

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 94/92

Dated the 7th day of December 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

FRANK LANE
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

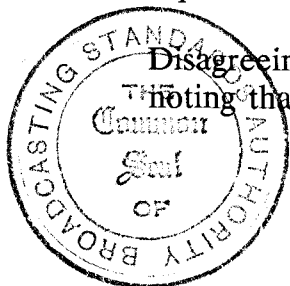
DECISION

Introduction

Computer piracy was investigated during an item on the *Holmes* programme broadcast on TV1 on 11 February 1992. Part of the item, recorded with the use of a hidden camera and microphone, portrayed the purchase by a reporter of a software programme from Mr Frank Lane who was described as a computer pirate. The item also showed that later in the day the reporter and a cameraman visited Mr Lane. They were accompanied by a Mr Robertson, a representative from a computer company which imported the programme purchased earlier. Mr Lane invited the reporter inside and the broadcast then showed that a scuffle took place between Mr Lane and Mr Robertson in the doorway.

Mr Lane complained to Television New Zealand Ltd, as the broadcaster, that the item breached the broadcasting standards which require broadcasters to maintain standards which are consistent with the observance of good taste and decency, the maintenance of law and order, the privacy of the individual and the requirement to give a reasonable opportunity to present significant points of view. An apology and the payment of legal expenses were requested.

Disagreeing with some of the descriptive material included in Mr Lane's complaint and noting that the factual disputes would be resolved when charges arising from the visit



portrayed in the item were heard in Court, TVNZ denied that the item breached any of the nominated standards. As Mr Lane was dissatisfied with TVNZ's response, his solicitor referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the broadcast to which the complaint relates and have read the extensive correspondence (summarised in the Appendix). The members have also read the District Court decision relating to the actions of two members of TVNZ's staff involved in compiling the item complained about. As is its practice, the Authority has determined the complaint without a formal hearing.

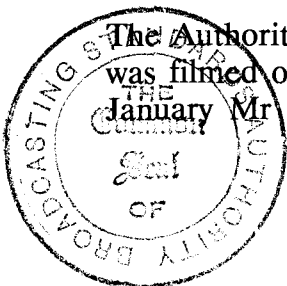
The Broadcast

The Authority considers that it is appropriate to start with a summary of the relevant part of the item which was broadcast on the *Holmes* programme on TV1 on 11 February 1992.

Referring to the computer industry's widespread concern about computer piracy, the item stated that the practice was common in New Zealand. After enquiries which, the reporter said, disclosed that it was easy to obtain pirated computer software, he was shown visiting the address of Mr Frank Lane, described as a second-hand dealer, where he purchased a software programme and the manual which accompanied it. That deal was filmed and recorded with the use of a hidden camera. The reporter's commentary also noted that a photocopier and computer were on the premises and they were described as the computer pirate's essential tools of trade.

The reporter then visited the business which was licensed to import the programme which had been purchased. A representative from that company, a Mr Robertson, said that both the programme and the manual were "pirated" copies. Mr Robertson said that the use of a hand-written label on the disc and the photocopied manual were evidence of that fact. The reporter and Mr Robertson were next shown visiting Mr Lane and knocking on the front door of his home. When Mr Lane, the alleged pirate, answered the door, the reporter said that he had bought some material that morning and wondered whether he could come in and discuss it. Mr Lane asked the reporter to come inside but firmly refused to allow Mr Robertson or the cameraman to enter. It was not clear from the broadcast what exactly happened next but Mr Lane and Mr Robertson were seen to be scuffling in the doorway. The next shot after the struggle showed Mr Robertson on the path beside the house calling out "You're a pirate Frank Lane". The item concluded with another person from the computer industry emphasising the magnitude of the problem of computer piracy.

The Authority also considered the following points to be relevant. The incident which was filmed occurred on 24 January 1992 and was broadcast on 11 February. On 25 January Mr Lane complained to the Police about aspects of the incident. On 11



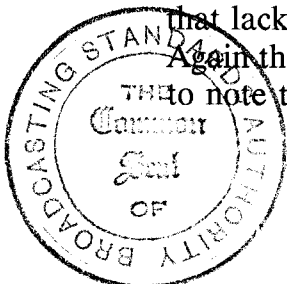
February, the day of the broadcast, Mr Lane was contacted by TVNZ's reporter and asked about computer piracy but he declined to comment.

Mr Lane complained to the Police about the behaviour of the two TVNZ staff members and Mr Robertson and alleged that he had been assaulted. However, the Police did not proceed with the assault charge. It laid charges of trespass against the reporter, the cameraman and Mr Robertson. The Authority is not aware of the date on which the charges were laid but it did not happen before 11 February - the day of the broadcast complained about. The three defendants pleaded not guilty. Later Mr Robertson elected to be included in the diversion scheme which applies for first offenders and is, in effect, a guilty plea. The two TVNZ staff were convicted of trespass after a defended hearing and each received a suspended sentence. There is some dispute between the parties about the actual aspect of the trio's visit to Mr Lane when the trespass occurred. The Authority thought that the precise actions which constituted the trespass might be relevant to its decision and, accordingly, obtained a transcript of the judge's decision.

