

is, it cannot be said they were actually trying to 'solve' the murder! The most damaging evidence against McDermott would appear to be eye-witness testimony placing him near the scene in a particular car. As it turns out, the car associated with McDermott was not at the scene but the evidence presented by the police suggested otherwise. With regard to the identification of the accused, the husband of the witness much later commented that to get the evidence they wanted the police 'wouldn't let up on her until she picked him' (349).

As a result of his own persistence and the assistance of a number of supporters, and in particular a tenacious Public Solicitor, Ray Hawkins, several other lawyers — Chester Porter and Jack Shand — were consulted. The latter, one of the leading criminal barristers at the time, was keen to take the case to a Royal Commission. Hawkins, the Public Solicitor on the case, did an incredibly impressive job of finding new evidence which supported McDermott's case and which largely destroyed the case fabricated by the police. Shand, with Porter, appeared for McDermott at the Royal Commission which was convened on 10 September 1951. In 120 pages Molomby outlines the way in which the Commission learned that McDermott was railroad.

The evidence of a miscarriage was all too clear. Justice Kinsella reported: 'In the present case an important part of the evidence tendered and relied on as proof of guilt has been shown by fresh evidence to have been completely mistaken. The result is that the trial miscarried' (316). Note the language — it is as if the whole thing happened 'of itself'. No police skulduggery here, mate! And more, 'the additional evidence establishes a strong probability that the jury was misled by erroneous evidence upon a matter of importance in the trial, and that this evidence contributed to their conclusion of the prisoner's guilt' (316). Well! If only the evidence would stop mis-leading people! And just to make sure the whole thing could be seen in the proper light, that is, the honest and efficient 'thin blue line' is still out there to protect us all: 'In my opinion there is no foundation for any imputation of misconduct or breach of

his obligations against Inspector Calman [re 'collusion with witnesses...and gross carelessness in the collection and presentation of evidence' — such was the summary of allegations presented to Kinsella] by Shand] or any of the other officers connected with this case' (317).

Justice Kinsella recommended that McDermott be released and so he was. He sought compensation. The request was sent to Kinsella J by the government. The miserly amount of 500 pounds was recommended (and given) but not because of a miscarriage, rather to help an-ex prisoner get established. For the judge remarked, 'McDermott has not satisfied me of any injustice' (321). In his last chapter, 'Bad luck or Bad Law?' Molomby puts together a thorough critique of the Commissioner's stingy reports.

The Tale is a sad one, not least for the details of McDermott's decline and death after release. But more generally, it is a brilliant analysis and warning to lawyers, and especially perhaps students, and others, that you really cannot simply trust the police, and prosecution, to follow the formal rules of justice and fairness or concepts of morality in these serious cases. For all sorts of reasons! Molomby comments in an understated tone: 'The role of the police in McDermott's case is highly questionable. The conclusion is inevitable that they set out to find evidence that would implicate McDermott, rejecting details that did not support the case they were constructing, and not bothering to make enquiries which might have supported McDermott's story' (335). Is it ever thus? It would seem so.

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## PROMISES TO KEEP

### Technology, Law and the Future of Entertainment

William W. Fisher III; Stanford University Press, 2004; 340 pp; \$29.95 hardcover.

Napster and KaZaA have become household names not so much because of their widespread use, but due to the litigation launched by the recording companies in a number of jurisdictions. Certainly such distribution methods pose a serious risk to the entertainment industry as it is presently structured. *Promises to Keep* asks whether the response thus far, including such litigation, is really in the best interests of consumers, artists or society in general.

Copyright is in effect a state-enforced monopoly granted to creators as a way of remunerating them. The copyright of one's creations has for decades worked to ensure that musicians, and record companies, are compensated for their endeavours. New technologies, particularly the Internet, threaten the current business model for the entertainment industry. *Promises to Keep* provides an accessible overview of the continuing conflict surrounding music and film distribution over the Internet.

