

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.

### advertising, sponsorship and the commercial environment

**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.

### managing technology

**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 is 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.

### conclusion

**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.*

## the new rights of copyright

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

**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

the Department of Communications and the Arts and is one in a series of recent initiatives by the Federal Government aimed at amending the *Copyright Act*, both to enhance (and clarify) the copyright rights of creators and users of works, and to satisfy Australia's obligations under international conventions.

Other recent initiatives include the establishment of the Copyright Convergence Group in January 1994 (see Communications Law Bulletin Vol 13 No 4) and the various reviews by the Copyright Law Review Committee including its Report on Computer Software (Jun 1993) and its Report on Journalists' Copyright (1994) (see this issue).

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### moral rights defined

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**T**he recognition of the moral rights of an author of a work generally involves the recognition of two fundamental rights of an author: the right of attribution and the right of integrity.

The *right of attribution* is described in the Discussion Paper as the right to:

- be made known to the public as the creator of the work;
- prevent others from claiming authorship of the work;
- prevent others from wrongfully attributing to an author works that are not hers/his; and
- prevent others from wrongfully attributing to an author works that are unauthorised altered versions of her/his work.

The *right of integrity* is described in the Discussion Paper as the right to "object to:

- distortions and mutilations; or
  - other modifications; or
  - other derogatory action,
- in relation to an author's work that prejudicially affect the author's honour or reputation.

As recognised by the Report, new technology such as the ability to digitally manipulate works (such as photographs and films) increases the scope and likelihood of alteration of works well beyond the contemplation of the original artist.

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### Berne Convention

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**O**ne of the major factors which will determine the nature of any legislative recognition of moral rights is Article 6 bis of the Berne Convention for the Protection of Literary and Artistic Works, to which Australia is bound.

The Discussion Paper succinctly summarises the obligations under article 6 bis as follows:

- moral rights must be independent of the economic rights;
- the two rights to be protected are those of attribution and integrity;
- the right of attribution may be limited to the positive aspect of attribution;
- the right to prevent distortions or mutilations is subject to a condition of prejudice to the author's honour or reputation; and
- the rights should be protected for the life of the author and, following this, at least one of the rights should be protected until the end of the economic rights, namely, 50 years later.

However, the Berne Convention provides no guidance on a number of issues of significant practical importance both to creators of copyright works and users of copyright works, in particular, the ability to deal in copyright works in which moral rights exist, for example, by assignment, licence or waiver.

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### current position

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**T**he Discussion Paper sets out a useful review of the current protection under Australian law of moral rights - such which exists on an adhoc and limited basis. An author must rely on limited provisions in the *Copyright Act* or in special circumstances may be able to rely on contractual rights, defamation, passing off or section 52 of the *Trade Practices Act 1974 (Cth)* or its equivalents in the State and Territory Fair Trading Acts.

The Paper also briefly reviews recent developments in moral rights legislation in the UK, US and Canada.

The Discussion Paper considers in detail the Copyright Law Review Committee's 1988 Report on moral rights. The majority of the members of the CLRC recommended against the introduction of moral rights legislation at that time.

From the Discussion Paper's consideration of the many other reviews and submissions to the Government on moral rights, it is clear that there has been a ground swell of interest in, and support for, legislative recognition of moral rights in Australia.

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### proposed amendments

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**T**he Report proposes that the Copyright Act be amended to recognise the rights of attribution and integrity, for the following types of creators:

- author of a literary or dramatic work;

- author of an artistic work;
- composer of a musical work; and
- the director or producer (or both) of a cinematograph film.

The right of attribution would include the right to be identified whenever the work is reproduced (or otherwise published, broadcast etc); and the right to be identified in respect of any adaptation of the work.

The right of integrity would consist of the right to prevent the work being the subject of "derogatory treatment" - defined to mean "any material distortion, mutilation or alteration to a work or an adaptation of the work that is unreasonable and is prejudicial to the honour or reputation of the author".

