

people in Perth were broadcasting on the ABC. In 1987 and 1988 Aboriginal access extended to the Kimberley region where groups could broadcast within their own regions and in their own languages. This arrangement was not met very favourably by some bureaucrats. There are now 3 radio stations in the Kimberley producing and presenting about 35 hours of Aboriginal programs to the region via the ABC.

Perspective

Australians were experimenting with radio as far back as 1905 and the first station 2SB in Sydney began broadcasting in November 1923. But it wasn't until June 1976 when Melbourne's station 3CR broadcast the country's first Aboriginal radio program. One month later 2XX in Canberra transmitted Australia's second Aboriginal radio show. So it took 53 years for our voice to be heard in our own programs, and this came about initially through the Public and community radio stations which only started operating in the mid seventies.

There are now over 100 licenced community radio stations and about 30 of them have some Aboriginal and Torres Strait Islander programs. These include 6 stations owned and operated by Aboriginal and Torres Strait Islander media organisations in Alice Springs, Brisbane, Townsville, Port Augusta, Perth and Kununurra.

We now have over 500 hours a week of Indigenous radio being produced by Indigenous people. Unfortunately, TV presents a different story. Less than 1% of Australia's television programs are produced by Indigenous people.

Policy and Training

We have been able to apply our talents to the media industry like a duck takes to water. Many Indigenous media workers have developed great broadcasting and production skills. There has been a lack of clear policy and direction from government. There has been very little or no formal training at all. But the Indigenous media industry feels it's essential to provide training opportunities for our people in this field of work. Not only tertiary education but also practical training in all areas of the industry from management and journalism to technical skills. There still needs to be a more concentrated effort made to increase the numbers and ensure that all positions within our own organisations are occupied by Indigenous people.

It is estimated that over 200 Aboriginal and Torres Strait Islander people are involved in community media either as employed staff or volunteers. The ABC currently employ 73 and SBS 16 Indigenous Australians in various fields of their operations. But you can count on one hand the number of Aboriginal or Torres Strait Islanders employed in the commercial electronic media, and the numbers for the print media are even lower.

The government's response to some of the recommendations from the Royal Commission into Black Deaths in Custody is a prime example of how low on the priority list Indigenous Media is. Recommendation 205 was split into two parts, the first part emphasising the importance of Indigenous Media and recommending further funding where necessary. The second part stressed the need for Aboriginal and Torres Strait Islander people to be employed in mainstream media and this media to set up codes of practice for use when reporting about Indigenous Australians. The Federal Government has provided funds to

mainstream media to train Indigenous people and has also funded a National meeting to address the codes of practice issue. But on the other hand the Indigenous media industry is still struggling for adequate funding, and some organisations have been operating on the smell of an oily rag. To this date no money has been provided to Indigenous Media from the Deaths in Custody funding. It appears that white industry once again has claimed black dollars.

We've had to convince our own people and the major funding bodies that Indigenous media is a priority, and not just a luxury. We've had to compete for limited funds while issues like health and education are clearly important priorities. *The second half of this article, which outlines the mechanisms for establishing a national Indigenous media service, will be published in the next edition.*

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The formidable process of reform

Duncan Kerr outlines the Federal Government's proposed reforms to the Copyright Act.

I am acutely aware that the protection of intellectual property under the Copyright Act and through International Conventions is critical for the maintenance and development of Australia as a significant force in our region and throughout the world. We are at the edge of a technological revolution which will change the fundamental nature of copyright. To quote one lawyer who remains anonymous, "copyright must be the tollgate to the new information super highways".

The Government's intentions have been signalled: to review rental of sound recordings in the light of technological change; enact a workable moral rights scheme for creators; review the impact of the growing number of copyright royalty collecting societies; and implement parallel importation of sound recordings.

Within the next few weeks, Bob McMullan (responsible for copyright policy regarding the arts) and I will release a paper on new moral rights legislation. By that time we will have taken to cabinet proposals for a new tax-based scheme for a

levy on blank audio recording media. Cabinet will have before it my proposed amendments to the Act to streamline the procedure for payment by Governments for use of private copyright material, particularly photocopying. A little further down the track, the Government will address Copyright Law Review Committee Reports on protection of computer software and databases and the report on employed journalist's copyright. Other areas of Copyright Law under review include Performer's Rights and Government Copyright in Legislation.

The Copyright Convergence Group

In order to deal with the consequences of the convergence of the telecommunications, broadcasting, computing, entertainment and information industries, we need to understand the technological environment. To this end, the Transport and Communications portfolio has recently initiated a communications future project, as announced by David Beddall, which is

being conducted by the Bureau of Transport and Communications Economics.

