employed."

Now that the Sub-Committee has tabled the report, it will be prepared in legislative form. Then it will go back to the Standing Committee on Communications and Culture which will seek public input through some form of public hearings. The final bill is expected to be tabled in the House of Commons and voted on by the middle of 1986.

ACTRA president Bruce MacLeod says, "ACTRA will have to keep the pressure on MP's to ensure that final legislation reflects the need of artists in the copyright area. While there are a few problems which we will have to work on, the report of the Sub-Committee contains most of the items for which we have pressed."

"It is a major victory," Mr MacLeod said "and deserves celebration but," he added, "we'll postpone the celebration until the final Copyright Act is passed in legislation, to our complete satisfaction!"

Performers win first round in fight for performers' rights

Performers have won the first round in the fight for performers' rights, said Lyn Jackson, Chairperson of the ACTRA Performers Guild after reading the report of the parliamentary Sub-Committee on Copyright.

"At last, there is recognition for the principle of performers' rights, and there is a recommendation that Parliament implement statutory performers' rights. If this is implemented, we will have achieved an important goal."

In its report the parliamentary Sub-Committee recommended that the performances of performers be a new category protected under copyright protection.

"As a matter of principle," said the report, "all creators should be protected against unauthorised uses of their intellectual property. A performer is just as much a creator as is the producer of a sound recording or a film. It is inequitable to protect some creative works and not others based on artificial distinctions that betray value judgments as to the creative merits of certain works."

The Sub-Committee recommended that performers' rights take the form of universal statutorily-created rights, administered by a performers' rights society. This was one of two options, presented by ACTRA in its submission to the Sub-Committee. This is the most comprehensive model for implementation of performers' rights and would create for performers a right very similar to a writer's copyright.

Performers' rights will give us a legal right to determine how our performances are used and to control unauthorised distribution.

"If implemented in legislation, the proposed performers' rights will provide performers with ownership of our performances when recorded on audio or video tape, film, phonograph, compact disc or any other media," said Lyn Jackson. "We will have a legal right to determine how our performances are used and to control unauthorised distribution."

To date, while ACTRA performers have the protection of the collective agreements, which include re-use payments, there is no protection in law. This denies the performer the guarantee of proper remuneration or means of enforcement of the required payments. While collective agreements bind producers of programs, they have no sway with third parties. This means that while performers can take legal action against engagers for breach of contract, performers have no grounds for legal claims with distributors who have acquired the rights for recorded performances from engagers.

ACTRA's Performers Guild has spearheaded a campaign to secure performers' rights for performers, building on a decade of lobbying on this issue by the Alliance as a whole. The Guild prepared a pamphlet on performers' rights and initiated several mailings to Members of Parliament. Before the report was tabled, the Guild participated in the development of the Alliance's submission and appeared as part of ACTRA's delegation before the Sub-Committee to present our position.

"The next round in the fight for performers' rights," according to Lyn Jackson, "is to ensure that when the recommendations of the Sub-Committee are translated into legislation, we get it passed by the House of Commons."

The response from MPs to the two

mailings has been very good, with answers from just under a third. While some said "thank you, I'll read the material", there were assurances from members from all three parties that they support the introduction of performers' rights.

"This is good support to build on, though there are still many MPs who must be convinced of the importance of the issue," said the Chairperson of the Performers Guild. "We must keep the momentum going and make sure that every MP is familiar with our arguments by the time the copyright legislation is discussed in the House of Commons."

"This is a critical issue for performers and we are on the verge of winning the protection we have sought for years." said Lyn Jackson. "I urge all our performer members to stay involved."

Jane Craig

The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), is a Canadian union of performers, writers and broadcast journalists affiliated to the Canada Labour Congress (CLC), the International Federation of Actors (FIA) and the International Affiliation of Writers' Guilds (IAWG).

The above article appeared in ACTRA's quarterly publication ACTRASCOPE. Jane Craig, the author of the above article is its Editor.

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CANADA

ACTRA
SCOPE

(Cont'd from p5)

Conferences are a useful and informal means of discussing and clarifying matters which do not require the formal taking of evidence or detailed legal argument. The Tribunal might, for example, conduct conferences with submitters to clarify points raised in their submissions. In other cases, where there is a collateral dispute between parties to an inquiry, a conference may be one means of resolving it. A conference can be conducted by any member of the Tribunal, usually but not necessarily a member of the inquiry Division.