The decision recorded that the charge concerned the alleged trespass on Mr Lane's property after the reporter and cameraman did not leave when warned to do so. It related to an incident described by the opposing parties respectively as "interviewing by ambush" and "investigative journalism". It was also noted in the judgment that the reporter, while accompanied by Mr Robertson and the cameraman, visited Mr Lane with the intention to confront him with an allegation of criminality. The judge found that the elements necessary to prove trespass had occurred: the trespass, the warning to leave and the refusal to do so. He noted that a scuffle had occurred but he was not prepared to ascribe responsibility for it nor did he rule whether that part of the visit had involved trespass. The offence had been committed when the trio stayed on the garden path which, it seems, was the part of the broadcast in which Mr Robertson was shown describing Mr Lane as a computer pirate.

The Appendix indicates that the parties have referred to a number of other aspects of the incident preceding and following the broadcast which they describe as indisputable facts. They include such matters as whether the property visited was principally Mr Lane's business or home, the extent of Mr Robertson's role as a licensed importer of Electronic Arts computer programmes and Mr Robertson's, Mr Lane's and the cameraman's actions while facing each other in Mr Lane's doorway. As the Authority decided that these and a number of other allegations made did not raise points which required resolution in order to deal with the broadcasting standards matters, they have not been resolved.

The same approach has been taken to the question raised by Mr Lane's solicitor when he asked whether it was TVNZ's function to investigate computer piracy or whether it should have passed the information gathered on to the Police or, in view of the alleged amounts involved, to the Serious Fraud Office. TVNZ mentioned that the Police seemed to have problems with prosecuting alleged incidents of computer piracy, implying that lack of resources or deficiencies in the appropriate criminal law was the problem. Again the Authority will not try to resolve the parties' respective contentions other than to note that computer piracy, as both parties agreed, is a matter of public interest.



Standards Allegedly Breached

The complainant alleged that the broadcast breached s.4(1)(a), (b), (c) and (d) of the Broadcasting Act 1989. They require broadcasters to maintain standards in programmes and their presentation which are consistent with:

- (a) The observance of good taste and decency; and
- (b) The maintenance of law and order; and
- (c) The privacy of the individual; and
- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

Some aspects of the complaint referred to events which occurred during the programme's preparation. One example was the allegation that the cameraman did not intervene in the scuffle between Mr Lane and Mr Robertson. TVNZ declined to reply on the basis that this part of the complaint did not raise a broadcasting standards matter. As s.4(1) of the Act refers to programmes and their presentation - but not their preparation - the Authority accepted TVNZ's submission on this point. It has examined the programme shown on the *Holmes* programme on 11 February, described on page 2 above, to see if the standards have been breached.

Good Taste and Decency

The aspect of the item which allegedly breached the good taste and decency standard was the confrontational environment created by the trio's unannounced visit to Mr Lane with a camera rolling. TVNZ replied that the item reported a methodical investigation into allegations of computer piracy and the visit, and the resulting incident, were shown to illustrate the reaction of the alleged pirate. It did not, it continued, breach the good taste and decency standard.

After assessing that aspect of the complaint, the Authority agreed with the complainant's solicitor when he claimed that the unannounced visit to Mr Lane created a confrontational environment. However, the Authority decided that the style of the visit did not, in itself, breach the good taste and decency requirement. As the scuffle which followed would not have been totally unexpected in view of the manner in which the visit had been organised, the Authority then examined whether the broadcast of the struggle in itself breached the good taste and decency standard. TVNZ argued that it was justified on the grounds that it showed the alleged pirate's reaction. The majority considered that this argument had some validity as the film of the incident displayed the depth of both the participants' feelings. As the reasons for and the extent of the scuffle were unclear and mainly left for viewers to interpret, the Authority decided that the broadcast, albeit partly gratuitous, had not breached the standard.

The minority concluded that the broadcast had breached the good taste standard for the following reasons: first, the disagreement involved considerably more than verbal



jousting; secondly, it would not have occurred had not the appropriate scene been set by the broadcaster; and thirdly, TVNZ's claim that it was broadcast to show the alleged pirate's reaction was not tenable when, beyond a request for the reporter to come inside, further reactions on his part were not at all clear from the broadcast.

Law and Order

The basis of the complaint that the broadcast of the visit to Mr Lane breached the requirement for standards "consistent with ... the maintenance of law and order" was that two of the visitors were later convicted of trespass and the third, in effect, admitted it. TVNZ argued that the entire thrust of the item was to encourage the maintenance of law and order in the area of computer piracy and that the convictions did not mean that broadcasting standards had been breached.

In the Authority's view, s.4(1)(b) of the Broadcasting Act imposes on broadcasters a primary obligation to refrain from broadcasting material which is intended to, or could reasonably be expected to, incite viewers or listeners to commit unlawful acts. The purpose or effect of a broadcast is therefore relevant to an assessment of its compliance with s.4(1)(b).

