also to be treated as 'communications' and hived off into the marine band. This was to be an interim solution until FM subcarrier services were introduced, which were very suitable for services which were not 'real broadcasting'.

These specialised radio services are one illustration of how smudgy the distinction has become between what is broadcasting and what is communication - and it has not all happened just now, or the year-before-last. Yet we had and have just two kinds of Act of Parliament, one explicitly for broadcasting and the other explicitly for everything else - 'communications'. The Department of Communications has been wrestling for some 18 months with the definitional problems posed by the ACS - those which are carried piggy-back by another service, such as subcarriers on an FM radio service or ancillary channels on a satellite television service. The Minister has announced that all these ancillary services are to be dealt with under one or other of these Acts. Yet only a week ago a discussion involving the Department and all sectors of the broadcasting industry showed just how far away we still are from ways to license and regulate these ACS services with which everyone will be happy.

And now we are to have the early arrival of superstations, in the club-and-pub circuit. It has been ruled by the legal pundits that they will not be 'broadcasting'. Therefore, under the simple conceptual frameworks we still cling to, they will be 'communications'. They must be we have not up to now conceded that there can be anything else.

The broadcasting industry, especially its commercial sectors, are outraged that the supply of just the kind of material they provide themselves is to be free of all regulation, when for decades they have had government agencies obliging them to meet standards on things like Australian content, use of the services of Australians, the foreign content of advertisements, how much advertising you can carry in an hour and so on, and also on supposedly moral matters like obscenity and blasphemy. Can this new activity really be treated quite differently from broadcasting, when it is carrying the same kinds of program with the same basic kind of technology, to a great many people, if not the whole population?

I am not arguing there has to be regulation, but only that a case has been put for it. I am looking at the problem of how we are to regulate if we decide in favour of it. Functionally as well as legally, these are not 'broadcasting' services. They are more like subscription services where the material is received not free-from-air, but as a result of a contract for it. Consequently, content regulation which purports to protect the listener from outrage will (in my view) constantly create virtually insoluble problems of definition.

Michael Law

The previous 4 papers were all presented at ACLA's Seminar, "New Video Entertainment Services - Out of the Sky ... and into the Pubs and Clubs", held on 13 August 1986. Papers were also presented by Michael Owen, Lyall McCase and John Hodgman. It is hoped to publish these in the next issue of the Communications Law Bulletin.

ACLA SEMINAR ON VAEIS
NEW VIDEO ENTERTAINMENT SERVICES

The advent of the new via satellite "closed circuit" television services complements the "coming of age" that Australia achieved with it's ownership of it's own satellite.

The fact that such services are vital to the economic viability of AUSSAT seems to have been overlooked in some early bureaucratic considerations.

These services, represent Australia's first departure from the norm of public broadcasting and it's licensed system of control.

These services will not be operated under the Broadcast and Television Act, which will prevent the issues we are opposed to in public licensing being applied. We define our "anti" issue as:-

1. Protection of the vested interests with the underlying realism that a licence granting can and has been a favoured act on numerous occasions.

2. Protection of economic viability to ensure that consumers are never deprived, because of financial failure, of a service that they have been receiving.
   This is a total fallacy. The fact that there has never been a financial

financial failure in the Australian broadcast industry is not a tribute to licensing. (The only public broadcast licence that has ever been threatened with withdrawal because of financial failure was sold earlier this year for $7 million. Obviously a commercial operator believes it to be commercially viable.)

We are in favour of regulation. This is the only purpose, in our opinion, for which any form of licensing should exist and we maintain this can be effected to the total satisfaction of all interests by the "up link' licensing provisions under the R&T Act.

Free Market Forces

What the legislators have created in providing for "point to point multi-point" distribution under the AUSSAT legislation is the emergence of ourselves, Bond, Holmes a Court and no doubt many more who will be creating and offering programme services.

The commercial winners, in terms of the number of outlets required to operate a profitable venture, will be solely dependent upon the market acceptance of the "product" or programming offered by each operator.

It will be proved that without the alleged protection against loss of services in the event of financial default that whilst there could be future reductions in the number of services on offer, there will be no financial failures under the free market force operation.

The key element for all the new operators will be the number of outlets supplied with a signal. As has been proved in the U.S.A. experience an operator may be incurring substantial trading losses but the number of his subscribers creates considerable asset value. Should any of the operators establish that, say 1,500 outlets are their break even point, with everyone operating on what is basically a fixed cost basis it will mean that every outlet over 1,500 becomes 100% profit. As such, an operator that has achieved, say 1,000 outlets can make a very substantial purchase offer to another operator who has 1,000 outlets.