Hearings will usually be a bit more formal than conferences, although it is likely that the Tribunal will be looking to shed as much of the "judicial" appearance of current hearings as it can. The Act itself says that the Tribunal shall not have regard to "legal forms and solemnities". The most important point about hearings is that they will be confined to matters which are best dealt with in oral hearings. A hearing will not roam over all the issues to be decided in the inquiry.

The Tribunal may restrict participation of parties to conferences and hearings, as it directs. Of course, this power is subject to implicit natural justice limitations.

The regulations specifically provide that proceedings (other than confidential sessions) at a conference or hearing may be recorded in any manner that does not, in the Tribunal's view, disrupt the proper conduct of the proceedings.

Conclusion of Inquiry

Following a conference or hearing, the Tribunal may decide that it needs additional documentation. It may then hold another conference or hearing as it sees fit. At some stage it will be satisfied that it has made a thorough investigation into the relevant issues and is sufficiently well-informed to proceed to a decision. A decision, when made, has to be followed by the familiar report on the inquiry.

Transitional Arrangements

The procedure outlined above will apply initially to any inquiry which does not fall within s98 of the Broadcasting and Television Amendment Act 1985. In numerical terms, that will be a fairly

small number of inquiries, the most important of which will be:

(a) inquiries into the determination of program standards; and

(b) inquiries into licence grants.

All other licensing inquiries (involving "old system" licences) will continue under the old procedures until such time as regulations are made under s98(2) of the Broadcasting and Television Amendment Act 1985. That sub-section allows regulations to apply the new inquiry process to inquiries involving old system licences. These transitional regulations are currently being drafted, and should appear in the Commonwealth Gazette a few weeks after the main body of inquiry regulations. It is expected that the new procedures will not apply to any inquiry which involves an old system licence, and has already commenced.

Leo Grey

IMPERSONATION AND WRONGFUL USE OF NAME AND LIKENESS

Media law in Australia is surprisingly lacking in substantive law on the issue of the wrongful use of a person's likeness or name for commercial gain.

There is, of course, some substantive law in relation to the protection of privacy in a non-commercial context (e.g. Argyll v Argyll [1967] Chancery CH. 302).

This article is restricted to the commercial context although, of course, many of the principles discussed would apply equally to non-commercial invasion of privacy.

Impersonation

It would seem that, so long as it is clear that an impersonation is occurring, there is no rule of law which would prevent an advertiser utilising a public figure in an impersonation occurring in an advertisement, whether authorised or not.

The usual restrictions upon any published material would apply, namely that the usage is not defamatory of the person being impersonated (or any other person or corporation) and that the material is not obscene, blasphemous, an incitement to riot and so on.

The Broadcasting Tribunal has on more than one occasion, and most recently in relation to the use of former President Richard Nixon's impersonation in commercials, intervened to prevent commercials containing impersonations to occur. However, impersonations of Humphrey Bogart, Margaret Thatcher and the Queen have all recently been utilised in commercials without apparent intervention by the Tribunal.

So far as broadcasting regulation is concerned, the following Broadcasting Standards may be relevant - paragraphs 38(a), 38(g), 38(i), 40(a) and 40(b). None of these Standards, however, are directly in point and would only circumscribe the manner in which the impersonation was performed rather than prevent the impersonation per se.

In the United States the commercial exploitation of a person's likeness has now been effectively prevented by developments in tort law. A leading case occurred in California in 1984 and involved the singer, Frank Sinatra, who objected to a lifesize photograph of himself being used

outside a southern Californian store to advertise carpets. However, this decision rested in economic tort, the argument being that on the one hand Sinatra's capacity to earn money from commercial endorsements was being eroded and, on the other hand that the public may be misled into believing that Sinatra actually endorsed these carpets.

It is submitted that a combination of tort law applicable in the Australian states and Federal trade practices law may permit the development of substantive law to prevent impersonation in commercial advertising in this country.

It is suggested that to impersonate a living person in relation to endorsing a product may well be a breach of sections of the Trade Practices Act, being s52 - misleading and deceptive conduct - and perhaps a breach of s53(d) - the prohibition upon claiming an endorsement or sponsorship which does not exist.

The Trade Practices Act arguments will have greater weight if it can be demonstrated that the commercial appears to present the impersonated "celebrity" as endorsing the product or service, the subject of the commercial.

The more interesting area, concerning which there has been no case in Australia, is whether there is an interference with contractual relationships or an inducement to breach contract by unauthorised impersonation.

