

submit the application to the Tribunal and the BCNZ had decided to make no submission or jurisdiction.

If the Instant Music Service was being provided only to enclosed premises to which members of the public or a section of the public did not have access, it could be argued that the service did not constitute broadcasting. However, some of the places supplied with the service appeared to be those to which members of the public have access and they would therefore receive the service.

On the other hand it can also be argued that "... intended to be received by the public..." in the definition (a) of broadcasting contemplates the programme being received by members of the public through their radio receivers, not by the applicant's supplied receiving sets from which the music is diffused to members of the public within the building served.

The Tribunal observes that it may not necessarily be appropriate that the Broadcasting Tribunal should deal with such applications. That is a matter for communications policy. However, under the Act it appears that the jurisdiction is at present with the Tribunal and it has to consider the issues involved without the benefit of any statement of Government policy.

In doing so, it does have regard to the particular circumstances of the applicant and Instant Music Ltd., the unavailability of any alternative distribution system of sufficiently high calibre, the willingness to pay a royalty, and the wish to be able to compete with delivery methods referred to in the evidence.

The Tribunal is satisfied that the proposed service does not have any effect on any other broadcast service. We are satisfied that the applicant will carry on the service satisfactorily and has the financial and commercial ability to do so.

The Tribunal would impose conditions that—

- (a) the service be encrypted if required by the Tribunal;
- (b) the applicant give an undertaking to pay levies in accordance with the regulations on the basis of revenue rather than on the basis of advertising revenue;
- (c) the feasibility of alternative distribution systems be reviewed before the expiry of each term of the warrant;
- (d) the initial term of the warrant be three years;
- (e) the warrant holder undertake to surrender the warrant if an alternative distribution method is economic and it is in the best utilisation of frequencies that the warrant be so surrendered.

The Tribunal can only at this stage give an indication of the basis on which it would grant the application.

This decision is therefore only an interim decision and a formal grant cannot be considered until certification of the application. The Tribunal is prepared to consider any submissions as to the conditions to be imposed.

Co-opted Member

The co-opted member of the Tribunal took part in the deliberations of the Tribunal, but the decision, in accordance with the Act, is that of the permanent members.

Signed for the Tribunal:

B. H. SLANE, Chairman.
go8815

Criminal Justice Act 1985

Confiscation of Motor Vehicle

Pursuant to section 84 (2) of the Criminal Justice Act 1985, an order was made in the Napier District Court on 26 July 1988, against Michael John Hardie for the confiscation of the following motor vehicle:

Chevrolet Bel Air Registration Number CS 1665.

B. P. MUDGWAY, Deputy Registrar.
go8668

Indecent Publications Act 1963

Decision No. 18/88

Reference No.: IND 25/87

In the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publications: *Razzle*, Volume 1, Nos. 2, 4, 5, 6, 7, Published by Risk Records Ltd., UK; *Derriere*, Volume 1, No. 2, Published by Stop Press Ltd., UK; *Martinet*, Volume 1, No. 7, Published by London Life Magazine, UK:

Before the Indecent Publications Tribunal

Chairman: Judge R. R. Kearney.

Members: R. Barrington, A. J. Graham, K. Hulme, and S. C. Middleton.

Hearing at Wellington on the 11th day of April 1988.

Appearances: Mr Wotherspoon on behalf of the Comptroller of Customs; No appearance by or on behalf of importer.

Decision

These publications are part of a commercial shipment imported at Hamilton in July 1987. The magazines were seized by the Collector of Customs, Hamilton and because the importer has disputed forfeiture, they were referred to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Razzle

This is a very cheaply produced British publication that retails for approximately NZ\$1.50 in the United Kingdom. It is a magazine on almost newspaper quality paper and includes a considerable number of photographic sequences of nude or semi-nude female models, advertisements of sexual aids and persons for contact for sexual activity and the usual collection of stories, jokes and readers' letters and accounts, all of which are directed towards sexual activity of one kind or another.

The Tribunal has previously found an earlier edition of this publication as indecent in the hands of persons under the age of 18 years—Decision No. 13/86 of 13 November 1986.

The Tribunal is satisfied that this publication would be injurious to younger readers and classifies each of these editions as indecent in the hands of persons under the age of 18 years.

The Tribunal has seen sufficient copies of this particular publication to reach a conclusion that the format is almost identical from issue to issue and, after discussing the matter with Mr Wotherspoon during the hearing, the Tribunal confirms that this publication will now be the subject of a serial order in terms of section 15A of the Indecent Publications Act 1963.

Derriere, Martinet

These publications deal with the topic of sexual gratification from corporal punishment. In both text and photographs they feature young females being spanked and caned, either by males or other females.

The Tribunal has expressed its concern on many occasions about magazines depicting violence towards young females. In Decision No. 12/86 of November 1986, the Tribunal found the publication *Victorian Erotica*, Volume 1, No. 1, Spanking Special, to be unconditionally indecent and we deem it important that we once again restate that which was set out in that decision as the reason for the unconditional indecent classification.

Any publications containing significant elements of violence