

2010 – Change is the Only Constant

Outgoing CAMLA President, Shane Barber, reflects on the year that was.

As an extraordinary year for the communications and media industries comes to a close, it can be quite overwhelming to consider the substantial changes facing the industries we serve and, as a result, the members of CAMLA. Arguably, never before have the opportunities been so great and the challenges so daunting for those of us in the legal profession serving the communications and media industries and the regulators who oversee them.

It is no coincidence then that 2010 has seen considerable growth in, and support for, CAMLA as it seeks to keep its members informed of industry, legal and regulatory developments and to build strong networks amongst practitioners so that, as a profession, we may fulfil our role during this extraordinary period.

Interconnected Regulatory Change

Looking back at the legal and regulatory changes occurring in only the last quarter of 2010, I am struck by both the sheer volume and the interconnected nature of many of the developments. The pressures being brought to bear on government and regulators, as well as competing industry players, come from many sources: from the diversity of technology available, from the inventiveness dedicated to its application, and increasingly from the demands of ever more sophisticated consumers whose collective voice becomes stronger year by year.

In the last quarter of 2010 alone, the cascade of activity has been very apparent:

- We have seen regulation and activity promoting significant infrastructure deployment, particularly fibre to the premises technology. The implications of the legislative packages are yet to be fully explored but will affect many players. For instance, legislation is proposed that seeks to compel all non NBN fibre deployments and upgrades to be subject to the same technical standards and open access requirements as the NBN itself.
- The legislative ground work has now been laid for the separation of Telstra, a move hastened by the NBN deployment. In early 2011 all eyes will be on the terms of a Telstra separation undertaking and the exercise by the Australian Competition and Consumer Commission (**ACCC**) of its new powers to set prices and terms in relation to access to wholesale networks.
- Hand in hand with new network deployment, there is much activity occurring to enhance consumer protection generally. The Australian Communications and Media Authority (**ACMA**) is pressing for significant improvement from industry in its approach to both product design and the protection of vulnerable consumers. This in turn places considerable pressure on the industry's current review of Communications Alliance's Consumer Protection Code due for completion in early 2011. Query whether ACMA, under pressure from consumer groups such as the Australian Communications Consumer Action Network, will put forward its own standard rather than register the revised Code.
- In turn, new MVNO players are entering the Australian market to address the apparent consumer demand for simplicity. Players like Amaysim, a SIM only provider, appear to be having an impact on the communications market.
- Presumably driven by the competitive impact of these players, but also by the need to secure revenue streams, established telecommunications players in the Australian

Volume 29 N° 3
December 2010

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Communications Law Bulletin

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Printing & Distribution: BEE Printmail

Website: www.camla.org.au

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market are broadening their offerings and moving into higher value areas such as content and applications.

- The participation of larger players in the content and applications space will no doubt have a profound effect on smaller incumbents which have traditionally been able to find niche areas in which to play. A good example is the introduction of significant IPTV plays, such as that by Fetch or the Microsoft - Foxtel Xbox venture announced earlier in 2010.
- No doubt this activity in the content and applications space will be further enhanced as the switch from analogue television to digital television continues apace, freeing up the digital dividend spectrum for next generation mobile technologies.
- Arising from all of this is the call for significant change to the Broadcasting Services Act 1992 (Cth) to deal with the use of technology not contemplated nearly 20 years ago, including mobile platforms, free TV, subscription TV, video on demand, IPTV and mobile TV.
- A backdrop to all the above has been a focus, particularly in 2010, on the liability on internet service providers for copyright infringement and the significant benefits which may arise from cloud computing.

Meeting the Challenge

In 2010 CAMLA has risen to many of these changes.

- It has been a busy year for the Association in preparing publications to keep our members informed and in organising seminars to provide not only information but key networking opportunities. Three key seminars organised by CAMLA in 2010 have been:
- In May, the Chairman of the ACCC addressed over 100 members regarding the changes made and the changes still required to Australian competition and consumer laws to tackle the dynamic telecommunications environment.
- In June, a seminar was held at which the US approach to its recent media regulation changes was analysed, and key players representing the internet, pay TV and mobile telephony

industries provided their views on how that experience may inform the Australian environment.

- In September over 120 members, particularly younger members of the communications and media lawyer community, attended a special presentation explaining current changes in media technology. This seminar was a valuable resource for all of us serving the media and communications industries as we seek to understand the technology in relation to which we are required to draft and negotiate on a daily basis.

Thanks and Farewell

It has been an enormous privilege to serve as the President of CAMLA for the last 2 years during this extraordinary period. I am particularly grateful for all of the support provided by the outgoing Executive Committee and the office holders of our Association. My best wishes go to the incoming Executive Committee and in particular CAMLA's new President, Peter Mulligan.

May I conclude with a special mention of Ros Gonczi, the Administrator of our Secretariat who retires from office at the end of 2010 after 21 years of service to CAMLA. When you consider that Ros has held that position for almost the entire period of our Association's existence, I am sure you will appreciate as I do the extraordinary service she has given to a number of generations of communications and media lawyers.

She has seen our Association grow and prosper and the practice of communications and media law change from being an obscure specialisation in a handful of law firms and corporations, to a significant field of law serving some of our fastest growing and most dynamic industries.

As 2010 draws to a close, I wish you and your families a safe and happy holiday period as we all look forward to 2011.

Shane Barber is the outgoing President of CAMLA, and the Managing Partner of communications and media law firm Truman Hoyle.