material for commercial profit (though Newsmonitor's customers were acquiring the transcripts for the purposes for research or private study).

Interestingly, the Judge also decided however that Newsmonitor's habit of taping all programmes in their entirety from which they selected transcripts on order for clients was a "fair dealing" because the tapes were not used for any other purpose and were then destroyed once the extracts had been made.

Although Blanchard J did not therefore need to deal with the question of what is "fair" in terms of a fair dealing defence, he did review the 16 individual extracts in this light. The defendant here put forward again a vigorous "public policy" submission that "fair dealing" should be interpreted rather liberally because the copyright material pertained to news and current affairs and there was a public interest in the dissemination of this material (which Newsmonitor but not TVNZ was willing to make available). Justice Blanchard however remarked:

"A news monitoring business is parasitic. Why should it have a free ride on a broadcaster which has put considerable amounts of time and money into producing the news and current affairs programmes which are the source for the transcripts".

Other Issues

There was also the question of what constituted a "work" - the whole programme or each news item or segment? On this important though academic question, in choosing the complete programme the Judge was able to find that ten of the sixteen items were "fair dealings" for the purpose of research or private study.

A defence which was successful in relation to one item, concerned the exception in the *New Zealand Copyright Act* where something is copied for the "purposes of a judicial proceeding". The Judge gave a fairly generous interpretation to this provision to permit material to be copied for the purpose of legal advice. This exception may not however be as broad as it seems.

One final point worthy of mention is the claim made by TVNZ that a "private purposes" exemption in relation to broadcasts in the New Zealand Act did not apply to the other types of copyright so that a broadcaster such as TVNZ who also happened to own the copyright in literary, dramatic or cinematographic works contained in the broadcast was able to claim infringement even in relation to private taping. The "absurd" result, as the Judge put it, would have meant that New Zealanders could not lawfully make a tape of a rugby test match by time recording it for private viewing. Clearly this would be beyond the pale and the Judge interpreted the *Copyright Act* provisions accordingly. But the question may not be closed.

Comment

The case has therefore clarified some matters of copyright for the media industry and will no doubt be welcomed on both sides of the Tasman by broadcasters who have had difficulties with monitoring organisations.

On the other hand, if those whose feathers have now been ruffled choose to raise the cry of reform (as a New Zealand MP has already done) this may be a very beneficial spin-off. Despite periodic lobbying and reports issued by the New Zealand Justice Department in 1985 and 1989 nothing has yet emerged in the shape of concrete proposals. Australians have at least embarked upon piecemeal reform. The technological changes that have occurred since the 1960's have exposed considerable chasms in copyright law. There are many examples some of which should be of far greater concern to TVNZ than news scripts - such as the question of cable TV and satellite broadcasts. Indeed, if I were a TVNZ executive I would be lobbying the New Zealand Government fast right now. But that is another story...

Paul Sumpter is an Auckland based partner in the New Zealand law firm Kensington Swan

Indigenous media is a priority, and not just a luxury

In this, the second of a two part article based on her 1993 Boyer Lecture, Dot West outlines the mechanisms for establishing a national Indigenous Media service

Out of the Silent Land

In early 1984 the Federal Government formed a special task force to advise on Aboriginal broadcasting and telecommunications policies. The Task Force report, *"Out of the Silent Land"*, was released later that year and in 1985 the government endorsed over fifty of its recommendations. *"Out of the Silent Land"* addressed the lack of telecommunications and electronic media available to Aboriginal people living in remote Australia and at the same time stated that city based broadcasting was being catered for through the Public broadcasting sector. Sadly this report did not go far enough to cater to the growing needs of Indigenous Media and the eight years since the report was written were stifling for many groups.