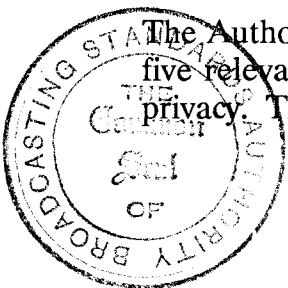
With regard to the item on computer piracy, although the broadcaster's own employees were involved in the commission of the unlawful acts shown, the Authority was of the view that the broadcast was not intended to, and could not be reasonably expected to, incite unlawful conduct on the part of viewers. Nor, indeed, in the Authority's view, did the broadcast bring the law into disrepute in viewers' eyes. Had a flagrant disregard for the law by the broadcaster's employees been revealed, the situation might well have been different. However, the unlawful consequences of the employees' conduct was clearly not planned. Further, the Authority believed that it was relevant to the broadcast that it was not readily apparent to viewers that unlawful conduct had taken place. Finally, there was nothing in the commentary accompanying the film of the unlawful conduct that was likely to encourage disorder in any way.

In these circumstances, the Authority declined to uphold the complaint under s.4(1)(b) of the Broadcasting Act 1989.

Privacy

The trio's visit to Mr Lane with the intention of confronting him was also alleged to have breached the standard which requires a broadcaster to maintain standards consistent with the privacy of an individual. TVNZ emphasised that trespass and privacy were different issues and that the trio's visit to Mr Lane, as the proprietor of Abacus Computers, was a legitimate action on the part of customers.

The Authority issued an Advisory Opinion dated 25 June 1992 in which it recorded the five relevant privacy principles which it applies to complaints which allege a breach of privacy. The Opinion explained that the specific facts of each incident are also relevant.



The first principle reads:

- i) The protection of privacy includes legal protection against the public disclosure of private facts where the facts disclosed are highly offensive and objectionable to a reasonable person of ordinary sensibilities.

As there were no private facts disclosed by the broadcast, the Authority decided that this principle had not been breached. The facts disclosed, for example the nature of some of Mr Lane's business equipment, could not be considered to be highly offensive private facts. The programme made a number of allegations, as opposed to reporting undisputed facts, which could be described as offensive but at no time did Mr Lane admit them and, as such, they are not relevant to the privacy aspect of the complaint that a broadcast disclosed highly offensive and private facts.

Another relevant privacy principle reads:

- iii) There is a separate ground for a complaint, in addition to a complaint for the public disclosure of private and public facts, in factual situations involving the intentional interference (in the nature of prying) with an individual's interest in solitude or seclusion. The intrusion must be offensive to the ordinary person but an individual's interest in solitude or seclusion does not provide the basis for a privacy action for an individual to complain about being observed or followed or photographed in a public place.

In relation to the broadcast complained about, the Authority considered whether the trio's visit involved the intentional interference with Mr Lane's interest in solitude. The broadcast, without question, involved the intentional interference with Mr Lane's business operations. It recorded a visit to his business address which, it was shown, was advertised prominently in the Yellow Pages of the Auckland Telephone Directory. Moreover, as the item disclosed, the reporter had visited the premises earlier in the day and had bought some software during an exchange which was shown to be totally acceptable to both parties. In those circumstances, the Authority decided that the trio's visit could not be considered as the intentional interference (in the nature of prying) with Mr Lane's interest in solitude and, therefore, no aspect of the broadcast breached the privacy provision in s.4(1)(c) of the Act.

Reasonable Opportunities for Comment

The other standard under which the complaint was made was s.4(1)(d) of the Broadcasting Act. As the complaint under this standard referred to a number of aspects of the broadcast and, in the Authority's opinion, is the central issue, it merits repetition. It requires broadcasters to maintain standards which are consistent with:

- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest;



The complainant alleged that the standard was breached because:

- * the reporter omitted to state explicitly during the item that he had been told by Mr Lane that the package he had purchased on 24 January was secondhand;
- * Mr Robertson's comment that the package was "obviously pirated" was made without justification;
- * the reporter's description of the equipment in Mr Lane's home as being consistent with that of a computer pirate omitted to mention that it was also consistent with that of a computer consultant or a licensed second hand dealer;
- * after the scuffle Mr Robertson was shown saying "You're a pirate Frank Lane".

TVNZ explained that its reporter took Mr Robertson (who had earlier challenged the legitimacy of one of Mr Lane's business transactions) to Mr Lane's premises for the following reason:

What fairer opportunity could we provide for Mr Lane than to present him with the very man who was challenging his credentials?

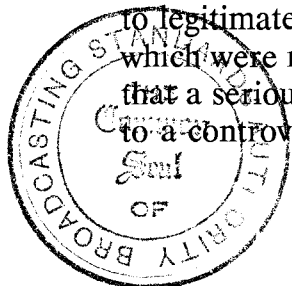
TVNZ added that its reporter later contacted Mr Lane by telephone in order to give him an opportunity to comment. TVNZ argued that, as the complaint to the police referred to trespass and assault, it was spurious to suggest that Mr Lane should decline to comment to TVNZ about an allegation of computer piracy - a totally unrelated matter.