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### qualifications

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**T**he Report proposes that the attribution right should exist only when it is "reasonable in all the circumstances." Similarly, the right of integrity will only be protected where the treatment of the work is derogatory (as defined above).

One example given by the Report of where it would be reasonable to recognise the right of attribution is where an author's work is included in a database which can be accessed by individual users at a computer terminal and printer. An example given of where attribution would be unreasonable is where a part of a film is reused in an incidental way in another film. However, the right of the creator in that case may be protected by copyright.

A useful example given of a derogatory use of an artistic work is the use of the work in association with a product or service that would offend against the known views of the artist.

Although the Report sets out a number of factors to be taken into account and gives examples in an attempt to illustrate the application of the "reasonableness" and "derogatory" tests, these tests will clearly be difficult to apply. This will result in uncertainty as to the existence of the moral rights and as to their scope (particularly in the short term before judicial consideration).

Recognition that industry practice and all the circumstances of creation of the work should be considered does not greatly assist in achieving certainty and predictability.

Of particular practical significance is that the Report contemplates that works created during the course of employment may be subject to moral rights of the

employee. This could be the case even though the copyright vests in the employer.

### practical implications

*Dealing* - Under the reforms proposed by the Report, moral rights: cannot be assigned; and may be waived by instrument in writing signed by the author.

*Infringement* proceedings may be taken by the author only (or her/his legal representative upon the author's death or mental illness).

A person who deals in a work the subject of moral rights (for example a publisher) may infringe those rights by use of the work where she/he has actual or constructive knowledge that the person from whom she/he received the work has infringed the creator's moral rights (for example, by modifying the work).

Remedies for infringement would comprise the full range of remedies including damages, injunctions and declaratory relief. Infringement proceedings would be heard by the Federal Court or State Supreme Courts (rather than the Copyright Tribunal).

### comment

**T**he introduction of the proposed moral rights scheme will have significant implications not only for creators of copyright works but for those who commercially deal in copyright works, from publishers and broadcasters to gallery owners and multi-media producers.

Although moral rights by their very nature are not economic rights, their recognition will have a significant effect upon the ability of both the artist and others to utilise the economic potential of their works. It is in the interests of both creators and users of works that the existence and scope of moral rights can be determined with some degree of certainty.

All those in the business of creating and dealing in copyright works should closely consider the Report's proposed legislative scheme. The Government's review will certainly benefit from input from creators and industry participants and groups on the likely practical and economic implications of the proposed scheme.

All interested parties should forward submissions and comments to the Attorney-General's Department (Telephone (06) 250 6325, Facsimile (06) 250 5929).

Sue Gilchrist, Freehill Hollingdale & Page (Sydney)

# And the winner is...

Catherine McGill discusses the protection of Olympic symbols, Sydney 2000 logos and names

**T**he announcement on 23 September 1993 by Juan Antonio Samaranch that Sydney would hold the Year 2000 Olympic Games saw a flurry of activity by entrepreneurs to register trade marks, company and business names in an endeavour to cash in on the goodwill attaching to the Olympic symbols, Sydney 2000 logos and names.

The Sydney Organising Committee for the Olympic Games (SOCOG), the Australian Olympic Committee Incorporated (AOC) and the International Olympic Committee (IOC) have moved quickly to protect their intellectual property rights and have given a strong indication that persons hoping to exploit goodwill attaching to those rights do so at their own risk.

This article examines the substantial rights which exist under statute and

common law for the protection of Olympic related intellectual property and notes some recent proposals to extend protection.

### Olympic Insignia Protection Act 1987

**T**he *Olympic Insignia Protection Act (Cth) 1987* enables the AOC, or the Australian Olympic Federation (AOF) as it was then known, to control the use within Australia of the Olympic Symbol (the five inter-locking rings), the terms "Olympic" and "Olympiad", the Olympic motto "Citius, Altius, Fortius" and other nominated Olympic designs including the koala-styled mascot and various other designs.

The AOC has been permitted by the IOC to exercise the above rights in Australia and the IOC has allowed the Olympic

