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## The Politics of Culture

**Martin Cooper critiques the Federal Government's "Creative Nation" policy statement**

**T**he release by Paul Keating of his grand plan for Australia's culture, "Creative Nation", is a timely reminder of the importance of the arts vote to successive recent Labor Governments.

The assiduous cultivation of arts industries such as the film industry immediately prior to the "unwinnable" 1993 election demonstrates the importance which the Keating Government in particular attaches to this traditionally supportive group.

If the Government received its reward for such cultivation at the election, the arts community certainly received its reward in the pages of "Creative Nation - Commonwealth Cultural Policy" October 1994 ("Creative Nation").

In fact, it is difficult to remember a major policy statement purporting to cover Government policy in relation to a whole industry sector being accepted with such universal acclaim and so little criticism. Further, this statement can almost be said to enjoy universal approval of the entire arts community from plastic artists to performing artists to film and television producers, to multi-media practitioners and all of those whose careers depend upon these persons.

### the policy and the dollars

**T**he Government's stated policy is that it has "a responsibility to maintain and develop Australian culture (which) means, among other things, that on a national level:

- innovation and ideas are perpetually encouraged;
- self-expression and creativity are encouraged;
- our heritage is preserved as more develops; and
- all Australians have a chance to participate and receive - that we invigorate the national life and return its product to the people.

Such noble sentiments could hardly be the subject of criticism but is what follows in the 100 pages of the policy document an accurate reflection of these noble goals? Firstly it must be remembered that the Commonwealth Government currently spends in excess of \$1 billion per annum (including funding of \$515M to the ABC and \$75M to the SBS) on the arts.

\$117M is provided to the Australian Cultural Development Office, \$33M to the National Library, \$19M to the National Gallery, \$9M to the Film and Sound Archive, \$13M for the Australian National Maritime Museum, \$30M for the Australian Archives and \$6M for the National Museum.

The Australian Film Commission received \$18M in 94/95 and the Australian Film, Television and Radio School \$10M as well as the Film Finance Corporation receiving \$54M, Film Australia \$6.4M and the Australian Childrens Television Foundation \$2M in 1994/1995. Finally the Australia Council receives \$59M, of Australian Opera \$7M, the National Institute of Dramatic Art \$3M and the Australian Ballet School some \$0.6M.

### bureaucracy

**A**ll of this funding represents an extraordinarily comprehensive intrusion into the cultural life of the country by the Federal Government and its bureaucracy.

Given that the report finds that some 336,000 Australians are employed in "cultural related industries", the Government is clearly stimulating a major part of the economy by its actions.

The proper balance between the bureaucracy, with its fundamental brief to protect the public purse, and the basically immeasurable or unquantifiable value of cultural expenditure is probably the central problem which policy in this area must confront.

*Creative Nation* addresses the perceived problems of the Australia Council and opts for a vastly strengthened Council because of its "accumulated knowledge from dealing with thousands of artists over the years of its existence, its skilled staff and its formidable research base".

Having decided that the Australia Council will be the major purveyor of Government largesse for the development of new artistic endeavours, the report goes on to place heavy emphasis upon the development of new "markets for our cultural products off-shore", the vital role which the Council must play in encouraging "the translation of the arts to screen based media" and the need for the Council to give "a high priority to the process of generating Australian content for the information highway".

*Creative Nation* then proceeds to deal with the arts under traditional headings of "performing arts", "music", "literature", "dance", "visual arts" and "crafts" and then "film", "television" and "radio". Each of these is given a number of constructive and in some cases, bold initiatives including the creation of a number of new training

### INSIDE THIS ISSUE

MULTIMEDIA - what's all the racket

CAMLA essay prize

Unjust enrichment in the US

institutions, an emphasis on funding for specific programs to develop new talent and an encouragement of Australian drama production.

### **the multi-media emphasis**

**H**owever, the most innovative and interesting area of the report is its very heavy emphasis upon "multi-media - cultural production in an information age". Consistent with its determination to apply economic rationalism to the arts and see creative endeavour become part of the new industries to help balance Australia's international trade, the Government has promised \$84M over a four year period for a number of initiatives designed to promote the development of a significant Australian involvement in the international communication super highway.

These initiatives include the creation of the Australian Multi-Media Enterprise, the establishment of co-operative multi-media development centres, the initiation of a series of national multi-media forums, the commissioning of CD-ROMs involving material from our major cultural institutions for Australian schools under the Australian On CD Program and specific assistance to foster our film agencies moves into multi-media.