Mr Lane's solicitor in his submissions to the Authority emphasised the legitimate interpretation which could be given to Mr Lane's activities as they were revealed on the programme while, in contrast, TVNZ stressed the evidence as confirming Mr Lane's actions as those of a computer pirate.

The Authority noted that if the complainant had alleged a breach of standard 1 of the Television Code of Broadcasting Practice which requires broadcasters:

- 1 To be truthful and accurate on points of fact

then, it would have been necessary to decide whether the allegation was or was not correct. However, as both parties stated explicitly that the complaint did not allege a breach of standard 1, it was not required to do so. On the item, TVNZ alleged, forcefully, that Mr Lane was a computer pirate. It alleged he played an active indeed an important role in a criminal activity which, because of its impact, was a major concern to legitimate computer dealers. But it was an activity for which the police, for reasons which were not given, had a low conviction rate. In summary, the Authority considered that a serious allegation had been made which, to use the wording of s.4(1)(d), related to a controversial issue of public importance. As a consequence, the Authority asked,



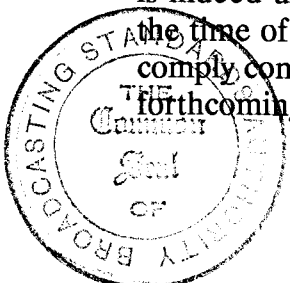
was a reasonable effort made or a reasonable opportunity given to Mr Lane to present his explanation?

Having gathered the information, TVNZ confronted Mr Lane on his door step with the person who, it believed, confirmed the implications of the evidence gathered. Faced with the reporter and Mr Robertson and while the camera rolled, Mr Lane displayed what appeared to be a surprising degree of self-control and invited the reporter into the house while declining admission to the other two. A fracas happened and precisely why it occurred is not important in this decision. TVNZ had attempted to give Mr Lane an opportunity to present his view but, for reasons which the parties cannot agree on, the circumstances were such that the opportunity to present those views did not eventuate. In other words, as the events unfolded on the door-step Mr Lane was not given a fair opportunity to present his point of view as required by the standard.

Nevertheless, TVNZ did not abandon its efforts to seek comment from Mr Lane after the incident on the door-step. Besides pointing out that Mr Lane could well have initiated contact, or made some other reasonable effort to present his point of view, TVNZ stated that its reporter telephoned Mr Lane on the day of the broadcast specifically to give him an opportunity to present his views. Apparently, Mr Lane declined to speak to the reporter at any length as he had by that time laid a complaint with the police alleging trespass and assault. The Authority accepted that Mr Lane's reaction was not unreasonable. It should be recalled that the item was filmed on 24 January and broadcast on 11 February - 18 days later - and it was only on the 18th day that Mr Lane was given an explicit opportunity by TVNZ by way of a telephone call to respond to the serious allegations in the broadcast. Moreover, TVNZ had the opportunity at the time of the broadcast on 11 February to report on its efforts to give Mr Lane an opportunity to present his point of view and his reaction. However, the item concluded with a comment about the magnitude of computer piracy.

Taking the actions of both TVNZ and Mr Lane into account, the Authority examined the broadcaster's statutory obligation. It decided, first, that probably for reasons associated with Mr Robertson's actions (for which TVNZ was not responsible), the attempted door-step opportunity was insufficient to comply with the s.4(1)(d) obligations in view of the seriousness of the accusation. Secondly, the door-step altercation changed the quality of the relationship between Mr Lane and TVNZ and, as a result, it was unrealistic to expect Mr Lane to telephone with his account and it was also unreasonable to expect the reporter's telephone call on the day of the broadcast to be sufficient to deal with what by then was a confrontational and tense situation. TVNZ had initiated the confrontational approach which, as a result, required extra effort on its part to restore some degree of calm and balance of opportunity.

The Authority would point out that although threats to complain to the Police about a reporter's actions may not be unusual, an actual complaint, which had been made by the date of the broadcast, followed later by the conviction of two TVNZ staff for trespass, is indeed unusual. The procedures which led to that final result had been initiated by the time of the broadcast and, as a result, TVNZ would have been aware of the need to comply conscientiously with the broadcasting standards. That standard of effort was not forthcoming.



The item complained about made use of the "walk-in" technique with a camera rolling. While potentially most effective in confronting an alleged wrongdoer, the process makes use of the television broadcaster's implicit potential to dominate and, perhaps, intimidate. It was a technique which, for reasons not totally in TVNZ's control, proved to be ineffective on this occasion in providing a satisfactory opportunity for Mr Lane to respond to the item's allegations. Despite its failure as a means of obtaining Mr Lane's unguarded response other than to portray his participation in a struggle for which he might or might not have been responsible, TVNZ decided to show part of the confrontation which, in the Authority's opinion, emphasised the visual entertainment aspects although it did provide some information on the attitudes of those involved. While acknowledging that the walk-in technique is an acceptable technique for the appropriate occasion, the Authority believes that its use when serious allegations are made carries with it a special responsibility to ensure the accused person is given a reasonable opportunity to present his or her point of view.

