

deployment, alongside the fixed network, by the end of the decade. The launch of the DCS 1800 services in the UK, Germany and France and the new digital systems such as DECT and HERMES, will build Europe's technological strength in digital mobile technologies.

restructuring the European telecommunications industry

Privatisation and international alliances are high priorities in telecommunications policies in Europe.

Danish Telecom and PTT Nederland have been partly privatised and were floated in early 1994. Portuguese Telecommunications should be privatised next year after a complete reorganisation of the industry. DBP Telekom and France Telecom privatisations are on the table although political problems are slowing down the process. However, due to the consequences on the financial market of the privatisation of very big corporations, it is evident that small operators are more easily "privatisable".

After the BT - MCI deal last year, France Telecom and DBP Telekom reached a parallel agreement with Sprint late in June 1994. Then, soon after, Unisource signed with AT&T. This is evidence of European operators' intentions to be involved in the globalisation of the telecommunications market.

conclusion

Three years ago, the 1993 single market deadline was the major issue for policymakers. Now, trans-continental stakes have to be taken into account to fully understand European telecommunications policy. This is the case for:

- competition policy, where the issue of reciprocity will be a key factor in the future international trade negotiations;
- operators' strategy within the alliances mentioned above;
- multimedia services market development where the issue of intellectual property rights, royalties and any other form of "content ownership control" will be a major topic. Clearly, lawyers will have to deal with this, but I am convinced that politicians will also have to address the question in order to promote, and even protect national identity and culture.

This is an edited version of a presentation to the Communications and Media Law Association in Sydney by Alain Vallee, PhD.

Alain Vallee is Head, Policy Analysis Department Directorate General of Posts and Telecommunications (Ministry of Industry, Post and Telecommunications and International Trade - France). The DGPT is the regulator for the telecommunications industry. Vallee's international responsibilities at the DGPT include chairmanship of the Committee of European Regulators on accounting principles and interconnection regulation. Vallee also lectures at various universities and engineering schools in Paris.

CAMLA comes to Brisbane

Wednesday, November 9 saw the first-ever CAMLA function to be held in Brisbane, expected to be the first of many such get-togethers for Brisbane-based CAMLA members and others interested in communication/media law and policy.

More than 50 attendees enjoyed the opportunity for informal discussion with old friends and new acquaintances, a passable luncheon and a wide-ranging overview of the future of converged communications by luncheon speaker Brian Johns, Chairperson of the Australian Broadcasting Authority.

Organized by a small steering committee comprising Brisbane barrister Lorenzo Boccabella, solicitor John Gariand and Brisbane-based CAMLA committee member Dick Rowe (with substantial and much appreciated support from John's firm, Freshlll Hollingdale & Page), the lunch was an occasion for Brisbane's communications industry and media law community to get together.

On the basis of the success of this first up effort, it seems certain that further CAMLA activities in Brisbane will follow in 1995.

Performers' Rights: some recent developments

Libby Bauch outlines the 1994 Copyright Bill and the MIAC report on performer's copyright.

Except for a reference to meeting Australia's obligations under the GATT TRIPS agreement (Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods which forms part of the General Agreement on Tariffs and Trade), the issue of performers' rights was notably absent from the Federal Government's cultural statement Creative Nation, released in October. The Government's intention regarding further review of performers' rights is thus unclear.

This article briefly discusses the amendments affecting performers in the Copyright (World Trade Organisation Amendments) Bill 1994 ("the Bill"), and the report on performers' copyright released by the Music Industry Advisory Council ("MIAC") in August.

The Bill

The Bill was introduced into Parliament on 21 September 1994. It is one of a number of pieces of legislation intended to put Australia in a position to join the World Trade Organisation, the body which will administer the GATT. The Bill has been considered by the Senate Economics Legislation Committee, which was due to provide its report on 28 November. Following the report, the Bill will be scheduled for debate, and is intended to be proclaimed by the end of 1994.

The three main changes for performers as a result of the Bill will be:

- a longer period of protection for certain performances;
- change to the "connecting factors" for protection, so that more performances will be eligible for protection; and

- new criminal provisions relating to certain unauthorised recordings made in the past.

In relation to the second and third aspects, the Bill does more than the minimum required by the TRIPS agreement.

In addition to the amendments to the Copyright Act, the Government will also need to amend the Copyright (International Protection) Regulations ("the Regulations") to provide the protection for foreign performers required by TRIPS. The ambit (as opposed to the duration) of protection for performers in the TRIPS agreement is lower than that required by the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations - Australia became a party to the Convention in 1992), and the protection of foreign performers required by the TRIPS agreement is different to that

required by the Rome Convention.

