

“RADIO - DELIVERING THE DIGITAL FUTURE”

Major Legal Challenges

From The New World of Broadband Services

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1. This presentation makes the assumption that copyright is a mode of cultural remuneration that is appropriate for the 21st Century.
2. It also uses music as a metaphor to discuss the impact of the broadband revolution on rights owners who are and will always be, vital to the provision of content.
3. The fast and extensive roll-out of fibre-optic cable creates a new and reasonable expectation as to which delivery mode(s) will be dominant: Disks and tapes will no longer be the primary sound carrier. They will be used when camping and fishing but rarely in the home. Broadband services will provide a more efficient and cost effective mechanism, one that will also permit listeners a virtually unlimited choice of material. (Having fought the television companies for pay-for-play in respect of music videos, the music companies will be faced with the problem of adapting fast to the ultimate pay-for-play system.)
4. This means that the present sources of income for copyright creators will wither. Composers and publishers will no longer be able to rely on the payment of mechanical royalties, recording artists and their companies will not be able to rely on the income based on the sale of records. Each of the participants will primarily rely on a division of the income derived from some species of transmission right (however that may be named and defined.) Mechanical income and record royalties will have about the same significance as sheet music royalties have in a music publishing deal: just further examples of technology changing what used to be a dominant delivery mode (and thus a dominant income stream) into a secondary one.
5. The greatest challenge is going to be faced by the record companies. They are going to have to completely redefine the way that they do business. They may well become production houses. Their present pressing and distribution functions will virtually disappear.
6. Their promotion staff are going to be focussing, not on how to sell records, but on how to persuade the public to select their artists' product from the extensive menu of choice.
7. As for the Internet, one of the major determinants of the record companies' commercial success will be their ability to attract Net surfers to their company's Home Page and to its own pay-for-play services.

8. As a result, what we may see is something that will give the Trade Practices Commission food for thought: a coalition of the record companies offering their own, joint-ventured broadband services. Just as the record companies now control the principal mode of non-broadcast music delivery, it is more than merely foreseeable that they will seek to control the new dominant delivery mode.
9. As far as narrow-band services are concerned, there is no reason to suspect that the present system of blanket licensing will greatly change. The present sophisticated system of remunerating rights owners for performance by public broadcast will perhaps change in detail but not in substance. It works effectively now: the main argument will continue to be about "how much" rather than whether such payments should be made at all.
10. In all of this, the income collection mechanism is going to be all-important. Reasons of efficiency and equity demand that collective administration of copyright will be essential. The role of the copyright collecting societies will become even more important than they are today.
11. The Societies themselves are going to have to be at the forefront of IT research, development and implementation. They are going to be responsible for the design, administration and supervision of the process by which uses are identified, royalties are collected, rights owners are identified and remunerated. No individual rights owners will have the resources to effectively administer their own rights.
12. The digital age may be one in which everyone has the ability to be a content provider but only those who administer their rights collectively will be able to maximise their commercial benefit. This is one of the great ironies of the Digital Revolution: The mechanisms of freedom of expression will be anarchic, but the income mechanisms will be largely collectivised.
13. If the music companies were successful in creating their own broadband services these would have a marked effect on the present music programming offered by radio. They would be in direct competition. Presently, only the ABC has the advantage of a radio and television network and ownership of a record, music publishing and merchandising business. It is not inconceivable that it will one day have competition from the Polygram Radio Network, the MCA network, Sony Radio, Warner Media and so on.
14. That said, few of the music companies want to be broadcasters. More likely, they will enter joint ventures with existing radio networks so that each cross-promotes the delivery of services of the other or, through conventional advertising, will use existing radio companies as a tool for attracting the public to their broadband services.
15. Moving from a technological environment which forces us to administer a limited (and thus valuable) resource, to one in which the task is the management of an infinite resource, demands a re-analysis of the Broadcast licence system, cross-media rules, Trade Practices regulation and indeed, copyright itself. It is not to say that these are concepts that will be irrelevant in the future, merely that they must be rethought to deal with our cultural, economic and technological future - a future that is already becoming our present.

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