DECISION

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of an item on *Holmes* programme on 11 February 1992 breached s.4(1)(d) of the Broadcasting Act 1989. The Authority declines to uphold any other aspect of the complaint.


Having upheld a complaint, the Authority may make an order under s.13(1) of the Act. It does not intend to do so in this case. The Authority has the power in s.16 of the Act to award costs. The Authority points out that the provision refers to costs - it is not to be applied in a punitive manner or as compensation. It is a power which is very seldom exercised as it is most unusual for costs to be sought. However, in this case Mr Lane's solicitor sought costs which, at 20 October, amounted to \$5,075.83.

The complaint alleged that the broadcast breached s.4(1)(a), (b), (c) and (d) of the Broadcasting Act 1989. The Authority has only upheld the breach of s.4(1)(d) although, in its opinion, that was the central aspect of the complaint. In the circumstances, the sum of \$1,250.00 is awarded in costs to Mr Lane against TVNZ.

COSTS

Under s.16 of the Broadcasting Act 1989, the Authority orders Television New Zealand Ltd to pay costs to Mr Lane in the sum of \$1,250.00

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



7 December 1992

AppendixMr Lane's Complaint to Television New Zealand Limited

In a letter dated 28 February 1992, the solicitors for Mr Frank Lane of Auckland complained to Television New Zealand Ltd about an item broadcast on the *Holmes* programme on 11 February.

The complaint alleged that the item breached s.4(1)(a), (b), (c) and (d) of the Broadcasting Act 1989 which require broadcasters to maintain standards which are consistent with, respectively, the observance of good taste and decency, the maintenance of law and order, the privacy of the individual, the giving of a reasonable opportunity to present significant points of view. In addition, the letter said, the programme lacked balance.

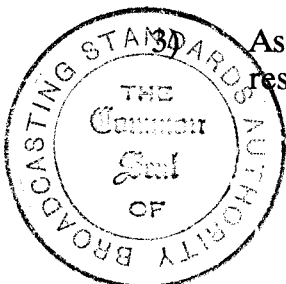
The letter described the programme which had shown a reporter from the *Holmes* programme visiting Mr Lane's business premises and secretly filming the purchase of a software package. Later that day, the reporter returned with a cameraman and a Mr Robertson, a computer software importer. Mr Lane invited the reporter inside but refused entry to Mr Robertson and the cameraman. Nevertheless, the letter continued, Mr Robertson attempted to enter and a struggle developed between him and Mr Lane during which neither the reporter nor the cameraman intervened. The letter continued:

We should initially say that in the current environment of community concern about the growth of crime and particularly crime within victims' own homes, we are very disappointed that the principal national broadcaster should at worst involve itself in and at best fail to distance itself from an attack on a person in his own home. The specific complaints arising from this matter are listed below. The criminal aspects of the intrusion and assault are being dealt with by the police, as they should be. However, there is clearly a broadcasting standards issue involved, and it is that issue which we now address.

Twelve specific aspects to the complaint were detailed and the standard or standards allegedly breached were noted. In addition to the specific allegations, the letter said that complaints 1, 2, 7, 8, 9, 10, 11 and 12 related to the item's "general absence of balance".

- 1) It was provocative to take Mr Robertson to Mr Lane's home - s.4(1)(b), (c) and (d)
- 2) The unannounced arrival of the trio created a confrontational environment - s.4(1)(a), (b) and (c)

As TVNZ took Mr Robertson to the address, it must share responsibility for his forced entry - s.4(1)(a), (b) and (c)



- 4) The TVNZ staff did not attempt to restrain Mr Robertson - s.4(1)(a), (b) and (c)
- 5) The cameraman filmed Mr Robertson's attack but did not attempt to intervene - s.4(1)(a) and (b)
- 6) Although the reporter was initially invited inside, he left and later he and the cameraman re-entered without authority - s.4(1)(a) and (c)
- 7) Mr Robertson was fitted with a hidden microphone - s.4(1)(a), (c) and (d)
- 8) The film which was broadcast was edited to delete Mr Robertson's forced entry - s.4(1)(b), (c) and (d)
- 9) The reporter omitted to explain on the broadcast that he was told explicitly when he purchased the package earlier in the day that it was second hand - s.4(1)(d)
- 10) Mr Robertson's broadcast comment that the package was "obviously pirated" was made without justification - s.4(1)(d)
- 11) The report which described the equipment in Mr Lane's home as being consistent with that of a computer pirate omitted to mention that it was also consistent with that of a computer dealer, computer consultant or licensed second hand dealer - s.4(1)(d)
- 12) After the scuffle Mr Robertson was portrayed saying "Frank Lane - you're a pirate" - s.4(1)(d)

The letter concluded with the request for, and the wording of, an apology and another request for the payment of Mr Lane's legal expenses.

