

LEGAL EYE

by Michael Bergman

The past meets the future

The three e's are in jeopardy! The law cannot come to grips with the new technological means of exploitation and exhibition and protect the exclusivity of the audio-visual media generally known as TV and motion pictures.

Whether it be satellite dishes, video cassettes, floppy discs, bytes, beams or particles, the new technology has in large measure shifted the control of the audio-visual medium to the consumer. With the right equipment, today's consumer can tap into most distribution networks and appropriate and duplicate the images for himself. Gone is the old simplicity where the distributor determined the consumer's access by the limited number of television channels within the reach of the television set and by the fleeting image on the

picture tube or the movie screen to be viewed at determined times.

This shift in mastery is thwarting proprietary and regulatory protection. It raises important legal policy approaches which will seriously affect the financial utility of new technology for those producing films and TV programming. To what extent should the viewer in the privacy of his home, using his VCR, tape any material he likes without anyone's permission, to view when he likes? Why shouldn't he be able to watch the result of any flow of electronic particles reaching his dish without restriction?

Current legislation on copyright, that branch of the law which protects ownership of film and television shows, comes to us directly from the 19th century. The media or the

presentation of ideas which it tries to protect are either written or static; the novel, the written play, the sheet of music, the painted or sculpted image. Although long recognized as being outdated, no major revision has really been attempted.

The advent of motion pictures and television in their traditional and conventional format provoked some minor amendment and judicial interpretation to bring them within the statute scope. Nevertheless, Parliament has hesitated to proceed further. This hesitation, while no doubt representing the public's "anxiety" over a seemingly obscure and boring issue, is really a result of increasing modern flexibility of use of the media of conveyance of copyrightable material. Furthermore, the constant creation of new technology requires continual legislative updating to bring new inventions within statutory control. Computer software is nowhere mentioned in the current Copyright Act. Theft of computer programs by tapping into memory banks is a phenomenon difficult to de-

tect, the prosecution of which is only beginning with uncertain outcome.

Yet there is an urgency for legislative reform. The protection of the proprietary interest of those creating film and TV programs is not only the recognition of private ownership, it is the assurance of continued output. Protection of proprietary interests makes for comfort in exploring the possible uses of new media and new technologies. The producer, safe in the assurance that his investment is protected, should be impelled to search for new ways to make technology more financially rewarding and obtain the maximum exploitative use of his product.

The law is thus to some extent holding back the boundless possibilities of technological advance in this area. This can be evidenced in many ways. Today's producer is still making programs for first use by conventional modes, the theatre and television whether "free" or "pay." Video cassettes, although a very important market, are not yet the first means of exploitation. This has much to do not only with marketing and media management but with pirating, unauthorized use and difficulties of legal control.

Of particular difficulty is the internationalization of media

use by satellite transmission. The reception of satellite transmission by dishes effectively defies international frontiers. The recipients in some countries can effectively pick off foreign transmission on foreign-owned satellites. Much as the several international treaties on copyright legislation extend national copyright protection to foreign jurisdictions, it seems that further treaties will be necessary to extend copyright protection to satellite transmission and other forms of effectively special atmospheric transmissions.

Satellite transmissions and dishes in particular pose the greatest difficulty for legal regulation and regulatory bodies. Effectively the notion of direct reception of atmospheric transmissions by the viewer amounts to a deregulation of television. It thwarts the policy aims of regulatory agencies like the Canadian Radio-television and Telecommunications Commission (CRTC) to direct the extent of Canadian cultural content, and concentration of television facilities in a given locale.

Solving the problem of regulating the new technology is a difficult task. Of course there is a need to develop technological security devices which prevent unauthorized tapping into satellites' systems.

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Much greater difficulty presents itself in the more philosophic concepts of media use and information access. Is there and should there be a way to licence direct viewer reception of international signals? This is, to some extent, already the case in free TV where the viewer may watch anything his rabbit ears may pick up. The problem now concerns the breadth and depth of what the viewer may see.

Perhaps the greatest difficulty, though, is the orientation of current Canadian regulatory systems. Free television systems have for a long time remained inert since it was at an

early stage regulated so that its fundamental transmission systems affect only the viewers of essentially defined geographic areas. The encroachment on this limited viewing range has until recently been primarily eroded by the use of cable. The regulation of new modes of transmission have been primarily defined by wire. Witness the Canadian pay-TV system – really a glorified cable TV network – as the logical extension of the development of the cable concept: the development of an antique technology. In Canada we have developed an elaborate and extensive cable network which will no

doubt last for quite some time, and entrenched interests, costs and the difficulties of reorienting existing systems and applying new technologies will assure this. Yet there is no doubt that an immediate inquiry is necessary to determine and guide the use of new technology in the film and television medium.

This is both a legislative and administrative problem. It is legislative in the sense that the law must provide for opportunities to explore and discover the application of new technology to the television medium and its distribution system. The need for amend-

ments to the Criminal Code and other legislation to prevent piracy both of video cassettes and other transmissions is of immediate necessity. The kinds of transmissions the consumer using new technology may draw directly into his home must be determined. To what extent do problems of obscenity concern the viewer in his private confines? All these are matters currently being approached with much hesitancy and uncertainty.

We should be apprehensive about future regulatory intervention into new technology. The experience of pay-TV is illustrative. This system as

originally sanctioned was poorly conceived and awarded without much foresight as to its possible uses, development and viability. While this is not purely the fault of the CRTc (the licensees themselves were poorly organized and by and large had no business or market strategy), it bodes for concern for the future development of a kind of unified information system where the computer is at the same time a memory bank, television set, satellite receiver, home shopping-centre and whatever else.

It is imperative that the film and television community act to advocate and lobby for changes in the law to anticipate and protect the application of new technology to systems of exhibition, exploitation and protect of exclusivity of product. For Canada, legal enactments take on a new importance in this area. Technological advancement is one of the key means for the Canadian film and television community to get a step ahead of work and, in particular, American competitors. Rapid technological advance has surgically removed much of the influence of the accumulated might of our American counterpart. Today, if only the muted might of our American counterparts. Today, if only the Canadian film and television community would innovatively harness its application, excellence, enterprise and energy can become the code words for the future of technologically advanced Canadian entertainment systems.



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UNESCO to sponsor World Fest category

MONTREAL – Sponsored by UNESCO, a seventh category featuring the film work of young directors under the age of 30 has been added to the six existing categories of the Montreal World Film Festival.

Making the announcement Nov. 15, WFF director Serge Losique said: "The World Film Festival is proud that an important international organization such as UNESCO will sponsor the new category and thus support the advancement of new talent."

All films selected in the new Young Filmmakers section must be in 16mm or 35mm, must have been produced in the 12 months prior to Aug. 22, 1985, cannot have been released theatrically nor have participated in any other Canadian film festival, must be in its original version and subtitled in French or English.

The new category will debut during the International Year of Youth for the ninth edition of the WFF to be held in Montreal from Aug. 22-Sept. 2.

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