Bold in its concept but very short on detail, Minister Lee has promised that details of the Australian Multi-Media Enterprise and the way in which the \$84M will be expended will be provided "before Christmas or thereabouts". Nothing has been heard since the date of publication but perhaps one should have asked which Christmas.

The report recognises that one of the most difficult areas facing the arts is the question of protecting Australia's creators' copyright. Nobody working with multi-media can be unaware of the enormous complexities of protecting ideas and product in that area and of the gross inadequacies of present copyright law to deal with "the new technologies".

### **issues**

**W**hile the initiatives set out in the *Creative Nation* statement are unexceptionable, it does raise three vital issues which need to be addressed:-

**One** - Is the continued direct subsidy of the cost of creative endeavour justifiable?

The Australian film industry is a classic example of a developed industry which is totally dependent upon continuing Government assistance. It is unarguable that the industry would cease to have any real substance in the absence of ongoing major Government input.

## **CONTENTS**

### **THE POLITICS OF CULTURE**

Martin Cooper critiques the Federal Government's "Creative Nation" policy statement 1

### **THE REAL ISSUES IN "WHO WEEKLY"**

Kaaren Koomen reports on the issue of identification and identifying the real issue 3

### **MULTIMEDIA - WHAT'S ALL THE RACKET:**

#### **MULTIMEDIA: THE DOOM OF TELEVISION**

Ian McFadyen muses on the shift from passive medium to active art form 6

#### **CONVERGING CULTURES**

Jock Given expounds - what's going to happen as royalty-based industries converge with fee-based industries and everyone wants to acquire and publish everything? 7

#### **MULTIMEDIA AND THE SUPERHIGHWAY**

Bridget Godwin provides some thoughts on "multimedia", copyright and the licensing of works 10

#### **LICENSING ISSUES FOR CONVERGING TECHNOLOGIES**

Michael Perkins looks at a lexicon and suggests a system for indexing of works 12

### **COMMUNICATIONS AND MEDIA LAW ASSOCIATION (CAMLA) ESSAY PRIZE**

The Communications and Media Law Association announces an essay competition in 1995 13

### **THE PRESENT STATUS OF TELECOMMUNICATIONS EVOLUTION IN EUROPE**

Alain Valle of the Directorate General of Posts and Telecommunications, France, expounds 14

### **CAMLA COMES TO BRISBANE**

#### **PERFORMERS' RIGHTS: SOME RECENT DEVELOPMENTS**

Libby Baulch outlines the 1994 Copyright Bill and the MIAC report on performer's copyright 15

#### **FEATURE:**

#### **UNJUST ENRICHMENT AND UNFAIR COMPETITION - IS APPROPRIATION PER SE WRONGFUL**

Professor Harvey S. Perlman discusses the US tort of misappropriation and why it has received such little support 17

#### **CONTINUOUS DISCLOSURE - AN ADDITIONAL LEGAL OBLIGATION**

David Williams describes enhanced disclosure obligations and their impact on film investments 19

### **TELECOMMUNICATIONS AFTER 1997 - CARRIAGE, CONVERGENCE, CONSUMERS**

Helen Mills, Director, Communications Law Centre reports on the CLC's conference held on 9 November 1994 20

### **THE CASE FOR COMPETITION IN SATELLITE DELIVERED TELECOMMUNICATIONS SERVICES**

Gregg Daffner, of PanAmSat, argues 22

#### **COMMUNICATIONS NEWS**

A Looseleaf Supplement to the Communications Law Bulletin (Vol.14 No.2) - edited by Ian McGill

Needless to say, this is not uncommon in most developed cultures in the world with the exception of the United States (although even there, there are considerable indirect subsidies through tax breaks and so on). It is proper that the question should be regularly asked whether, if public moneys are to be spent in such quantities, the public is getting "what it wants" for its dollar and is the process too "hit and miss"?

Given that the Australian film industry has received well in excess of \$1 billion in total Government subsidies in the last 15 years, one is obliged to ask whether the Australian public has had "a good return" on this investment.

**Two** - Is a Government cultural policy which places major emphasis on training and culturally supportive institutions preferable to one which provides substantial ongoing subsidy for individuals and companies which actually "produce" cultural material?

This age old debate has no clear resolution and the *Creative Nation* statement does not purport to provide any answer to those whose complaint is that cultural policy constantly encourages the establishment of new "creators" but it does not sustain those creators over time (unless you are the happy recipient of a so-called "Keating Award"!).

