Australian preschool programs, children's drama, adult drama, and documentaries.

In its review the ABA came to the conclusion that there was a real legal impediment to the recognition of New Zealand persons and programs in the standard. The definition of 'Australian program', for the purposes of the Australian Content Standard, does not include programming produced by New Zealanders.

Project Blue Sky Inc., representing the New Zealand film and television production industry, took the view that the ABA's standard contravened Australia's treaty obligations under the CER Agreement by not according national treatment to New Zealand programs.

In his ruling of 2 August 1996, Justice Davies indicated the ABA cannot include New Zealand persons or programs as Australian for the purpose of the Australian Content Standard. His Honour said it was, however, otherwise open to the ABA to determine a standard which is consistent with the Protocol on Trade in Services (the Protocol) of the Australia New Zealand Closer Economic Relations Ñ Trade Agreement (CER Agreement). In its notice of appeal the ABA sought a review of that ruling.

The ABA's appeal was heard before the Full Court of the Federal Court in Canberra on Friday 1 November.

Cathy Bishop is a Senior Lawyer with the Australian Broadcasting Authority, and had carriage of the Project Blue Sky litigation on the ABA's behalf. Lesley Osborne is Manager, Standards, ABA. Standards is the area of the ABA responsible for Australian content regulation on free to air and pay television. The views expressed are those of the authors, not of the ABA.

Copyright Review

A Note On The Formation Of An Inter-departmental Committee To Deal With The Issues Of Collecting Societies

The report by Professor Shane Simpson for the Commonwealth government on the collective administration of intellectual property rights in Australia has prompted formation of an IDC, headed by the Department of Communications and the ARts, and including Treasury, Attorney-General's Department and ACCC representatives. The ACCC is dealing separately with APRA's applications for authorisation and notification in relation to its standing arrangements for the acquisition and licensing of the performing rights in its music repertoire, for distribution of funds to members and with overseas collecting societies.

The ACCC's draft determination contains proposals that authorisation be granted for a period of 4 years for the "input and output arrangements" excluding live public performance rights "provided that APRA sets up an independent appeal mechanism for users". With respect to live public performance and broadcast rights, the ACCC proposed in its October 1996 draft determination that authorisation not be granted unless and until a range of issues can be resolved to the satisfaction of the Commission. The issues identified relate to assignment of rights in all works present and future, opting out provisions, and membership withdrawal notice being reduced from three years to six months. These matters have all been subject to criticism from parties opposing APRA's applications.

Against this background, a roundtable on the Simpson report was held in Canberra in December 1996, involving IDC participants and a broadly based group of copyright users, drawn from broadcasting, small business, book and other print publishers, academia, librarians and others. An opening presentation from Mr Peter Drahos (Law Faculty, ANU) commented on price and access as core issues, with access or permission formulated under three model approaches: negotiation, statutory and compulsory licensing.

Mr Drahos indicated some preference for statutory licensing. The Simpson Report had recommended statutory rights for educational institutions to reproduce artistic works but not for multi-media exploitation (Recommendations 15 and 16). Mr Drahos suggested that reform areas included the reduction in the number of collecting societies and the ned for a stronger Copyright Tribunal and more guidance on conduct. References to "webs of control" were taken up by other participants with a discussion on the merits of a Copyright Ombudsman being created - one of the 106 recommendations of the Simpson Report.

The meeting demonstrated that there was dissatisfaction with the current role and performance of collecting societies. The Simpson report identifies several areas for management reform, including development of IT operations, election procedures, sampling and budgeting. Commenting specifically on the role of the ACCC, Profession Simpson recommended that it be consulted so that "guidelines be drawn up and approval mechanisms instituted, by which those collecting societies which can demonstrate that their structures, procedures, functions and conduct is within those guidelines, are accorded the status of Qualified Societies"which can retain the protection of s 51(3) of the Trade Practices Act 1974.

Broadcasting industry representatives were critical of the Simpson report recommendations that "undistributable funds" be allocated to cultural purposes. It was stated that any funds not distributed evidenced over collection and should be rebated to users. Other criticisms of collecting societies related to non-payment or underpayment to certain copyright owners. The complaint from small business users was that the collecting societies were over-zealous in their fee raising efforts, were self-interested and some at least were inefficient (in line with the Simpson Report observations and recommendation that one organisation should "make an effort to reduce administrative costs to 30% of revenue").

The recommendation which potentially carries the most far-reaching implications for the role, function and existence of collecting societies is that "as a matter of urgency, further study be made of the impact of new technologies on copyright collecting societies and potential new methods of collection." It remains to be seen precisely how this recommendation will be implemented.