The report also highlighted the need to offset the impact of western television and radio in remote communities, which was brought about by the launch of AUSSAT's first generation of satellites. In the year of the bicentennial some 85 remote Aboriginal and Torres Strait Islander communities were given, through the Department for Aboriginal Affairs, a facility called BRACS, Broadcasting for Remote Aboriginal Communities Scheme. The package included a satellite dish and decoder along with some basic equipment which allowed the community to interrupt the radio or television signal and broadcast their own programs within a 5km radius.

Brilliant idea, fantastic plan, but what was forgotten were three very important factors for the system's success: consultation, training and on-going funding. In many of the 85 communities who received BRACS, there was no consultation by the Department of Aboriginal Affairs about whether they wanted the equipment or not. It was just delivered and installed. Many of these communities say that they were given only a half hour course in how to operate the equipment. About a year later the bureaucrats got it together enough to realise training programs were necessary to teach the community members how to interrupt the incoming signal and to make and present their own community based programs. But in most cases it wasn't until two years after the installation of BRACS that people received this training.

In the meantime the communities had become accustomed to the daily soapies and the general infiltration of western culture. As an Aboriginal person you start to wonder about the motivation behind BRACS and the governments' failure to meet the challenge it supposedly set itself: to allow remote

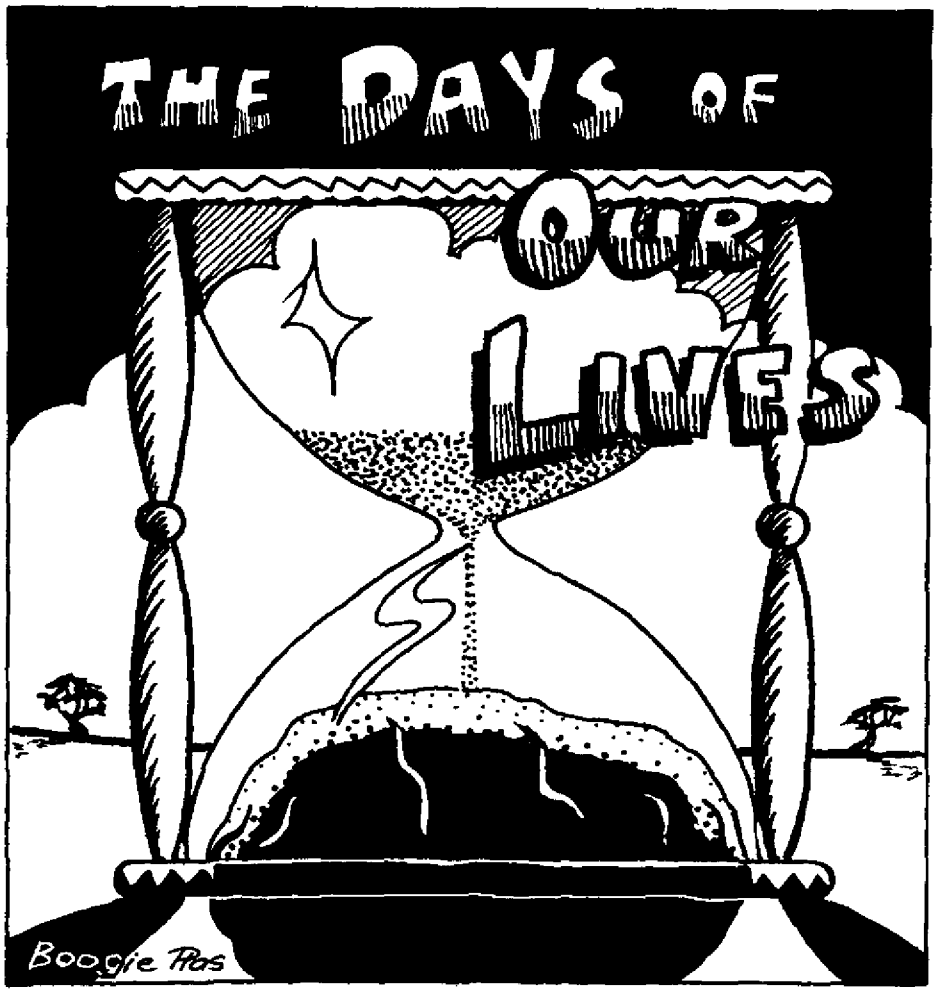
Aboriginal and Islander communities to interrupt the broadcasting of western civilisation to their communities. Was the delay in providing training and infrastructure a sub-conscious infiltration of white society into Australia's indigenous communities? It certainly appeared that way.

