

four year old insists that I help him play the computer - "Daddy, what do I type now? Can you do the moving?" - two of us squashed on a single chair. I will offer a reward here and now for the first computer manufacturer to make a machine with two keyboards.

"But", I hear you thinking. "People don't want to come home after a hard day at work and have to solve problems in a computer game." Not true. After a hard day at work, there's probably nothing more satisfying than picking up a gigantic gun and blasting several hundred mutant cacodemons into Bolognese sauce. Yet the idea persists that people just want to relax - that they just want to sit and be entertained.

Let's be clear about this. People want to sit and be entertained by television and videos because that's what a hundred years of cinema and television has trained them to do. A century ago the idea of a whole family sitting on a couch staring at a box for several hours every night was inconceivable. There were parlour games, musical instruments, painting, drawing, carving, cooking, sewing, weaving, home renovation, sports. But 20th century technology and the economics behind that technology created the century of watchers. Sports, home renovation, travel and family interaction are now things to watch on TV rather than things to actually do.

Now a new technology is creating a new generation of actors rather than watchers. Simulated action it may be but at least it is

some form of action. Twenty years from now people will be amazed that passive entertainment was ever so popular.

### Stepping into the screen

Let's look at some of the prospects for future entertainment. First, we can assume that, as with cinema, the audiovisual quality will improve. Screens will become huge and fine grained. They will become more immersive either by being worn as helmets or by becoming so wide as to give an impression of a total surround screen. Audio will become fully directional. Games will get bigger, longer and more realistic. There will be characters that you speak to, listen to you and interact like real people. There will be exotic locations, amazing special effects. In other words it will be like movies are today except that you will be IN the movie.

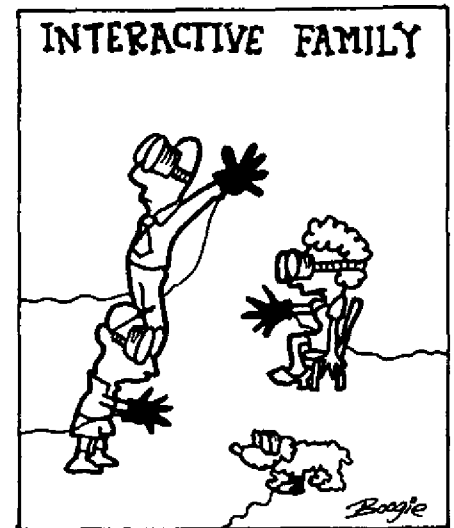
When Steven Spielberg, or his equivalent, makes Jurassic Park II, you will not sit in a cinema watching a T-Rex chase people in a car - you will be wearing a Virtual Reality helmet, and the T-Rex will be behind you, and getting closer. It is Purple Rose of Cairo in reverse - the audience steps up into the screen. It is Alice passing through the Looking Glass.

Not only this, but several people will be able to share the same experience. You can already play Doom on a network. This means you see other soldiers in the labyrinth who are actually other players playing the same game at the same time.

You have the choice of co-operating with these other players, or treating them as the enemy.

But, again, as with cinema, the appeal of this medium will not lie with technical sophistication. The cinema captured the public imagination when it stopped showing trains pulling out of stations and started dealing with the eternal themes of life: love and death, tragedy and comedy. When a new generation of multimedia artists learn how to deal with these themes in this unbelievably powerful medium it will become the art form for the next century.

*Ian McFadyen, Media Arts Television Pty Ltd*



## Converging Cultures

**Jock Given expounds - what's going to happen as royalty-based industries converge with fee-based industries and everyone wants to acquire and publish everything?**

In simpler times, publishers produced books, record companies made records and filmmakers made films.

These days, some publishers, some record companies and some filmmakers, along with some computer software and games companies, are developing the same products - for the most part, CD ROM.

It's a convergence of product lines that is requiring established businesses to acquire new skills and new business practices.

### overlaps in the past

Not that the idea of overlaps in the products of different media is itself new. Books have always been turned into films, films have

spawned soundtrack albums and merchandise or been turned into books, and stars from all media have been the subjects of biographies.

