... Continued from page 11

tions. Creators of artistic works of all kinds, should be granted the right to be identified as the creator, in all reasonable circumstances. Examples given of reasonable circumstances for attribution include where an author's work is included in a database which can be accessed by individual users at a computer terminal and printer. This approach contrasts with that taken in other countries, such as the United States, where works created under a contract of employment are necessarily excluded from the right of attribution.

An interesting feature of the recommendations is the way in which the creator of a film is identified. The director or producer or both shall have the moral right to be identified with the film, and in each case the question should be decided contractually; in the absence of contractual agreement, the producer.

The second major right is the right of integrity. Here the ministers propose that creators shall have the right to prevent their work being subject to derogatory treatment, including material distortion, mutilation or an unreasonable adaptation which is prejudicial to the honour or reputation of the author. Again, the right would only apply in context with the same factors as those used to test the reasonableness of the right of attribution. Examples of derogatory treatment include use of a composer's music in association with a film or advertisement that would offend against the known views of the composer, and where a film is unjustifiably reduced in length to fit in with broadcasting schedules.

Moral rights should be protected by injunctions to prevent infringements, and damages where appropriate to compensate for infringement; or an order for a public apology.

The proposals are open for comment until 1 September 1994. ❑

Helen Mills

Journos Lose Out

The tussle over copyright between journalists and publishers is but one twist in the knotty issue of who shall control, and profit from, the contents of the trucks on the information superhighway.

In May, the Attorney-General's Copyright Law Review Committee (CLRC) recommended an end to the traditional split of rights between publishers and employee journalists. A five-member majority recommended repeal of section 35(4) of the *Copyright Act* 1968 (Cth), which vests copyright in the work of employee journalists in the proprietor for the purpose of broadcasting or publication in a newspaper, magazine or similar periodical.

Copyright for other purposes remains with the journalist. Because those other purposes include such potentially lucrative areas as databases and clippings services, the major publishers have for the past three years been lobbying the Federal Government to make them sole owners of copyright in the work of employees. (Freelance journalists own all copyright unless they agree otherwise.)

Former Attorney-General, Michael Duffy, eased the pressure by sending the matter to the CLRC, but now it's back in the Government's lap.

A three-member minority recommended retention of section 35(4) with modifications. It acknowledged that newspapers may soon be published electronically and that proprietors should own copyright for those purposes. And while publishers would have the right to establish a public access service for research, they could not without the author's permission, allow copying from the database or for any other purpose.

The Committee did not really explore the spacious public policy issue of concentration of media power, which was raised by the Media Entertainment and Arts Alliance (in a submission commissioned from the CLC). The submission argued, in effect, that since existing policy and law had not prevented unhealthy concentration of control of media hardware, the public interest required that copyright law not concentrate control of the software. The majority did not see the connection, concluding: 'If there is a harmful effect because of an undue concentration of ownership or control, that harmful effect will flow from the publication and distribution of newspapers, not from any subsequent publication of material in some other form, the storage of it in a database or the distribution of it by press clippings services.'

The minority was less dismissive, acknowledging the arguments without forming any views on them and noting their interest to readers.

Both the majority and minority recommendations pleaded for a resolution of the core issue through direct negotiations between journalists and employers. 'Otherwise', says the majority (at para 10.29) 'as technology takes hold, there will be increasing uncertainty'. This will lead to increasing disputation, the result of which will be likely disruption of businesses and employment and ultimately a most adverse effect on the public interest because of interruptions to the supply of information which is so essential to a modern community. ❑

Paul Chadwick