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**recommendation 9:  
transmissions originating from  
a satellite**

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A new section should be inserted in *the Act* which provides that transmissions originating from a satellite which are directly and lawfully receivable by the public in Australia and intended for reception by that public should be deemed to be made from Australia and therefore protected as broadcasts in which copyright subsists. (Paragraph 3.7)

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**recommendation 10:  
retransmission of broadcasts**

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Section 199(4) of *the Act* should be replaced with a section which allows for retransmission by any means of a broadcast (in the extended sense suggested in recommendation 2) only in the following circumstances:

- (i) where the retransmission takes place within the intended reception area of the primary broadcast; and
- (ii) where the retransmission is simultaneous with the primary broadcast; and
- (iii) where the content of the primary broadcast is not altered in any way in the retransmission; and
- (iv) the retransmission is for the purpose of enabling reception of the primary broadcast in areas where the signal quality of that broadcast is inadequate.

Consequent amendments will be required to section 199(5), (6) and (7) of *the Act*. (Paragraph 4.2) The CCG has also recommended complementary amendments to section 212 of the *Broadcasting Services Act 1992*. (See recommendation 16).

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**recommendation 11:  
rebroadcast of broadcasts  
(section 25(3))**

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Retransmissions of broadcasts should be dealt with in a technology neutral manner. All retransmissions should be dealt with in a single section as set out in recommendation 10 and section 25(3) of *the Act* should be repealed.

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**recommendation 12:  
unauthorised reception of  
transmissions**

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Two new offences concerning unauthorised reception of transmissions should be enacted:

- fraudulent reception of transmissions;
- making, importing, selling, or letting

for hire unauthorised decoding devices.

The CCG notes that these offences may possibly be more appropriately included in Commonwealth Crimes legislation than *the Act*. (Paragraph 5.2)

A civil right of action against a person who makes, imports, sells or lets for hire unauthorised decoding devices should be introduced. (Paragraph 5.2) The civil right of action should:

- (i) vest in the person who charged a fee for the intercepted transmission, or for whose benefit such fees were collected, or the maker of any encrypted transmission;
- (ii) lie against any person who makes, imports, sells or lets for hire the unauthorised devices, and against any person who publishes information calculated to enable or assist any persons to receive services to which they are not entitled.

The same rights and remedies should be available against such persons as would lie against copyright infringers. (Paragraph 5.2)

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**recommendation 13: incidental  
cable services where persons  
reside or sleep**

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Section 26(3) of *the Act*, which permits the cable diffusion of copyright material in premises where persons reside or sleep, is inequitable in view of the commercial reasons for such exploitation. The provision should be repealed. (Paragraph 6.1)

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**recommendation 14:  
ephemeral copying**

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The ephemeral copying provisions in *the Act* should operate for the benefit of all broadcasters, but at present, and pending further review, should not be extended to all transmissions to the public.

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**recommendation 15: statutory  
licence for the use of sound  
recordings in broadcasts**

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- (i) The scope of the statutory licence for the use of sound recordings by broadcasters in section 109 of *the Act* should apply only to broadcasts which are not offered in return for valuable consideration from the recipient of the broadcast.
- (ii) Further consideration should be given to whether the statutory licence for free-to-air broadcasters should continue to operate, and that this should take place as part of the wide ranging review of *the Act* which has been proposed by the Minister for Justice.

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**recommendation 16: section  
212 of the Broadcasting  
Services Act 1992**

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The operation of section 212 of the *Broadcasting Services Act 1992* should be narrowed to make it consistent with the circumstances in which retransmission is permitted as set out in recommendation 10. Section 212 should be amended to make it subject to the provisions of *the Act*. Retransmission outside the licence area of the primary broadcast should not be permitted without the permission of the copyright owner.

# SBS: shuffling the broad and the narrow

Malcolm Long, Managing Director SBS Corporation,  
charts the new course

**A** great deal is being said about the rapid changes that are occurring in the communications business in Australia. Nowhere is change likely to be more rapid or more far-reaching than in broadcasting. It will put enormous pressure on existing broadcasters to devise strategies so they can survive and, indeed, prosper in the new audio-visual environment.

Change will come in a rush because Australian broadcasting has been protected from developments that have occurred almost everywhere else in the world in a rather more gradual way. There has been no

significant change in the shape of Australian television for more than 30 years, except for the creation of SBS.

There are a number of reasons for this. Firstly, the traditional broadcasting system in Australia with its mixed economy of healthy public and private operators has served the audience well, with a fairly high degree of program innovation and diversity. As a result, there has been nervousness among regulators about admitting new players to the scene: the current balance of broadcasting forces might be destabilised, current commercial viabilities could be threatened. Hence, new services like Pay TV were put on the back burner.

Secondly, Australia, because of its geographical position tucked away outside the footprints of most of the world's communications satellites was naturally protected from the growing impact elsewhere of satellite delivered trans-national broadcasting.

All this is about to change.