The argument would be that many persons who might be described as "celebrities" - i.e. persons who are well-known for being well-known (in the definition of James Monaco) - depend in part for their living upon commercial endorsements and sponsorships. One vital aspect of these person's capacity to earn their living is that they are sparing in the products and services they endorse so as not to suffer from "overexposure" and that they are able to give "exclusivity" to a particular product or service for a particular territory. Furthermore, to protect their overall image "celebrities" very carefully select the kinds of products and services they will endorse and the circumstances in which they will endorse them.

Obviously, if they are being impersonated for the purpose of commercial gain in circumstances where they have no control of the type of product or service or the markets in which the product is being sold, the "celebrity" loses the opportunity to represent similar products and services. Further, the impersonation may be for a product competing with one which the celebrity already endorses.

Clearly if the celebrity had authorised the impersonation this may well be a breach of those existing contractual rights. Is the position any different because the impersonation is unauthorised? There is no logical reason why it should be except that, under existing law there is little that the "celebrity" can do about such unauthorised impersonation. Only a third party aggrieved by the unauthorised use could bring action. Is this a circumstance where the tort of inducement to breach contract might be extended by a Court in the appropriate circumstances to permit the "non-aggrieved" party to bring suit?

Unauthorised Use of Likeness or Name

Ironically, the substantive law would appear to be clearer in relation to the unauthorised use of a person's name, or in the jargon of the trade, "biography", than it is in relation to impersonations.

Privacy legislation in several Australian states establishes committees to overview invasions of privacy, substantially without power to penalise. However, naming in Parliament has shown itself to be a substantial deterrent in most instances.

The development of the law has been stunted by the decision of the High Court in Victoria Park Racing and Recreation Grounds Co. Limited v Taylor in 1937 (58 CLR 479) in which Latham CJ expressed the view that no general right of privacy exists. However, the case was not a privacy case as such, involving the use of viewing platforms to overview a race meeting and was really a case dealing with the right to benefit from the publicity value of a public spectacle.

More importantly, the International Covenant on Civil and Political Rights, to which Australia is a party, provides in Article 12 that "no one should be subject to arbitrary interference with his privacy, family, home or correspondence ..." and these concepts are reflected in the Bill of Rights currently being considered by the Australian Federal Parliament. Whilst the fate of this Bill remains in balance, the existence of the Covenant gives some scope for Federal Court action to an aggrieved private litigant.

In passing it should be noted that he Law Reform Commission in its Report No. 11 entitled Unfair Publication - Defamation

and Privacy made extensive recommendations in relation to the introduction of a statutory protection for privacy in the areas of health, private behaviour, home life or personal or family relationships, photographs in private places, persons in distressed, ill or injured condition and in relation to people's criminal records. The privacy provisions were, unfortunately, linked to reform of defamation law and the combined package was greeted with great hostility by established media interests, particularly in the print media area. The report has not been acted upon.

Conclusion

In relation to invasion of privacy involving the impersonation or unauthorised use of the likeness or biography of an individual in relation to commercial announcements, Part V of the Trade Practices Act would seem to offer the most fruitful source of protection. The relief could be both injunctive and by way of damages and can be swift.

Less beneficial to the private litigant because it does not give rise to damages, is pressure upon the Australian Broadcasting Tribunal in relation to broadcast commercial announcements, the Press Council and the various privacy committees in relation to the print media.

Ultimately, the most effective weapon is the advertiser's fear of interference with his expensive and carefully scheduled advertising campaign. The earlier in the process of creating the campaign that the invasion of privacy is complained of, the more likely a positive result. Once the campaign is "to air" the advertiser is more reluctant to withdraw it because of cost and scheduling factors as well as public embarrassment. At this juncture, very commonly the best result that can be obtained is to have the advertisement killed at the end of its initial schedule.

In relation to the campaign which has been completed, there may be some comfort for the aggrieved in the tort of inducing breach of contract where it can be shown that the defendant has prevented the plaintiff performing a contractual obligation owed to a third party. As previously pointed out, the problem with tis action is that the third party must bring the proceedings because it is it which has suffered the damage. It could, of course, only be used as a tactic in circumstances where a specific contractual right existed which was being infringed by the defendant's conduct.

However, this may be the only protection in instances of flippant reverse "endorsement" such as in the recent Golden Lady drinks commercial - "If you would rather spend an evening with Robert Redford than Bernard King, this is the drink for you".

Martin Cooper

CONTRIBUTORS TO THIS ISSUE

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Jane Craig, Alliance of Canadian Cinema Television and Radio Artists.

Martin Cooper, Martin Cooper and Co.

(Cont'd from p8)

Territory soon, using transmittors in Alice Springs, Katherine and Tennant Creek and that the Government would conduct a study as to whether such services should be extended to Cape York, the Kimberleys and the Pilbara.