The producers of the "original" products have always tried to ensure at least that they are rewarded from the success of any such spin-offs. They have often also tried to control spin-offs, so that subsequent exploitation can be managed as part of an overall strategy for the "concept".

For the film and music industries, this has not been a matter of controlling the "cream" - "nice-to-have" revenues on top of their primary business. They've seen the whole nature of their business change, many times. If they hadn't worked out how to control the new revenue streams, they wouldn't be around.

Recording and broadcasting provided new revenue streams not previously available to musicians whose only form of

remuneration was the sale of tickets to public performances. These "new" forms of exploitation now typically earn far more money for the creators than live performance. Television and subsequently video provided new revenue streams to distributors and filmmakers whose primary form of remuneration had been the sale of cinema tickets. Cinema release now often returns very little to the primary creators. It's often as much a marketing platform to give a title profile in the TV and video markets where it has to earn the real money.

For publishers, this is newer terrain. The types of books may have changed (paperbacks as well as hardbacks) and the ways of selling books may have diversified (book clubs, department stores, supermarkets as well as traditional bookstores and libraries) but the core of the business has still been books. Although CD-

ROM is "book-like" in so much as it is a physical item which is exchanged for price, electronically delivered information or books printed on demand are a very different scene.

As the range of possible products which can result from the same "concept" (a book, a band, a movie) increases, the traditional tension between the commercial and creative interests of the primary creator and those of the organisation which invests the time and money to turn the creator's ideas into saleable products, is heightened.

It becomes more important for the producer/publisher to control all the possible forms of commercial exploitation because no-one can be quite sure what the most important revenue streams will be for a particular title in the distant future.

But creators become less prepared to relinquish the rights that might be used to adapt their work to a wider range of forms. Commercially, they're not sure of the value of the rights they're selling. Creatively, they're not sure what they might find their ideas being turned into.

Several key aspects of the relationship between the creators and the producers/publishers are being affected - what is being acquired, who is acquiring it and how the creator is to be remunerated for its commercial exploitation.

### what is being acquired and what can be done with it?

**A**s anyone will tell you, there's no such thing as a standard deal.

Still, there are standards about what is being dealt with. Publication rights, translation rights, theatrical rights, free-to-air broadcast rights, pay TV rights. The parties know what these terms mean and negotiate simply about the price.

Multimedia products are a different story. There are currently many different approaches to acquiring the rights necessary to produce and sell them. Publishers have long acquired "electronic publishing rights" or "electronic reproduction rights". Some people are trying to acquire "multimedia rights", others "interactive rights" or "digital rights".

It's all complicated by the fact that people from different industries - publishing, music, film, television - are trying to acquire these same rights so they can do the same sorts of things with them.

David Noakes, Investment Manager responsible for documentaries at the Film Finance Corporation says there is "a lot of confusion about it". He thinks there are three kinds of uses of film and television program footage which are being

contemplated for multimedia product. They provide a useful model for other "primary product" like books and recorded music:

- "Stock footage" deals where someone wants to acquire small bits of footage from a film or TV program. "The fact that the proposed use might be interactive is irrelevant. Its no different from existing stock footage deals. You sort out the media and the territories and you do a deal," says Noakes.
- Deals where "some of the narrative structures of the film are being used as the basis for, say, a CD-ROM". That is, more substantial segments of the film are being intercut within the CD-ROM. "We are approaching these project-by-project," says Noakes. "We're not prepared at this stage to settle on a standard deal for "interactive rights".
- Deals where the bulk of the CD-ROM is made up of the film - "the CD-ROM of the film". This becomes "a significant use of the copyright in the film which is capable of affecting the distribution of the film. It's more like an ancillary use of the film. We don't mind someone acquiring these rights, so long as they're not bundling them up under the same fee or royalty".

### who is acquiring them?

**R**obert Sessions, Publishing Director at Penguin Books Australia, says publishers have tended to "acquire widely and publish narrowly ... We've always acquired, for example, electronic and photocopying rights, anthology and quotation rights, digest rights and second and subsequent serial rights. But we've tended to 'sub-contract', for example, film rights to filmmakers. Any self-respecting agent or author asks 'What is best for this product?' They have got to believe we can exploit the rights we acquire".