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### the context of change

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**T**he growing sophistication and fragmentation of broadcast audiences, together with the developing complexity of the cultural mix in our society, means existing Australian broadcasting outlets will increasingly be unable to satisfy the myriad of needs, tastes and lifestyles that characterise our more and more demanding viewers and listeners. In addition, the arrival over the next eighteen months of a range of foreign satellites with footprints covering Australian homes will dictate that either the Australian broadcasting system develops new services or viewers will be tempted to tool up to watch direct-to-home services provided by operators off-shore.

SBS is Australia's youngest broadcaster with a specific, focussed charter to serve the special needs of the nation's different cultural communities - to reflect our growing multiculturalism to all Australians; and, thereby, to add diversity to the broadcasting system. I believe SBS has not only been a very valuable component of the existing broadcasting scene but that it is also well placed to respond effectively to the changes that are almost upon us.

There are three crucial areas of concern for any broadcaster managing change: audiences; the people who acquire and make our programs; and technology.

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### managing for audiences

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**A**ustralian broadcasting audiences are restless. In television they are watching an increasing number of hours each week, now (on average) more than 22 hours per person. But at the same time, surveys show that the overall satisfaction level of audiences is low. Last year, a national survey by AMR: Quantum found that the television industry was one of the worst performers in the customer satisfaction stakes, ranking with banks and used car dealers. Australians also hire almost five million videos a week, presumably because they can't get what they want on over the air TV.

The increasing demands of audiences will force Australian broadcasters to follow the logic that has governed broadcasting developments internationally - a move away from broad or mixed services towards

narrower, streamed services targeted on a particular aspect or niche in audience interests and tastes. Audiences are demanding more programs, with more quality, more consistently delivered to them according to their tastes, interests and viewing moods.

Now SBS, already something of a niche or special interest broadcaster, has already benefited from these trends. The cumulative audience for SBS TV in the nine major cities has grown by an average of 30% each year over the past ten years and the reach of the channel is now three times what it was in 1984.

But we need to respond further to audience changes, and to that end we have been undertaking a fundamental review of our schedule. In the evenings we are streaming our programs more to assist the audience to access that station. For example, late last year we began to broadcast movies at 9.30 - every evening, seven days a week. We are doing the same with documentary programs every weeknight. The audience response has been encouraging, reflecting our view that audiences want more consistency of output from day to day.

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### targeted & specialised services

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**B**ut audiences are also keen for more targeted and specialised services. SBS is responding to this need in two ways. First we have developed our services on our free-to-air network.

In radio, over the years we have expanded the number of languages in which we broadcast. We now present regular services in more than sixty languages, responding to new audiences as Australia's multiculturalism develops.

A year ago SBS TV broadcast for about eight hours each day. We now broadcast more than eighteen hours of programs. In the mornings we broadcast a set of niche services which is unique. Our developing *Worldwatch* program presents major daily news bulletins from some of the most respected broadcasting organisations in the world, in Italian, Greek, Cantonese, Mandarin, French, German and Russian. A Polish news round-up is broadcast weekly and an Arabic service is currently being planned.

Each weekday afternoon, SBS TV now broadcasts a range of educational programs in association with 12 Australian universities. The Professional and Graduate Education Consortium makes teaching programs in each university's own production centre aimed at practical skills enhancement using simple to-camera

instruction.

These program initiatives are examples of how SBS is responding, on its existing services, to the new audience environment. However, in television there is obviously a limit to the degree to which emerging audience needs can be met on our existing networks.

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### future delivery

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**F**or this reason, SBS TV is keen to enter the Pay TV arena. Our plans include: the provision of non-English language television services to Australia's leading non-English language cultural communities through the SBS subsidiary company, Multilingual Subscriber Television Ltd; the extension of our education programming to Pay TV, providing a range of skills development services; and, the supply of programs and program services to the Pay TV industry in developing niche program formats and offering comprehensive sub-titling and re-versioning services.

In radio we have recently seen the extension of SBS Radio to capital cities beyond Sydney and Melbourne, broadcasting in more than fifty languages to cultural communities in those Cities. Mid-year a second SBS Radio frequency will open, on the FM Band in Sydney and Melbourne, so that SBS Radio can serve its audiences there with more programming, and more consistently.

This initiative will also be followed by the introduction of some English language international news and analysis programs on SBS Radio so that existing listeners and we hope a healthy, new audience of English only speakers can hear on SBS Radio the kind of quality, world news reporting that SBS TV has presented so effectively for many years.

In both radio and television, SBS is also an active participant in the planning for digital over-the-air services.

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### managing people

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**N**ew service developments at SBS are only possible because of the quality and energy of our people - in the in-house staff and external contributors who acquire, and make our programs and those who support them. In order to enhance our performance in the face of our many-sided charter, SBS has been developing our corporate culture in a number of ways.

We have been working for some months on a new positioning statement which will define as clearly and as simply as possible the essence of SBS's role in the audience environment we now face. This statement

will both feed into our internal corporate planning processes and will also form the basis of a major publicity and promotional campaign which will occur mid-year.