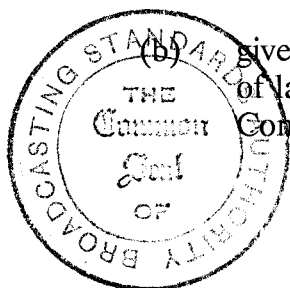
TVNZ's Response to the Formal Complaint

TVNZ advised Mr Lane's solicitor of its Complaints Committee's decision in a letter dated 13 May 1992. It dealt briefly with each of the specific complaints and, noting that some of the factual disputes would be resolved in Court and that complaints 3,4 and 5 did not raise broadcasting standards issues, wrote in conclusion:

In summary the Committee was unable to:

- (a) discern any breach of section 4(1)(a);

(b) given that the thrust of the item related to upholding the maintenance of law as it applied to copyright and the computer industry, the Committee was unable to conclude that Section 4(1)(b) had been



breached;

- (c) that there was no invasion of privacy as indicated by the complainant being shown inviting the camera crew in, hence Section 4(1)(c) was seen as being not in any danger;
- (d) implicit in the crew being at Mr Lane's home was the desire to obtain his side of the story, and therefore there could be no breach of Section 4(1)(d).

In the circumstances your complaint was not upheld.

Mr Lane's Complaint to the Broadcasting Standards Authority

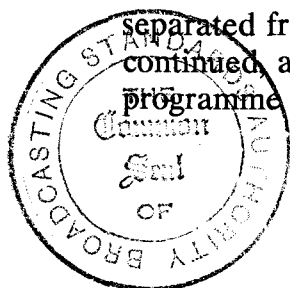
As he was dissatisfied with TVNZ's decision, Mr Lane through his solicitors gave formal notice to the Broadcasting Standards Authority of the referral on 12 June 1992 under s.8(a) of the Broadcasting Act 1989 and, in a letter dated 22 June, supplied comprehensive details.

After supplying personal and business details about Mr Lane, his solicitors' letter went through in detail the events to which the complaint related - some of which were broadcast in the item on the *Holmes* programme on 11 February. In addition, the letter reported that the police had laid criminal charges against TVNZ's reporter, its cameraman and Mr Robertson as a result of the incident at Mr Lane's home. On the day the item had been broadcast, 11 February, the reporter had telephoned Mr Lane asking him for comment but as he had by then lodged a complaint with the police, he thought it was appropriate to do so.

The letter then traversed the 12 specific allegations, noted above, and discussed TVNZ's response to each. It was stressed that, although not shown on the broadcast, the violent incident was instigated by a person (Mr Robertson) taken to the property by the broadcaster and that no opportunity, apart from the telephone call on the day of the broadcast, was given to Mr Lane in which to respond to the allegations contained in the item. Moreover:

The broadcaster's assertion that the intention of the film crew was to obtain Mr Lane's comment in unsustainable in the light of another part of its response to Mr Lane's complaint. The broadcaster has admitted that a microphone was concealed on Mr Robertson. If it was the film crew's intention to allow Mr Lane a proper opportunity to respond, a hidden microphone would not have been necessary.

In regard to TVNZ's comment that some of the specific complaints were outside the area of broadcasting standards, the complaint argued that the standards could not be separated from the methods used to make programmes. The broadcaster, it continued, adopted a confrontational method which was wholly within the purview of programme standards.



In regard to the complaint that the cameraman and the reporter stood by and filmed Mr Robertson's "attack" on Mr Lane, the solicitor stated:

It is accepted that the role of television crews and reporters is to film and report on newsworthy events and matters of public interest. However, this incident was well beyond the filming of an item of public interest. It was an attack on a person in his own home. It was an attack by a person who had been taken to the property, unnecessarily in Mr Lane's submission, by the broadcaster's staff. If the item was newsworthy or of public interest, it became so only because it was created by the broadcaster itself. Its newsworthiness and public interest element was artificial. The broadcaster's response on this point is self-serving and does nothing to dispel disquiet that a violent attack on a person in his own home has the appearance of having been condoned by the broadcaster.

The letter also discussed possible limits on the Authority's responsibilities in view of the criminal proceedings. That issue is not presented further in the Appendix as, although TVNZ's response to the formal complaint was prepared while the criminal charges were outstanding, its response to the Authority about the referral was written after the completion of the criminal cases. Thus, as they were concluded by the time the Authority determined this complaint, the earlier criminal proceedings were irrelevant to its decision making process.

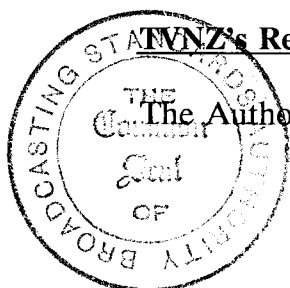
Emphasising Mr Lane's concern about the violent incident, the solicitor described the "indisputable" facts as:

- (i) A violent incident occurred inside Mr Lane's home;
- (ii) The violent incident followed Mr Lane's clear but polite refusal of an attempt to enter by Mr Robertson;
- (iii) The violent incident involved Mr Robertson;
- (iv) Mr Robertson was taken to Mr Lane's home by the broadcaster;
- (v) The broadcaster's staff at best did not intervene to prevent or stop the violent incident; and
- (vi) The broadcasters screened film of the incident, even though it was immaterial to the subject matter of the programme.