Agent Rick Raftos says "We would always argue that filmmakers make films and book publishers publish books". But most publishers "will end up with some control of the film adaptation rights", or at least a share (10-20% is common) of any payment for such rights. This acknowledges that the publisher's investment in the production and marketing of the book has contributed to the value of the film rights. "It all depends on who is doing what. The publisher obviously deserves remuneration if they actually do the selling of the film rights to producers". A reversion of rights if the licensee/assignee has not exercised them within a certain period is also common.

As companies consolidate, single organisations acquire the capacity to publish books and records, make films, interactive multimedia product and everything else. There is greater pressure

to acquire from the creator all the rights which might be necessary to permit the exploitation of an idea in all its forms. Producer/publishers are less likely to be satisfied with just a share of returns from other forms of exploitation and more likely to want to control that exploitation themselves.

After all, it's precisely those synergies which were supposed to have justified the corporate consolidation in the first place.

### how is payment calculated?

**T**he central issue is choosing fees or payments which reflect use.

Fees mean one-off payments regardless of the actual sales or use of the product. Payments which reflect use mean rights holders are rewarded according to the commercial success of their products. Because everyone expects to be a success, they all want some kind of payment which reflects use, although the cautious know the value of fees.

The two approaches are not mutually exclusive. Publishers' contracts will often include an advance against royalties. If the actual royalties calculated don't exceed the advance already paid, the deal becomes, effectively, a fee. In rare cases (superstar authors), only part of the advance may be recoupable by the publisher out of royalties.

In general, publishing is a royalties/advances industry. Authors generally contract for a percentage of the recommended retail price (RRP) of copies sold. This is a "gross receipts" concept. The costs of publication and marketing are met by the publisher and are rarely part of the deal with the author. The percentage of RRP is likely to increase beyond certain thresholds of copies sold ('rising royalties').

Music is also primarily a royalties/advances industry, except that record companies generally don't pay royalties until their costs (recording, marketing, promotion, film clips etc.) have been recovered. This is a "net receipts" concept. The percentage royalty will vary depending on whether it is based on retail ('published price to dealer') or wholesale ('wholesale dealer price') price.

By comparison, film is a much more fee-based industry. Screenwriters, directors, performers and others are generally paid a flat fee for their work, although the fee is set to reflect the rights being acquired. For example, in Australia, performers' awards require basic rates to be increased by certain multiples depending on the territories where the product is to be screened. "Residuals" are payable in some circumstances to creative participants where the product is exploited beyond the uses agreed in the original contract.

However most writers, directors performers and others are unlikely to be

directly affected financially by the success or failure of their product in the marketplace, as authors and musicians are. This is especially the case in television, where television networks pay flat licence fees, sometimes complicated by facilities deals, for the final product. The success or failure of one product affects the "author's" next product, through higher/lower/no offers, more than the current one.

Senior creative personnel (director, lead cast, writer) are often able to negotiate "profit participation" (proportions of the producer's share of any net profits earned by the production). However, these rarely amount to any money in practice because so few productions go into profit. Revenues generally come back to the producer after everyone else's costs have been deducted. What on paper is a "fee-plus-profit share" deal usually amounts in practice to a straight fee.

### who gets their money out first

It's all a question of who gets their money out first. In publishing, the author typically gets their money out at the same time as everybody else - a share of the retail sale (although they won't actually receive it for some time). In music, the songwriter gets some money out first (APRA fees). Musicians generally have to wait until the record company gets its money out before they receive anything, but then they're paid according to sales of the product. In film, and television, the creators generally get something out at the start (fees), but the few who are entitled to anything else wait, usually in vain, until everyone else has recouped.

Convergence of products means convergence of these different business practices - convergence of the ways the producers/publishers of media products and services sell them and deal with, and pay, the creators.