The Attorney-General's Department has said that *the Regulations* may be amended by introducing new provisions applying to countries which are members of the World Trade Organisation but not party to the Rome Convention, and by adding a new part in Schedule 1 of the *Regulations* which will list those countries.

Briefly, the provisions in the Bill affecting performers are as follows.

protected performance

A performance will be eligible for protection if it takes place in Australia or is by a "qualified person", being an Australian citizen, protected person or resident. This change will also affect the protection of performances by nationals and residents of countries listed in Part IV Sch. 1 of the *Regulations* and performances which take place in those countries.

The current provision is that the performance must both take place in Australian and be by a qualified person.

criminal provisions

Some changes to the existing criminal provisions, and the introduction of new criminal provisions relating to certain uses of sound recordings of performances. The new criminal provisions relate to acts done on or after the commencement of Part 4 of the *Copyright (World Trade Organisation Amendments) Act* in relation to performances given at any time before that date.

The current provisions only apply to certain performances which take place in Australia after 1 October 1989; certain performances which take place in, are recorded in or broadcast from a country listed in Part IV of Sch. 1 of the *Regulations* after 1 January 1992; and certain performances which take place in, are recorded in, or broadcast from, the United States after 3 May 1994.

The offences include:

- making copies of unauthorised sound recordings of performances;
- having equipment for the making of unauthorised copies;
- selling or hiring unauthorised sound recordings of performances; and
- importing unauthorised sound recordings of performances to sell or hire.

There are no civil rights of action proposed for performances which took place before 1 October 1989. According to the Attorney-General's Department, this is because of concerns that such provisions

may not comply with requirements of the Constitution regarding acquisition of property on just terms.

protection period

The protection period will be 50 years, rather than 20 years, for the purposes of:

- the new criminal offences contained in s 248QA, relating to certain uses of sound recordings; and
- certain rights and offences relating to unauthorised sound recordings of performances - such as making a direct or indirect sound recording of a performance; making a copy of a sound recording of a performance.

rental right

The Bill will also introduce a rental right for owners of copyright in sound recordings and owners of copyright in works recorded on sound recordings. A rental right has not been granted to performers.

MIAC Report on Performer's Copyright

In August 1994, MIAC released a report prepared by a sub-committee appointed to consider whether there is a need to extend the rights of performers under the Copyright Act. The sub-committee comprised representatives of the Musicians Union of Australia; Media Entertainment and Arts Alliance (MEAA); Coalition of Independent Record Companies of Australia; Australian Record Industry Association; Federation of Radio Broadcasters; Australian Music Retailers Association and a performer.

MIAC was established by the Federal government in 1992, following recommendations by the Prices Surveillance Authority in its 1991 report on prices of sound recordings. MIAC's function is to advise the government on matters affecting the music industry, including performers' rights. MIAC comprises representatives from a variety of areas in the music industry, including composers, performers, performers' unions, managers, record companies, music publishers and broadcasters.

The report notes the support for performers' copyright by the MEAA and Musicians Union of Australia; the opposition by record companies, commercial television and radio stations and SBS; and the acceptance of the concept of performers' copyright (subject to a number of reservations) by the ABC. The report sets

out the justifications for these positions, and also contains a model for performers' copyright proposed by the MEAA and Musicians Union of Australia.

future consideration of Performers' Rights

In its August 1994 report, the Copyright Convergence Group ("CCG") identified performers' rights as one of the matters requiring further urgent consideration by the Government. In its *Creative Nation*, the Federal Government said it accepted the recommendations of the CCG.

The Federal Department of Communications and the Arts has indicated its intention to commission a study on performers' rights, including performers outside the music industry and thus not considered by MIAC. This proposal was put on hold in the lead up to the release of the Federal Government's cultural statement in October, and there has been no indication to date as to whether the Department intends to follow through with the proposal. If not, there will need to be some other mechanism for further review of performers' rights if the Government accepts the CCG's recommendation that this is an area in need of urgent consideration.

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APPLICATIONS for EDITOR

After the next edition (Vol. 14 No 3) Anthony Mrsnik will retire from the editorship of the Communications Law Bulletin. CAMLA is therefore calling for applications for a new editor.

This is high profile position which brings the editor into contact with a wide range of people across the entire communications and media sector. It is accompanied by a modest honourarium.

Expressions of interest in the position, together with a curriculum vitae, should be sent to:

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