The complainant sought an apology, compensation and legal costs which, at that stage, amounted to \$3820.00 (exclusive of GST and disbursements).

TVNZ's Response to the Authority

The Authority advised the broadcaster of the complaint in a letter dated 15 June.



The Authority agreed to TVNZ's initial request to defer a reply until the completion of the defended trespass charges faced by two TVNZ staff arising from the incident. After the trial had been completed, it agreed to TVNZ's next request for an extension of the 20 working day time limit during which broadcasters are expected to respond to the Authority's request for information about a complaint. TVNZ's lengthy response to the Authority's request for a report about the complaint was dated 1 September.

The complainant's solicitors earlier advised the Authority that criminal charges were heard against TVNZ's reporter and cameraman in the Auckland District Court on 27 July and, after not guilty pleas, were both convicted of trespass and given six-month suspended sentences. The solicitors also advised that, before the hearing, Mr Robertson withdrew his "Not Guilty" to the same charge and elected to be dealt with under the police diversion scheme.

TVNZ began by providing some background which described computer piracy as a major, and expanding, international fraudulent activity. However, it added, little media attention had been given to the issue and, as the Police had difficulty in gathering evidence to conduct a successful prosecution, there were few convictions in New Zealand or elsewhere. The substantial part of the item on *Holmes* complained about, it continued, had dealt with the hardening approach by the Business Software Association to the problem.

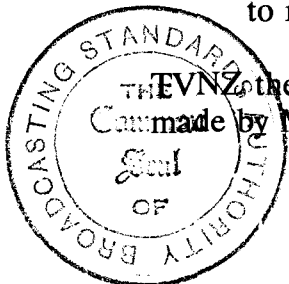
While investigating the story, TVNZ stated the reporter had heard many claims and had decided to show computer piracy in operation which defrauded the legitimate licence holders. Having purchased illegally copied software, the reporter returned to the vendor to put his complaint that he had been sold illegally copied goods and took with him the person who could prove the goods were illegally copied. TVNZ explained:

The reporter wanted to show viewers that illegally copied software could be purchased in New Zealand. He acted as any reasonable member of the public would - he returned to the place of business where the goods had been purchased to make his complaint. He had been sold illegally copied goods.

He took with him a person who could verify that the goods were "faulty". The one person who could prove the goods were illegally copied was Mr Robertson, the legitimate licence holder in this part of the world for Electronic Arts.

As a journalist, the reporter had particular responsibilities. He wanted to be certain that Mr Lane had a clear and fair opportunity to state his views and to reply to the claims being made. For those reasons he went with a cameraman to record Mr Lane's point of view.

TVNZ then dealt with the detailed submissions and contested some of the points made by Mr Lane's solicitor. In regard to the start of the struggle between Mr Lane



and Mr Robertson, TVNZ denied that Mr Robertson had tried to force entry into Mr Lane's home. Rather, it said, Mr Lane had seized the camera and the cameraman had been dragged into the house. Nevertheless, it continued:

With respect, we suggest that the details of the physical encounter on Mr Lane's premises are not a matter which should be dealt with under the heading of programme standards. What happened (while unfortunate and unexpected) did not alter the integrity of the journalistic investigation, or the content of the broadcast item.

TVNZ also advised that its staff had been found guilty of trespass because they did not leave the property when asked to do so but, it continued, the convictions did not invalidate the item which was broadcast or mean that broadcasting standards had been breached. It also maintained that Mr Lane had had the opportunity to answer the reporter's telephoned questions which related to computer piracy. The questions had not dealt with the complaints about trespass and assault which had been laid with the police.

TVNZ argued that the entire thrust of the item was designed to encourage the maintenance of law and order in the area of computer piracy and that it was appropriate in those circumstances to take Mr Robertson on the visit to Mr Lane's business.

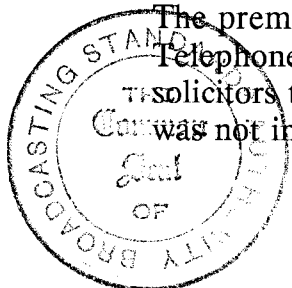
Commenting that the complainant's use of the term "violent incident" to describe a "very brief squabble" was sensationalism, TVNZ said that incident nevertheless showed Mr Lane's reaction when directly accused of computer piracy. TVNZ also maintained that Mr Lane had been given "every opportunity" to comment.

In our opinion, not only was a reasonable effort made, but a reasonable opportunity was given for Mr Lane to give his point of view on the software piracy question.

TVNZ reported that a hidden microphone had been used only during the initial purchase of the software - not when the trio visited Mr Lane later that day. On that occasion, only standard equipment was used and TVNZ apologised that its earlier comments had apparently misled the complainant's solicitor into believing otherwise.