In short, there is no doubt that the "free market forces" will bring about future rationalisation.

Would anti-monopoly laws in Australia be sufficient to ensure that one takeover merchant could not control the entire market? If they don't they should, and the only other limiting factor then becomes AUSSAT transponder capacity.

It has been suggested that rationalisation could create a reduction in usage of AUSSAT. It may well do but we would be prepared to bet that other new services will be lining up to absorb any available capacity.

Is there an unused or financially failing communications satellite anywhere in the world today? We doubt that there is, or ever will be, in any society that does not seek to restrict commercial availability.

John Hodgman

Mr Hodgman had the comments set out below on some of the other speakers at the seminar:

LIZ FELL - Her criticism of the MDS licence issue to the Real Estate group is argued on the basis that those people are using the facility as a delivery system, in down time, at a dramatic cost and efficiency benefit.

MICHAEL CROSBY - Whilst we are opposed to the imposition of restrictions that essentially enable a performer without talent to earn income simply because they have decided to offer services to people who do not want to buy those services, we do feel that the alleged annual $72 million expended by licensed clubs on "live" entertainment should not be replaced by overseas entertainment telecasts.

SPORTSPLAY - believes and would support up to 70% "local content" requirements as a condition of "up link" licensing but under no circumstances would we provide any local content if it was only to absorb a second rate performance.

We argue that if we are providing any service that involves, say, 98 Australian jobs and 2 overseas performers who collectively are earning as much as the 98, that is a commercial decision, not a content decision.

THE AUSTRALIAN BROADCASTING TRIBUNAL - We were most disturbed at the stated Tribunal position of having "no opinion".

In 1982 we, with many others, expended millions of dollars submitting "pay" television concepts to the Tribunal's hearings which resulted in recommendations

to the then Government that "pay" television be introduced.

Now we hear they have "no opinion" other than to join in the description of our services as "pay" television which from their previous findings could be interpreted as support.

GENERAL - Perhaps our position in the entertainment industry should be as electronic remote delivered cinemas who, instead of having a roll of film delivered by a truck, are receiving it as a transmitted signal which would seem perfectly logical in the satellite age.

Whatever, we are providing entertainment to which the method of delivering the "product" should be totally immaterial.

Club "live" act patrons do not care if Liberace takes a cab or a helicopter to his performing venues. How he gets there is irrelevant.

Finally, we support the view that tobacco company advertising should not be allowed and we promote the view that it is services, like ours, that will provide the replacement revenue to Australian sport if tobacco company sponsorship is to be banned.

SPORTSPLAY, alone, have already contracted to expend in excess of $1 million a year (which is totally new revenue) and we estimate that collectively Australian sport could be receiving up to $10 million a year, within 2 years of service commencement.

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Word Processing
Gary Ross of Legal Word Whiz

Printing
Allens Pty. Ltd.

Communications Law Bulletin
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ACLA SEMINAR ON VAEIS
COPYRIGHT LICENSING OF VAEIS

Whilst video and audio entertainment and information services are "radiocommunications" under the present demarcation between the Broadcasting Act and Radiocommunications Act, they are, or shortly will be affirmed as, "broadcasts" for the purposes of the Copyright Act. In addition, such broadcasts will give rise to other copyright uses of the material transmitted, in particular, by public performance.

The Copyright Amendment Bill 1986, passed but proclaimed only in respect of its piracy amendments, provided a new definition of "broadcast", with the apparent intention of including point to multipoint transmissions but excluding point to point transmissions. The new definition in section 10 was to have read:

> "broadcast" means broadcast, other than from point to point by wireless telegraphy."

A new subsection 10(1A) was to have stated:

> "a broadcast shall be taken to be from point to point if it is intended by the broadcaster to be received only by particular equipment at a particular location."

The Explanatory Memorandum had this to say:

> "Amendments to broadcasting legislation, and the introduction of broadcasting via AUSSAT, have highlighted possible uncertainty as to the meaning of the current definition, which provides that "broadcast" means "broadcast by wireless telegraphy". It is proposed to make clear that only transmissions intended to be received by the public (whether the "general" public, within the meaning of the Broadcasting Act 1942, or part of the public) are covered, and not those intended for a particular recipient ("point to point" transmissions) such as, typically, microwave communications."

This explanation offers some assistance in indicating the purpose and intend-