discussion topic, I would like to raise one other recommendation: the one regarding the introduction of a 'trustee' system of major share transactions similar to that in use in the United States.

The current inquiry by the ABT into the Bond Corporation presents a scenario which, in my view, makes introduction of the 'trustee' system imperative.

Should the ABT find that Alan Bond is not a fit and proper person to hold a licence, it has two choices: either to require Alan Bond to be removed from a position of influence on the Board of the Bond Corporation; or to order divestiture by the Bond Corporation of the Nine Network. In either instance, a period of grace would almost certainly be provided to allow this to be done. Leaving Alan Bond in a position of influence over the company holding the licence during this period of grace, this would clearly be a ludicrous situation.

If the ABT had the power to require the transfer of shares to a trust arrangement this situation could be avoided.

Our first report we believe, provides the framework to allow the ABT to deal with its existing responsibilities in a more effective and efficient way. It provides the ABT with more options to deal with issues but also ensures that individuals are provided with the necessary protective mechanisms in the event of excessive ABT decisions as they arise.

The next report, will I hope address the issue of tying all of the new technologies under the same umbrella of the ABT and provide the necessary protective mechanism if required to ensure that existing program quality or choice is not effected by new concepts such as PAY TV if and when they are introduced. Just as importantly we would hope that whatever new options are introduced, it is done in a way which ensures a further diversity of ownership and a continued separation of ownership between the arms of the media.

This will we hope ensure that we not only have a top quality broadcasting industry in Australia but one which provides a wide range of diverse views and options.

Note: The Chairman of the Australian Broadcasting Tribunal, Deidre O'Connor was also a guest speaker at the CAMLA lunch. She acknowledged the recommendations of the Saunderson Committee report and expressed appreciation for the positive way it highlighted the ABT's limited powers and inadequate resources for regulating the broadcasting industry.

The ACLA/MLA merger completed

The President's address to the annual general meeting

We have not provided much information during the year about how our association was functioning, or where our plans had reached. That is because most of the year was consumed in strenuous but successful, efforts to build up the organisation. Throughout the year, the merger of the Media Law Association and Australian Communications Law Association has been executory and inchoate. Our animation has been slightly suspended. A report on progress would have said that great things would be happening at the time known in the US computer industry as 'real soon now'.

Happily, the Annual General Meeting marked the end of the 'real soon now' stage. It is time to tell of the work which went into building the new framework of the association.

The history of the decisions to merge the MLA and ACLA is well known. At the AGM, both former organisations disappeared into the Communications and Media Law Association, the renamed company limited by guarantee which was formerly the corporate base of the MLA. It was a considerable achievement to bring the results of the negotiations of 1987 and earlier, in which our two vice-presidents Alec Shand and Stephen Menzies represented the two sides, to fruition. Hugh Keller kindly prepared the final documentation to bring the changes into effect.

Some of the greatest challenges in the last year went beyond the legal framework to the human framework of understanding, contact, enthusiasm and cooperation. This was not like the merger of the two businesses with offices, staff and resources. It was the merger of two non-profit organisations both depending largely on voluntary work. By unfortunate coincidence, both organisations had run out of part-time administrative support just around the time the merger started to happen. The Australian Chamber Orchestra had the good fortune to hire Roz Gonczi who had provided outstanding administrative support to ACLA. The MLA was in a similar condition.

Vital continuity

Some vital continuity was provided by our treasurer Des Foster, who maintained the financial life of our organisation whilst it was on the operating table undergoing merger surgery. There were a lot of demands on his time and complications, including different membership fees and payment dates for the two previous associations, different banks, accounts and authorities, different membership records, and varying cost structures and circulations of the Communications Law Bulletin.

Into the administrative void stepped Cleo Sabadine, a person of great experience in communications who had recently retired from running the secretariat of the Broadcasting Tribunal. From a standing start, and working from home without basic office resources, Cleo built up what is now a very reliable administrative base for the Association. Members should be aware that a lot of the work she does for us is voluntary.

The last character in this dramatis personae of people who created order from chaos is the honorary secretary, Victoria Rubensohn. Victoria has brought a superhuman level of energy and inspiration to every activity and function of the Association: and she has done this despite the travels and travails of her demanding job.

Looking at the association as a whole, nobody could have anticipated the number or the height of the administrative hurdles we had to jump. On the other hand, the main problems which people did foresee before the merger did not happen. Perhaps the lesson is that a foreseen problem is unlikely to cause trouble: and vice versa. Some had doubted whether the two existing committees of ACLA and MLA would work happily together. In reality, there was no issue on which people split along ACLA/MLA lines, formally or informally. There was unbounded goodwill, no faction, and no unbalance of one side or the other. It was a single, harmonious committee from day one.

Making way for new blood

Another legitimate fear was that the transitional arrangement under the merger documents, whereby large existing committees combined into one would produce unweildy meetings. In fact, we sometimes had the opposite problem of barely a quorum present. Because we were two merged existing

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ABT had conceded there were doubts, turned the case [before the ABT] in its favour."

The IFM proceedings raised the issue as to the function of the Federal Court in proceedings for judicial review of decisions such as licence grant decisions made by the ABT. Counsel for IFM submitted that the ABT took into account irrelevant matters, namely incorrect findings of fact and failed to take into account relevant matters, namely the correct facts.