In March this year, SBS moved out from under the purview of the *Public Service Act* in the matter of staffing and employees' terms and conditions. We now stand on our own in this regard. This is a very significant move but I believe an absolutely necessary one if the corporation is to develop, with its staff, a working culture which effectively responds to the unique position SBS plays in the fast moving and demanding broadcasting environment.

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### advertising, sponsorship and the commercial environment

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**T**he uniqueness of SBS is reflected in its advertising and sponsorship activities. These activities have had an impact on our culture and that of some of our colleagues in the industry. For the first time in the Australian television industry SBS is a TV broadcaster which carries commercials while deliberately setting out to service different audiences at different times in its output. This niche approach sits uneasily in the traditional culture of commercial television advertising.

For all of its life before SBS, Australian commercial television has been primarily the outlet for retail-style advertising to mass audiences. Targeted advertising was done in other media. Advertising was also skewed to the anglo audience. SBS Marketing has been working to change this culture among our advertising colleagues with growing success. More than 150 manufacturers and service providers have now seen benefits in taking advertising and sponsorship with SBS, and our marketing seminars on the good business sense of taking account of the multi-ethnic character of our community have been influential.

Like so many other public sector enterprises, we are also learning within SBS how to live in a corporate culture that must combine public service with a commercial ethos. This has been difficult, indeed painful, for some. However, success stories are now beginning to emerge. For example, our SBS Linguistic Services Unit is increasingly revealing itself as a highly motivated group which can achieve its charter driven sub-titling tasks while also developing an impressive range of new activities in the marketplace.

As a small, flexible broadcaster it is also important that SBS be able to draw effectively on a range of non-staff producers and facilities houses to support its broadcasting. We must be able to capture for TV more of the considerable talent that exists in the Australian independent production sector. To this end a special unit

called SBS Independent has been established to develop out-of-house product. More interaction between in-house activity and providers from outside will be an important development at SBS which will need to be carefully nurtured.

The move by the bulk of SBS in-house staff to new purpose built headquarters in the suburb of Artarmon in Sydney has also had a significant impact on the culture of the organisation. Here for the first time SBS Radio and Television are under the same roof in a building designed to encourage and support interaction between different groups.

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### managing technology

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**T**he management of plant and technology is crucial in planning for survival in the tumultuous years ahead for broadcasters. I draw on my current role at SBS and experience at the ABC.

The impact of new plant and technology on staff can have a significantly bad effect on organisational culture. As such, at least as much planning needs to go into the preparation and training of staff headed for new plant and equipment as goes into the construction and installation of the facilities themselves. Careful human resources planning, using your best managers, will be repaid handsomely on the fateful day when your services are due to originate in a new way from a new place.

On the other hand, I am constantly impressed by the potential of new plant and facilities to support cultural changes within an organisation, especially in the area of work practices. It is extraordinary how many often ineffective or outdated work practices relate to labels on work spaces or to particular pieces of technology. In the ABC Ultimo Centre, for example, there are no spaces labelled "control room" in the transmission suites. Nor are there pieces of equipment that are clearly either "presentation" or "control" consoles. The touch screen digital consoles installed in the building are able to be configured in either,

or both, modes. This approach gave considerable freedom to management and staff to plan new ways of making radio.

New technology often depends on the development of a kind of critical mass of penetration into the community. I understand marketing experts say that a penetration of about 5% in the general population in necessary before a new technology has a real chance of feeding off itself and "taking off". Certainly there can be pockets of resistance to new technology that are difficult to budge. Generation-based technological phobia has previously hindered people from switching from the AM to the FM band.

Contemporary broadcast managers have to transcend the temptation to "leave the technology to the engineers". I do not think it is possible to be an effective, audience-responsive manager of broadcast services these days without maintaining some level of knowledge of what is happening technically, especially with transmission technologies. Engineering expertise will, of course, always be crucial in broadcasting organisations, but provision of services to audiences - the customers - is so intimately related these days to what is possible technically, that the once fashionable general management attitude of gross technical ignorance is not credible.

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### conclusion

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**A**s we, at SBS, confront the issue of managing responding to change in audience needs; as we develop the cultures within our organisation; and, as we cope with the developments in technology we are strengthened by our belief that our role as the national, multi-cultural broadcaster is an important one which will endure as we enter an exciting new era in Australian broadcasting.

*This is an edited transcript of an address entitled "New Services & Cultures - Organisations, Strategies & Tactics" delivered at ATUG '94.*

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# the new rights of copyright

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## Sue Gilchrist outlines the proposed moral rights legislation discussion paper

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**I**n June 1994, the Federal Government published a Discussion Paper on "Proposed Moral Rights Legislation for Copyright Creators", setting out the options for significant amendments to the *Copyright Act 1968 (Cth)* to achieve

recognition and enforcement of moral rights of creators of literary, artistic and other works.

The Discussion Paper was prepared by officers in the Attorney-General's Department in consultation with officers in