

# The Collection of Copyright Royalties

Charles Alexander and Murray Deakin report on the most recent round in the battle over journalists' copyright

**T**he ability of Copyright Agency Limited ("CAL") to license use of news material, its collection and distribution procedures and its market representations are to be examined in proceedings in the Federal Court. Recently, a number of major newspapers and magazine publishers including News Limited, John Fairfax, David Syme & Co. and ACP commenced proceedings against CAL in an action which raises serious issues about CAL in its role as a copyright collection agency.

## Administration of licensing scheme

**T**he Copyright Act ("the Act") includes provisions under which educational institutions are permitted to copy printed materials provided it is within the guidelines set out in that Act. For a considerable period CAL has been offering licences to educational institutions which in some respects vary from the statutory licence contained in the Act. While this course is adopted for other reasons, CAL says it also permits it to avoid the stringent requirements in the Act relating to the applications of funds. CAL is also now promoting its services to other users including press clipping agencies, Commonwealth government departments and business users.

In undertaking this exercise CAL relies on its claim to represent a great number of print copyright owners in Australia and particularly the Media Entertainment and Arts Alliance, the trade union to which many Australian journalists belong. The heart of the current litigation lies in CAL's administration of its licensing schemes.

Newspapers and magazine publishers in Australia at present have declined to join CAL and have put CAL on notice that it has no rights to license any copyright which belongs to the publishers. Australian

Associated Press ("AAP"), a wire service, has taken a similar position. The publishers claim that they have copyright both in the published edition of newspaper and magazine articles and in the compilation of those articles.

## Rival contentions

**W**hile CAL does not have all the rights to license print copyright materials, the publishers allege that CAL appears to warrant that it does and is prepared to indemnify licence holders against claims for copyright infringement that might arise by reason of their copying pursuant to a voluntary licence. The publishers contend that CAL is authorising and encouraging a breach of copyright. CAL denies that the publishers have any rights which need to be licensed and also denies that AAP (which is not a newspaper publisher) owns the copyright in works prepared by its employees.

One of the interesting issues which will be determined in the Federal Court proceedings is the duties and responsibilities of CAL in relation to its granting of licences, the basis on which it holds money and any restrictions it should observe in making distributions of money collected. The publishers claim that where CAL is entitled to collect money it is bound by both the Act and its own Articles of Association to pay into a trust account and retain in that trust account:

- (a) money received from educational institutions;
- (b) money, the entitlement to which is disputed; and
- (c) money where the information available to CAL is insufficient or not sufficiently accurate to enable an equitable and accurate allocation to be made.

## Trustee obligations

**T**he publishers and AAP claim that CAL has breached its duties as a trustee and its own Articles of Association by:

- (a) failing to recognise the publishers' copyright;
- (b) failing to recognise AAP's copyright;
- (c) failing to pay the royalties that CAL has collected into a trust account and failing to retain those amounts in that trust account until the matter of entitlement to the royalties is solved.

Submissions made to the recent Copyright Law Review Committee indicated that CAL may have insufficient information to enable it to identify the authors of many articles. Modern newspaper and magazine publishing practices are such that a great number of articles are worked on by a number of different journalists, sub-editors and editors and the final article that is published in a newspaper or magazine is the product of multiple contributions. CAL seems to be of the opinion that the by-line on an article is sufficient evidence of authorship.

The hearing of the publishers' case will traverse a wide area and hopefully answer many questions relating to print copying and the role of collecting societies.

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**AGM and Cocktail Party.**  
Please note that there will be an Annual General Meeting of CAMLA on Thursday 25 November 1993, followed by Christmas Cocktails.  
The time and venue will be announced.  
Please mark your diaries.