

## Broadcasters argue for new intellectual property rights

Mr John Corker, ABA Manager Legal, reports on the symposium: **Broadcasting, New Communications Technologies and Intellectual Property** held in Manila, the Philippines, April 1997. The World Intellectual Property Organization (WIPO) is an intergovernmental organisation with headquarters in Switzerland. One of 16 specialised agencies of the United Nations, it is responsible for promoting the protection of intellectual property and administering multilateral treaties dealing with the legal and administrative aspects of intellectual property.

The symposium was convened to explore the need to update the intellectual property rights of broadcasters. The main international treaty that deals with broadcasters rights is the Rome convention of 1961. Authors, performers and producers have had their rights updated in two new treaties, entered into in December 1996.

There were 260 participants from more than fifty countries, representing governments, broadcasters, collection societies and Internet service providers. John Corker, ABA and Stephen Fox, Attorney-General's Department represented the Australian Government. Other Australian representatives were Joanne Court from the Federation of Australian Commercial Television Stations, Scott Morris from Australian Performing Rights Association and Michael Green from the Audio-Visual Copyright Society Ltd.

### **The broadcaster's case**

Broadcasters are seeking neighbouring rights rather than new copyrights. A neighbouring right is akin to a copyright in that the basic rights granted pursuant to the right (such as the right of reproduction or rebroadcasting) are the same. The neighbouring right is an economic right vested in the outcome of the broadcaster's activity (the broadcast) whilst a copyright requires an original creation of mind, a literary or artistic work in the broad sense of the term.

Broadcasters want to move towards a new treaty because of the following issues:

- piracy of their signal;
- there is no control over re-broadcast by cable;
- there is no right for broadcasters to authorise or prohibit private recording of their broadcasts;
- the ephemeral right in the Rome treaty is outmoded;

- satellite transmissions are not adequately protected; and
- illicit decoding.

European broadcasters developed a 'wish list' — see box.

### **Government positions**

Government positions varied but on the whole were less enthusiastic than broadcasters about the need for a new treaty. They now have until the end of this year to consider their position and convey it to WIPO.


### **Digital transmissions and the Internet**

The symposium also discussed digital transmissions and broadcasters putting their signals on the Internet some views were:

- it is conceivable that digital and analog will be different rights to be acquired;
- what is a 'reproduction' in a digital environment remains contentious;
- digital may allow rights management databases on the net to do what 'collective societies' now do; and
- Internet service provider representatives expressed concern about the language of the new treaties.

### **Where to from here?**

In his summary, Mr Mihaly Ficsor, Assistant Director General WIPO, stated that Latin America, Asia and Africa requested that a committee of experts be convened, to start developing a new treaty. This decision will be made in January 1998. Governments who want action should make their proposals to the International Bureau of WIPO.

Australia's Attorney General's Department is considering the issue, and is likely to convey Australia's position later this year. 

The European Broadcasting Union's 'wish list' of new rights for broadcasters:

1. The right to authorise or prohibit:
  - (a) the rebroadcasting of their broadcasts (rebroadcasting should include both simultaneous and deferred broadcasting and 'broadcast' should include satellite broadcasting.
  - (b) the cable distribution of their broadcasts, both simultaneous and deferred
  - (c) the making available to the public of fixations of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them
  - (d) the communication to the public of their broadcasts, whether or not the communication is to a paying audience or is made in places accessible to the public against payment of an entrance fee
  - (e) any fixation of their broadcasts for other than private purposes, and any reproduction or distribution of such a fixation
  - (f) any reproduction or distribution of legally made fixations, other than for private purposes
  - (g) the making of any still photograph of a television broadcast for other than private purposes, and any reproduction or distribution of such a photograph.
  - (h) distribution to the public, by any broadcaster, cable distributor or other distributor, of their own program-carrying signals transported by communications satellite, or of such signals intended for them.
2. The right to receive equitable remuneration in respect of private recording of their broadcasts (levy on recording equipment and/or blank tapes)
3. Protection against importation and distribution of fixations or the reproduction of such fixations made without authorisation in a country which grants no protection to broadcasting organisations.
4. Penal or administrative sanctions against the unauthorised manufacture and distribution of decoders for encrypted broadcasts.