(Cont'd from p9)

purpose of criticism and review is concerned.

The Media Release also stated the Government's intention to further consider options forhometaping (and educational use of audiovisual materials) and to examine the potential for a rental right for copyright owners of records and videos.

Catriona Hughes

NATIONAL BROADCASTING SERVICES DEVELOPMENT COUNCIL

The Government has formed the NBSDC to advise it on the ABC and SBS radio and television expansion. The establishment of the Council means the abolition of the National Broadcasting Service Planning Committee and the Special Broadcasting Service Planning Committee.

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AUSSAT

TECHNICAL DIGEST

In the context of AUSSAT and the domestic satellite and Remote Commercial Television Services (RCTS) technology is becoming important. The Bulletin will attempt to explain some of the terms used to enable readers to better understand these communications issues.

The first term is "B-MAC", the technical system to be used for the ABC's remote area service (HACBSS), and, thus, also for RCTS licensees.

It is said that the B-MAC (Multi-Plexed Analogue Component, Type B) transmission system chosen for Australia's Homestead and Community Broadcasting Satellite Service (HACBSS), has several significant advantages: high quality television reception, six digital sound channels, a data channel and more reliable reception, even under extreme climatic conditions. The system also has the capacity to keep pace with future technological developments which will improve the quality of television (e.g. extended definition television).

The system is capable of carrying stereo and mono sound broadcasts plus television with stereo sound, teletext, and a data channel which could provide emergency warnings, special educational programs and other services.

B-MAC signals transmitted via satellite at a frequency of 12 GHZ are received by a dish-shaped antenna and Outdoor Unit (ODU). The ODU converts these signals to a lower frequency for transmission through an interconnecting cable (about 30m long) to the Indoor Unit (IDU). The IDU provides a means of tuning to different satellite transponders, or channels, and with the aid of a baseband processor located within the IDU, separates the picture, sound channels, data and teletext for connection to domestic receiving units.

The television picture or pages of teletext are accessible through either a traditional television (PAL) receiver or RGB (Red/Green/Blue) video monitor. Radio programs or sound to match the television picture are accessible through a stereo amplifier. A traditional radio receiver is not required.

COMMUNICATIONS LAW BULLETIN

SEE ARTICLE INSIDE
"International Film Co-productions"

AUSTRALIAN FILM COMMISSION
INTERNATIONAL CO-PRODUCTIONS
EXPLANATORY NOTES

Film is an international medium which lends itself to international co-production arrangements. A number of countries, among them Canada, France, the United Kingdom and the Federal Republic of Germany have entered into co-production treaties with other countries, in recognition of the creative and commercial advantages which may be derived from co-production arrangements.

Summary of the Proposal

Provision exists for international co-productions in both the Australian Film Commission Act and Division 10BA of the Income Tax Assessment Act. Both Acts include in the definition of Australian film a film made pursuant to a co-production agreement or arrangement between appropriate authorities.

The AFC has established a limited ...tions program, to operate on a trial basis for a period of two years. A maximum of seven projects will b...

Each project will be made pursu...oduction arrangement between the AFC and a counterpart authority in the c...is arrangement or *memorandum of understanding* will be the "uml...he Australian and overseas co-producers.

Co-production proposals sul...istry professionals. The panel will...

The key criteria in assessing...

participation, the backgrou...

for international distributi...

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that there be a balance...

program.

The program will be r...

period.

Objectives of the Pro...

The aims of the co-r...

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overseas film...

(ii) to establish...

iii) to gain acc...

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AUSTRALIAN FILM COMMISSION

APPLICATION FOR SPONSORSHIP OF A CO-PRODUCT...

THIS IS NOT AN APPLICATION FOR CERTIFICATION. For information on certification for co-... the AFC Co-production Guidelines.

If there is insufficient space to provide full details, please attach relevant information to the appli...

Please read the Co-Production Explanatory Notes before completing this form.

I. PROJECT

1. Film Working Title .....

2. Type of Film (one only)

☐ Feature ☐ Film of a like nature (to a feature film) produced for exhibition by way of television ☐ Documentary ☐ Mini-Series or television drama

3. Estimated Budget:

(i) Total Budget: $A .....

(ii) Amount to be financed from Australian sources: $A .....

(iii) Amount to be financed from overseas sources: $A .....

(iv) Is any of the total budget to be raised in a currency other than $A?

☐ No ☐ Yes

What is the currency and th...

II APPLICANT

4. Full Name .....