The CAMLA workshop on Copyright and New Communications Technology demonstrated that the Copyright Act needs urgent but considered amendment. This would mesh it with the Government's Broadcasting Services Act. This is why I am establishing the Copyright Convergence Group - a broadly based committee to deal with these matters. The Attorney General's Department and the Department of Transport and Communications is to liaise with the Centre for Telecommunications Law and Policy on this project.

The Group will convene a major seminar early in 1994 to consider proposals for amending the Copyright Act to cater for technological change. Invitations will be extended to representatives of all relevant copyright owner and user interest groups to attend the seminar or make submissions. The ultimate aim is a system which gives a fair allocation of copyrights and access in respect of transmissions over the air - be they broadcasts or narrowcasts and covering satellite, microwave - and cable transmissions.

At the international level, some amendments will be required if the Uruguay round of GATT negotiations is concluded. More extensive changes may be needed if the protocol to the Berne Convention, and the new instrument for the protection of performers and record producers and broadcasters, currently under discussion, are concluded.

A simplified Act

Another strong desire of mine is that these far reaching changes find their home in a simple and understandable Copyright Act. I will be referring to the Copyright Law Review Committee an examination of options to simplify the Act both in its form and substance.

In simplifying the Copyright Act, there is a responsibility to examine the central platform of the Act. This will mean close scrutiny of what has been called "broadly based rights". I have a certain attraction to an Act which reflects broad rights including communication and distribution rights. I believe the pigeon holing of rights in the Act has exacerbated difficulties the Act experienced as technology overtook it.

From time to time there are calls for a fundamentally different approach to the prescription of copyrights. As I understand these calls, they are advocating

the substitution of more general, technology neutral rights for the existing elaborate regime. Such rights would readily attach to any new technology that came into use for the creation or enjoyment of copyright materials. One likely outcome of this approach may be that more would be left to judicial determination. In turn, one beneficial outcome might be that less defined rights would encourage users and owners to deal with each other outside the courts. The voluntary licensing could end the uncertainty of generally worded exceptions to exclusive rights. However, that scenario would, in turn, require the development of effective machinery by copyright owners to provide complete licence cover. This would be important to substantial users with the need for licences at very short notice - particularly broadcasters.

On the international scene, provided that Australia complies with the minimum requirements of Berne, there is nothing to stop us from providing more extensive rights. This is, of course, subject to the policy issue of having to extend those benefits to other Berne member nations. We should remember that we can be courageous in reviewing our Copyright Act - we are not beholden to the squabbles in international circles.

The issue of a distribution right, which is currently being considered for possible inclusion in both the Berne protocol and the new instrument on record producers and performers is a little more problematical. Submissions by WIPO to the committees on these instruments suggests a broad distribution right, qualified by exhaustion by first sale - with certain qualifications in the case of rental and, possibly, lending. At first instance, this seems a much more complex approach than separate, affirmative publication and rental rights. However, I do not express a concluded view to that effect.

In the new instrument on record producers and performers, a right of communication to the public has been suggested for sound recordings and performers. This would encompass both broadcasting and cable distribution. In discussions delegations have expressed concerns about merging the rights of broadcasting and other communication to the public.

Appointments to CLRC

The third major initiative is reforming the process of appointments to the Copyright Law Review Committee.

The committee has an enviable record of achievements in the 10 years of its existence. While the committee's output is clearly impressive - particularly for a part-time body, the real measure of the committee's performance is the general acceptance of its recommendations. Again, it has an enviable record. Its major recommendations for action - in the reports on performers' protection and importation - have in the main been agreed to or enacted. The exception is moral rights. The Government has now made a commitment to legislate, while the committee recommended no action, admittedly by a slim majority.

The Government is taking steps to ensure that membership of the committee is more representative of the copyright community and Australian society. In future all appointments to the committee will be advertised ensuring the broadest possible field of interested people are considered. It is important that the community has confidence in the selection process and perceives it as being more fair, equitable and open. We will maintain a rolling list of those who have expressed an interest. To that end, the Department will be writing to relevant groups to explain our new policy. In certain circumstances, I will also be contacting qualified people who have not expressed an interest, where in my view the list does not contain the necessary expertise.

The challenges facing those of us responsible for copyright law review and reform are formidable. But the record of work up to now undertaken not only by the Government but also by very conscientious private sector representatives - serving on the CLRC and in other forums - has shown a readiness to meet those challenges.

This is an edited version of an address to the 6th Copyright Law and Practice Symposium, on 28 October 1993, by The Honourable Duncan Kerr, MP, Minister for Justice.