Three significant technological developments: digital recording and storage systems, compression/decompression systems and the Internet have opened up new ways of making, keeping, sharing and enjoying audio and video recordings. If these new developments were fully exploited a number of social and economic benefits would follow, benefiting both artists and consumers. The cost savings of fully implementing such technologies would allow consumers to obtain a greater volume of entertainment for less, while artists would be getting paid more. While being cost effective, new systems for the delivery of entertainment would also be more convenient and precise. The nature of such systems would mean that more artists would be able to reach a global audience and consequently the public would have access to a much broader body of entertainment resources to experience.

While emerging technologies create many new opportunities they inevitably pose new challenges. Fisher points to three serious dangers posed by these technological developments:

- the systems by which artists and intermediaries have traditionally made money from recordings can be bypassed
- artists' 'moral rights' are threatened
- the cultural icons in reference to which we partially identify ourselves may potentially be destabilised.

*Promises to Keep* outlines the choices society can make about the consumption of digital entertainment. Fisher puts forward the view that new technologies can offer more efficient ways of distributing and supporting the creative industries. He carefully and comprehensively maps an array of choices society can make in its response to emerging technologies, laying out three possible scenarios for reconciliation of the opportunities of digital technologies with the implications for copyright protection.

Fisher first sets out an environment where copyrights are treated as property rights. Under this system, which has been advocated by the record companies and movie studios, the right to control the use of a song or a film deserves the same protection as the right to control the

use of a piece of land. The result is that copyright protection is strict and anti-copying systems are embedded in software and hardware. Fisher warns of the dangers in such a path arguing that it will stifle innovation and limit the development of enhanced delivery and access models for entertainment.

Fisher then suggests the scenario of the entertainment industry being set up as a regulated utility. Under this model the government would take a much more interventionist role, regulating the distribution of entertainment in a similar way to water, electricity or telecommunications. Fisher views such a development as potentially beneficial but not ideal.

Fisher's hope is that legal systems and business models can be restructured to capitalise on the opportunities offered by the new technological developments whilst minimising the potential dangers. In the third scenario Fisher proposes an alternative compensation system which would comprehensively change our interaction with, and acquisition of, entertainment. Fisher's proposal for an alternative compensation system is perhaps the most controversial aspect of the book.

Fisher's proposal would supplant the present copyright system as a way of

compensating artists whose work is distributed online. Under the system a government agency would track how many times a specific recording is downloaded and then compensate the copyright owner in proportion to the number of downloads. The funds required for such a compensatory system would be raised by some sort of tax, possibly on the devices and services that consumers use to access digital entertainment. Fisher believes that such a tax would be about five or six US dollars a month. Not bad for unlimited access to music and movies. The chapter relating to the proposed alternative compensation system goes into quite intricate detail and is available online at <[www.tfisher.org/PTK.htm](http://www.tfisher.org/PTK.htm)>.

Rather than exploiting new technologies that could benefit creators and consumers, the response by the entertainment industry and governments has been the adaptation of pre-existing, and arguably outdated, legal rules to new technologies and the institution of litigation to defend existing business models. It is this response of the entertainment industry that has necessitated Fisher's provocative and timely book which is certain to stimulate, and colour the direction of, debates on copyright and entertainment law.

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## *'Cops and Consultation' continued from page 115*

of them. This, in turn, will strengthen the community who will be aware that their active input has improved their local community. It will also ensure that the police are accountable to the local community. It is important too that meetings and PACT memberships are advertised so that members of the public are aware they can take part in meetings if they wish to. However, it appears that this style of governance is out of favour.<sup>26</sup>

It is essential that the police make sound judgments and use discretion properly when exercising their powers. It is equally important that they provide appropriate local policing initiatives and policies. In order to do this they must consult and discuss issues with their local communities. Failure to effectively divide representative control of meetings and the setting of agendas, failure to incorporate diversified community participation and not promoting PACTs

and its aims and objectives within the community means that the New South Wales police will continue to alienate communities from local policing.

Attempts to introduce community initiatives that are not implemented effectively waste time, money and resources. Further, they are an insult to the community who have no actual influence in PACT meetings or in setting agendas. Paying lip service to this task is futile in any attempt to involve communities in local policing. If the New South Wales police do not wish to give the community influence in local policing it must say so. It must not, however, hide behind the facade of PACTs.

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26. The dropping of the word 'service' from the NSW Police name is further evidence of the organisation's lack of commitment to community policy strategies associated with calling it a service.