**Three** - to what extent should cultural bureaucrats be making creative choices?

Obviously, when there is a greater demand for funds than funds available choices must be made but the question still remains whether these should be on purely economics or also take into account qualitative issues of cultural value. It is interesting to note that the Film Finance Corporation having started out as being entirely "deal driven" has steadily and inexorably intruded further and further into qualitative issues. More and more frequently it is determining that an otherwise qualifying project will not be funded unless an additional producer is appointed, or has a different director or, in the documentary area particularly, that the script is re-worked.

The FFC now demands a "presentation credit" above the title of films in which it invests rather than an end credit acknowledging its financial support for the film. This is a significant change of emphasis and "style".

Whether these types of intrusions are good or bad is not dealt with or resolved by *Creative Nation*. In fact, they are compounded to some extent because *Creative Nation* talks about creating market and the exploitation of the arts which must, inherently, involve creative decisions being made in favour of "popular" artforms as against traditional high culture.

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## Sum

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*Creative Nation* is a bold, precise and clear statement of the involvement of a Government which genuinely believes that culture is essential to the creation of a coherent and worthwhile nation state.

The linkage between cultural policy and this Government's aspirations to republicanism should not be overlooked - it

is difficult to shed an entire cultural heritage in the process of becoming a republic if you do not have a sound and complete culture within the newly independent nation state. The significance of this linkage could be overstated but the emphasis upon institutions in *Creative Nation* would seem to confirm the linkage.

*Martin Cooper, Martin Cooper & Co., Lawyers.*

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# The real issues in "Who Weekly"

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**Kaaren Koomen reports on the issue of identification and  
identifying the real issue.**

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In June 1994, *Who Weekly*, a magazine with a distribution of approximately 112,000 copies in the NSW and ACT each week, published a photograph of Ivan Milat, the person presently facing trial in relation to the seven "backpacker murders", along with a charge of attempted murder, armed robbery and unlawful possession of firearms. The photograph was featured prominently on the front cover of the magazine and a smaller copy was on page 29. In the photo Mr Milat was depicted singing at a private gathering at his family home. The facial features and upper torso of the accused were clearly visible from the photograph.

Following the publication the Attorney General brought an urgent application for injunctive relief against the publisher of the magazine, Time Inc. Magazine Company Pty Ltd ("Time"), on the basis that the publication of the photographs involved a triable issue for contempt of court. Charges for contempt were brought against Time and the editor the next day.

The interlocutory hearing came before the NSW Court of Appeal (Kirby P, Handley and Sheller JJA) on 7 June 1994.

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### Implied right of free communication

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Time argued that the case involved balancing the right of free expression and the right to fair trial, and that, at least at the interlocutory stage of proceedings, the balance favoured free expression. Reference was made to the implied Constitutional right to free communication, referred to by the High Court in *Nationwide News Pty Ltd v Wills and Australian Capital Television Pty Ltd and Ors v The Commonwealth of Australia*. (The interlocutory proceedings were heard before *Theophanous v The Herald & Weekly Times Ltd and Stephens v West Australian Newspapers Ltd*).

Kirby P, with whom Handley and Sheller JJA agreed, said that in deciding whether to grant an injunction in these types of cases it was necessary to not only consider whether there was a triable matter of contempt but also the impact of such an order on free expression and communication.

The Court said that it was established as part of the law of Australia that the Court will usually seek to defend the right of free communication ordinarily enjoyed by all members of the community (*Council of the Shire of Ballina v Ringland*, unreported, Court of Appeal (NSW), 25 May 1994). This was "a precious right" which was in addition to any constitutional right of free expression or communication.

However the Court said that also at stake in this case was another "precious right" - that of an accused person to a fair trial. Kirby P described this as a right to "have that trial conducted before a jury and with witnesses uninfluenced by relevant matters which have been published and which may adversely affect that right".

The Court explained that the right to a fair trial was not only a right of the accused person but also of the Crown, representing the community, to ensure that in appropriate cases a person who is in fact guilty can be properly convicted according to law in a manner which can withstand appellate scrutiny. Kirby P stressed that it is in cases where the alleged crimes of the accused are already notorious and of high media interest that our commitment to this right is truly tested.

In balancing of the competing rights of freedom of communication and fair trial Kirby P found that, at least to the degree of satisfaction required to grant interlocutory relief, it is not the case that "the Constitution or any right of free communication which is implied in it, diminishes the right of the accused to fair trial which the courts must