Davies J. agreed that the ABT had made some errors of fact and that "its decision was to that extent made on wrong facts and to that extent was unfair to IFM." The ABT reached wrong conclusions as to debt to equity ratio and the use made by the ABT of IFM's proposals concerning overdraft and leasing facilities. His Honour stated that these were unsatisfactory aspects of a finding by the ABT that GVB's estimates of revenue were preferable to those of IFM. The ABT's statement that IFM's revenue projections were at the top of the range "was not a fair description of them", the ABT did not explain why a lowering of proposed advertising rates would have a serious effect on its revenue projections and the ABT did not give adequate support for certain of its findings as to the consequence of advertising rate attrition.

Davies J. found that the ABT had made some findings of fact that, in his view, were wrong on the material before the ABT and to that extent took into account facts that were wrong and failed to take into account facts that ought to have been found on the material before the ABT. That, however, was held not to be sufficient to found a conclusion that irrelevant considerations were taken into account or that relevant considerations were ignored. His Honour said:

"It is necessary to find that the errors were of such a nature that no reasonable decision-maker could have made them or that there was no evidence before the ABT to justify the findings or that the findings were in some like vein an improper exercise of the decision-making power."

In conclusion Davies J. stated:

"On the whole, I find myself in the same position as was Pincus J. in Western Television Limited v. Australian Broadcasting Tribunal, cited above, where His Honour at p.429 expressed the view that a finding was not 'in the least convincing' and the 'I do not think any court would have made a finding adverse to the applicant on the basis of such tenuous material as is mentioned in the report' but that the Tribunal's finding nevertheless did not involve an error of one of the varieties mentioned in s.5 of the Adjr Act in the end it amounts to a judgment as to whether the approach taken by the ABT with respect to the several matters I have discussed in these reasons was an approach that no reasonable decision-maker would have taken."

The decision in Independent F.M. Radio Pty Limited v. Australian Broadcasting Tribunal and Anor gives little comfort to unsuccessful applicants aggrieved by ABT decisions to grant new licences. The legislature has not thought it appropriate to confer on such persons a right to apply to the Administrative Appeals Tribunal for review. Should such a right of appeal arise under s.119A of the Broadcasting Act the Administrative Appeals Tribunal would be constituted by a presidential member alone.

Paul Marx
Boyd House & Partners
24 April, 1989

ACLA/MLA merger

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committees rather than a freshly-elected new one, we missed the opportunity to take in some new blood. I frankly encouraged existing committee members who would not be able to make an active contribution during the coming year to make way for new blood. For that purpose, a number of distinguished committee members who had served well in the past resigned or did not stand for re-election this time around. Thanks to them all. The vacancies allowed us to get our vast committee membership down to 30 members, including the vital infusion of new members from diverse backgrounds.

Our events and publications require less explanation, because they have been visible to all. A number of promised events did not get off the ground due to lack of volunteers, but all those which were held were well attended and successful. There were luncheons addressed by Henry Geller, the US communications lawyer and John Dowd, Attorney-General of NSW who spoke about defamation. There was also the evening OTC/IIC/CAMLA function addressed by Veronica Ahearn, a US telecommunications lawyer, and Peter Leonard of Sly & Weigall. The dinner following the AGM addressed by Gleeson CJ was a resounding success.

Communications Law Bulletin

The most manifest advance in 1988 was the upgrade of the Communications Law Bulletin. The current very successful approach was reached through effort, planning and experiment. Many were involved, but particular tribute must be paid to Michael Berry, the editor. Despite his commitments as a TV producer, Michael has done an outstanding job. Most of his work, like Cleo's, is unpaid. The Bulletin is dependent on the submission of articles by members and others. Don't be shy. Send your articles to the editor, or phone him to ask if he would be interested. There is always a shortage of articles about defamation, contempt and other basic areas of law relating to the content of communications. If you are working in that area, you should consider sharing your ideas through the Bulletin.

I have mentioned only a few names among the many committee members and others who built up the organisation in the last year. The expression *unius principle* does not apply to the many others not mentioned. Suffice it to say that the combined effort of all has produced a well-organised, united association with the promise of more activities in the coming year. Members based in Melbourne have expressed enthusiasm for holding some functions there, which is likely to happen. It is likely that Melbourne will be a centre of the new telecommunications law, in addition to traditional areas, as the Government has announced that Austel will be located there.

In conclusion, I would like to emphasise that ours is an independent and voluntary association. We do not provide the smooth, professional level of service which you would find in an industry association with a paid staff and an office. This fact is at its most obvious in the organisation of functions, when some people deal with Cleo Sabadine and other helpers as if they were the reservations staff at the Waldorf Astoria. What we do provide is something unique, inimitable, and priceless: an independent forum, in print and at functions, where people can come together from all the diverse avenues of communications law to share ideas and enjoy themselves. We will provide more of it in 1989.

This is the written version of Mark Armstrong's shorter oral address given at the meeting. Mark Armstrong is the Law Foundation Visiting Professor of Communications Law and Chairman of the Broadcasting Council.

Contributions
from members in the form of letters, feature articles, extracts, case notes etc. are appreciated.

Editorial submissions
should
be posted to:

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