ATSIC

Now that we have the Aboriginal and Torres Strait Islander Commission (ATSIC), things are looking up for the remote communities. Just this year (1993) the Commissioners realised the worth of Indigenous media and the importance of BRACS. In their new policy paper they have said they will develop a detailed strategy for the "revitalisation", over the next three years, of BRACS. In the first year they plan to pump $1 M into the revitalisation and another quarter of a million into training.

Even though BRACS has been installed in communities for a number of years without clear government policy or assistance, in many parts of Australia BRACS' local programming is a vibrant part of many community's daily life. It has been used to bail up government officials and visitors to communities which then allows community members who don't attend the council meetings an insight as to who's visiting, and why. It is also used extensively to inform the community of the daily business of council and its workers, and community schools can access the service and broadcast their own programs and learn about electronic media.

Setting up our media groups around Australia has been hard work, especially in the absence of progressive government policy for Indigenous media. The Department for Aboriginal and Islander Affairs began a policy development process back in 1987. Indigenous Media workers, along with their communities, became extremely frustrated when reports were not produced even though the consultation process, in an ad hoc fashion, had been conducted. We've been waiting for the promised new policy for over five years now. It has been extremely hard for the broadcasting sector within the Department of Aboriginal and Torres Strait Islander Affairs to attract extra money without a clear policy. There was only a small number of Aboriginal and Torres Strait Islander media groups who were fortunate enough to get on the funding list of the then Department for Aboriginal Affairs. The rest were left to fend for themselves or try for the small amount of funding available for Aboriginal broadcasting in the Public broadcast sector.



New Approach

It was not until October 1991, nearly 70 years after the birth of Australian radio, that ATSIC, along with the Department of Transport and Communication, wrote a discussion paper about Aboriginal and Torres Strait Islander broadcasting policy. In April 1993, after much consultation, the Commissioners of ATSIC endorsed a new policy paper for Indigenous Media in Australia.

To a certain extent the new policy paper is reflective of what is happening within Aboriginal and Torres Strait Islander Broadcasting and what will be developed in the future. However, there are still some areas of concern. The major one is the use of the word broadcasting when in actual fact we in the industry also include our newspaper outlets, but the policy paper doesn't recognise this form of media. There are other areas of concern but it is apparent that ATSIC plans to use the newly formed National Indigenous Media Association as a body to consult with and receive advice from. We as the Indigenous Media industry now have a forum for negotiations.

There is one other important aspect of this new paper; a long term goal. In association with Aboriginal and Torres Strait Islander Broadcasters, ATSIC will seek recognition and appropriate funding of the indigenous broadcasting sector in its own right within the framework of the government's mainstream broadcasting structure. If this goal is implemented it will mean that we will be competing for funds with the rest of the broadcasting sector of Australia such as the ABC and SBS and it will also allow our Industry to have the same recognition and importance as our National broadcasters.

At the moment media organisations who receive ATSIC grants are required to go to their ATSIC regional councils for funding. This raises a conflict of interest and is a major reason why the funding of Indigenous media needs to be separated from ATSIC. Our communities expect Indigenous media to report truthfully and fairly on all stories we broadcast. But in some instances it becomes extremely

difficult for this to happen in relation to ATSIC, our funding body. If there is an adverse story about a regional council or councillor it becomes very difficult when these same people decide on your organisation's funding.