Robert Sessions says "Multimedia, today, means CD-ROM and it's like a book. It's tangible, protectable and has a point of sale. Copyright can be identified, and a price paid for it. Once you move to on-line services - perhaps in a couple of years - everything changes".

"CD-ROM is a royalty-based structure of payments. We can't answer yet how on-line services will work out. It's likely that suppliers will have to make an up-front payment to get their information onto the system, and then earn on-going income based on usage".

### measuring use

Usage can be a complicated concept and it can cost a lot to measure it. Broadcast uses are much harder than point-of-sale products and services. Advertisers and broadcasters employ ratings to assess the use being

made of TV and radio advertising. They also need surveys of consumer behaviour and the extent to which it has been influenced by particular advertisements to see if they have actually been "used" in a way valuable to the advertiser.

Copyright collecting societies like the Australasian Performing Right Association (APRA - covering the public performance of musical works), the Audio Visual Copyright Society (AVCS - off-air taping by educational institutions) and Copyright Agency Limited (CAL - copying of printed materials) use sampling to assess use. It's simply too expensive to measure all the valuable transactions individually, but it means large sums of money depend on adequate survey methodologies.

Publishers of CD-ROM products are already confronting a particular aspect of this problem in relation to use of their products on networks. An organisation (a library or a law firm) which might have bought several copies of a paper publication buys one copy of a CD-ROM which is accessible from many terminals.

This is being handled, by some, through a kind of "honour system". Libraries are required to estimate the number of simultaneous users of a particular product and pay accordingly. The Law Book Company has set fees for its CD-ROM edition of *The Laws of Australia* which reflect the number of users of it.

"Initially," says Peter Mariani, Electronic Publishing Manager at the Law Book Company, "we were charging for electronic print based on the number of terminals which could access the product. But that meant we were over-charging. Large organisations might have hundreds of terminals which could access the product, but only six people were actually making regular use of it".

Peter Banki, Chair of the Australian Copyright Council and a member of the Copyright Convergence Group told a recent Phillips Fox seminar "It is hard to see how [adequate monitoring and payment] can be achieved without the intervention of copyright collecting societies, to create and maintain the necessary databases and develop the required systems. International electronic networks will make it virtually impossible for individual owners of copyright to manage their own rights successfully".

With the uses to which new kinds of product may be put still so unclear and the capacity to measure at least some of them still so limited, it's not surprising that people are approaching multimedia deals very cautiously.

Adrian Fitz-Alan, Business Affairs Manager at Sony Music Australia, told the National Entertainment Industry conference in Sydney on 3-4 September 1994 he thought music used in multimedia

product would eventually be paid for through a royalty based on use. "The problem is how to measure use. At the moment, there are no standard rates and people are signing deals for limited terms to allow for renegotiation if industry practice changes". Over time, he expects more specific contracts as uses become clearer, more standardised rates and "more total packages as record companies become all-purpose entertainment conglomerates".

### "authorship"

A key issue in standardising industry practice is the widening variety of "authorship". Some authors will continue just to write text. Others will be more involved in the conceptualisation and development of products with sounds, images, graphics, games and the like. Inevitably, they will demand higher levels of payment for such services, although publishers will argue in response that the total cost of getting a multimedia product into the market place will be higher than for a conventional book.

If the collaborative medium of film is a foretaste, it is more likely that an individual will be defined as undertaking additional specific tasks, and be paid for them discretely, than that the general rate of payment for authors or illustrators will increase.

### uncertainty - take the money and run?

Uncertainty can tempt different responses. You can try to hold onto as many rights as you can, until you see what they're worth. You can let them go, but make sure you're getting a cut of whatever action there is. Or you can take a fee now, recognising that a dollar in the hand might be better than a share of a market that turns out to have been all hype.

Rick Raftos says the last can be very tempting. "The danger is that we will take fees now while the value of the new markets is uncertain, and by the time their value is clear, it will be too late for industry practice to change".

Marius Coomans from Firmware thinks "participation" is the way to go. "If we do this right, we can create an industry where creative people share the rewards, but we need to be prepared to share the risk".

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