

"Arts Law - The Kirby View"

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turning are easy to come by. To the contrary, the sheer difficulty of achieving success in this area is itself indicative of the need for a united and efficient response. Unless publishers are prepared to do something serious about subsidiary rights, then one would have to advise writers in all instances not to give away rights

to publishers which are unable to exploit those rights.

The need for co-ordinating the marketing of artistic rights of all kinds demands careful consideration and planning. In the case of literary rights in particular, the mutual challenge is there for publishers and writers alike.

ESTABLISHMENT OF A COPYRIGHT COLLECTING AGENCY FOR VISUAL ARTISTS: VISCOPY

ARTS LAW—THE KIRBY VIEW

Speaking at the tenth anniversary celebrations for the Arts Law Centre of Australia, the President of the Court of Appeal of the Supreme Court of New South Wales, Justice Michael Kirby, lauded the Arts Law Centre of Australia for its work in dealing with some of the more practical kinds of arts law problems.

Justice Kirby noted the constructive role played by the Arts Law Centre in helping to resolve a dispute between the Federal Department of Health and the copyright owners in the "Phantom" character. The Department of Health had used a Phantom-like figure called "condo-man" with the words "Play it Safe" in posters for AIDS education in Northern Australia. The owners of copyright in the Phantom artistic work in New York threatened to sue for the use of the Phantom image without permission. The Arts Law Centre succeeded in containing the combatants. Justice Kirby also spoke of the constructive role of the Arts Law Centre played in liaising with the Tax Office in relation to changes to sales tax exemptions applying to works of art, to include computer equipment used by an artist to produce computer-generated art works.

Justice Kirby also spoke of his concern about the assumption of the "Blinky Bill" character in advertising for the Republican movement. He likened the problems inherent in this kind of usage of popular artistic images to supporters of the constitutional monarchy taking over the "Magic Pudding" image, which he said would be entirely appropriate as the Australian Constitution is "a sort of pudding and magically it generally works well enough". He also envisaged the Labor Party taking control of Snugglepot and Cuddlepie, while the Liberals might declare the Prime Minister as the Big Bad Banksia Man, and the Nationals might reach back into the Grimm's Fairy Tales, or perhaps Snow White or Skippy the Kangaroo. In the view of Justice Kirby: "Art is above politics. Planting subliminal messages in children's characters should be left to advertising toys, soapsuds or breakfast cereals."

In addressing his concerns about this matter, Justice Kirby noted that the protection of the works of Australian artists would not be complete without the introduction of moral rights.

For many years, the lack of a copyright agency in the visual arts has been an issue of concern. As individuals, most visual artists do not have the ability or the time to find out if their work is being reproduced without their consent. Even if an artist knows that unauthorised reproductions of his or her work are being sold, it is usually not cost effective to take legal action as an individual to remedy the situation.

Visual arts collecting societies operate in many overseas countries, and their basic work is to collect and distribute fees for various uses of copyright material, such as reproduction, broadcasting, etc. At present the lack of such an agency working on behalf of visual artists on a collective basis means that it is virtually impossible for an Australian individual artist to gain any benefit from their copyright rights. This in turn means that effectively there is no copyright market in the visual arts in Australia at present. Australian individual visual artists forgo income as well as the opportunity for entering into proper contracts. Upon the establishment of an Australian Agency, Australian visual artists' rights would be protected internationally via the CIAGP group of visual artists' copyright collection agencies.

With the advent of blanket licences for areas such as photocopying, broadcasting, and home taping, only