National Indigenous Media Association

As Indigenous media groups we have operated for many years in separate arenas. There were the groups who received DAA/ATSIC funding, and the groups who broadcast on Public radio; others who broadcast on the ABC; the print media; the television and video production groups and not forgetting our individual Indigenous media worker's in the ABC and the SBS.

In May of 1992 a meeting was held in Canberra which formed the National body on an interim basis and in May 1993 the National Indigenous Media Association of Australia held its inaugural Annual General Meeting. The association's major objective is to represent Indigenous media groups individually and collectively on a local, state, national and international basis while maintaining and respecting the uniqueness and authority of every group. As a collective of all indigenous media in Australia we want to enhance and further develop the industry nationally and assist communities in the establishment, operating and development of their own media.

Future Vision

I would like Australia to recognise there is an Indigenous media sector which does exist and has existed and developed for many years. We currently have the ABC and SBS fully funded and resourced by the Federal government as national media services. Why then not a national Indigenous media service? Why not a national Indigenous television station which can be accessed from anywhere in Australia.

The service should have the capacity to not only be televised from a capital city, but also to broadcast nationally from a region such as the Kimberley. Also, Indigenous media should have the capabilities of BRACS, and be able to intercept the national broadcast and televise our own local programs. This would need to be an important aspect of the service in recognition of our cultural diversity and the language differences within Australia's indigenous nation. The same approach could also apply to radio on a national scale.

An organisation such as the National Indigenous Media Association could provide support and resources to its member associations by way of providing a national news service, music library, research assistance, technical advise and even administer the funding to its member groups.

Non-Indigenous Australians could benefit enormously from a strong Indigenous media service. You would not only get a better informed view about our culture but also you'd be able to see pictures of yourselves from another point of view. What about Aboriginal people making a series of documentries about white suburbia? What about Aboriginal comedy and soapies? I'm sure you as White Australians are sick of seeing and hearing all the political and contentious issues surrounding us, but there's a lot more to life and we can share this with you.

Everyone in Australia could benefit from such a media service which would give a more truthful and positive view about ourselves as Indigenous Australians. The possibilities for our future development are endless but we can't do it without community and government support. After all we are an essential service and we see ourselves as providers of a service for all Australians. A service that reflects the cultural diversity of this country. With this, a greater understanding and awareness will evolve and a healthier Australia will emerge.

I will end with these words from a poem of Jack Davis'.

Let these two worlds combine,
Yours and mine.
The door between us is not locked,
Just ajar.

Dot West is Chairperson of NIMAA, Training and Broadcasting Co-ordinator for the Broome Aboriginal Media Association, and presents a weekly program on Radio Goolarri in Broome.

The innocent dissemination defence in defamation

Paul Svilans reviews a recent decision on the defence of innocent dissemination in defamation proceedings and its implications for broadcasters

In a recent decision by Gallop J in the ACT Supreme Court, *Thompson -v- Australian Capital Television and Ors*, the availability of the defence of innocent dissemination in defamation proceedings has been extended to include broadcasters taking material by relay.

The Proceedings

The proceedings arose out of the broadcast of *"The Today Show"* in February 1994 in the Australian Capital Territory by Australian Capital Television ("Capital TV"). The programme contained a segment in which a woman made allegations that her father (being the Plaintiff) had an incestuous relationship with her while she was a child. Those allegations were false.

The Plaintiff first instituted defamation proceedings against Channel Nine, Sydney in the Supreme Court of NSW. Channel Nine was responsible for broadcasting the matter in Sydney, which was taken on relay by Capital TV. The proceedings against Channel Nine were subsequently settled by Deed of Release in which Channel Nine agreed to pay the Plaintiff the sum of $50,000 damages.

The Plaintiff thereafter instituted additional defamation proceedings, this time against Capital TV over the publication of the same broadcast in the Australian Capital Territory. The imputations relied upon by the Plaintiff were that the Plaintiff was guilty of incest with his daughter of seven years of age and thereafter, and that the Plaintiff had