TVNZ maintained that, in regard to specific complaint 3, that broadcasting standards as explained in the Broadcasting Act 1989 only applied to "programmes and their presentation" (s.4(1)). Furthermore, the complainant was incorrect by alleging in complaint 4 that TVNZ had attempted to create an environment but that was not a standards matter either. Moreover, in relation to complaint 5, there had not been an attack on Mr Lane but, again, that was not a standards issue.

The premises visited, TVNZ insisted citing the Yellow Pages of the Auckland Telephone Directory, were those of Mr Lane's business and it was misleading for his solicitors to describe them as his home. It considered the solicitor's contention that it was not in the public's interest to investigate alleged computer piracy was



"extraordinary".

Repeating that the criminal charges were immaterial to the question of programme standards and that the return visit had not involved a hidden microphone, TVNZ said that the rest of Mr Lane's solicitor's comment showed a misunderstanding of the journalistic process. The evidence collected and broadcast about Mr Lane's activities justified the approach taken in the item. TVNZ repeated its contention that Mr Lane had been given ample opportunity to respond either at the time of the visit or by initiating contact or by responding to the reporter's telephone call.

TVNZ began its conclusion by observing:

In beginning his conclusion, Mr Lane's solicitor places undue emphasis on the scuffle. The main thrust of the story had to do with computer piracy, and the possibility that Mr Lane was involved in it.

The company, respectfully, believes it is the role of the Broadcasting Standards Authority to judge complaints against what is broadcast and respectfully suggests that such a role is clear from a reading of the Broadcasting Act.

It expressed the opinion that it was inappropriate to consider untransmitted material in the context of a formal complaint.

TVNZ concluded by examining the sections of the Act allegedly breached by the broadcast and wrote in regard to paragraphs (a), (b), (c) and (d) of s.4(1) cited by the complainant as the basis of the complaint:

- (a) ... What viewers in this item saw was a methodical investigation into allegations of computer software piracy. Included in the item was a brief incident which was not planned, but was used because of what it had to say about the reaction of the alleged pirate. We submit that nothing shown in this programme came close to breaching the rules on taste and decency.
- (b) ... We would submit that the programme as broadcast was all about law and order in the computer software business. The item was intended to expose lawlessness in this industry and draw the problem to the attention of a New Zealand public which has a multi-million dollar stake in computer software. We submit there was no breach of this clause.
- (c) ... The programme showed two legitimate business visits by our reporter to the business premises of Mr Frank Lane, the proprietor of Abacus Computers. As both visits were in connection with Mr Lane's business activities, it was perfectly legitimate to make them. Even if Mr Lane did not want to see our reporter, it is not a breach of privacy to call on business premises on a business matter. A Court has decided that because our crew did not leave the property owned by Mr Lane when it



was asked to, it was guilty of trespass. Trespass and invasion of privacy are not the same thing. We submit there was no breach of this clause.

- (d) ... We point out that the programme as broadcast showed our reporter taking Mr Robertson (who challenged the legitimacy of Mr Lane's earlier transaction) to Mr Lane's premises. What fairer opportunity could we provide for Mr Lane than to present him with the very man who was challenging his credentials? It is also clear that Mr Lane was given another opportunity to comment when he was contacted by the reporter on the telephone. We submit there was no breach of this clause.

Mr Lane's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 17 September 1992 Mr Lane's solicitor dealt with some of the points raised by TVNZ.

He repeated that Mr Robertson had vacated his not guilty plea, acknowledged his guilt and had elected to be included in the diversion scheme for first offenders. The two TVNZ staff, after a defended hearing, had been convicted of trespass. Referring specifically to the defended hearing, Mr Lane's solicitor said that the judge, first, rejected the defence submission that the cameraman had been dragged into the house, and secondly, had not treated the trespass as being merely of a technical nature.

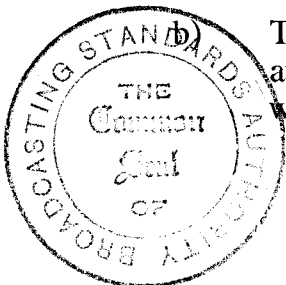
In response to TVNZ's claim that the altercation was screened to show the reaction of an alleged seller of pirated software, the solicitor wrote:

Whilst it is accepted that a reaction by a person accused of criminal conduct may be newsworthy in some circumstances, the broadcaster fails to acknowledge that in this case Mr Lane was the victim of criminal conduct. The broadcaster's staff were the perpetrators of that criminal conduct. For this reason, it is difficult to understand any argument that the broadcast had "journalistic validity" for the reasons given by the broadcaster.

Describing TVNZ's response as assuming that Mr Lane was involved in criminal conduct, the letter said that that was not an issue for the Broadcasting Standards Authority to resolve. Nevertheless, Mr Lane's response to the allegation consisted of four points:

- a) Why did not TVNZ follow the complainant's example and show faith in the police by lodging the evidence with them?

b) TVNZ referred cryptically to a police inquiry but, as Mr Lane was not aware of any police investigation, then a reference to a police inquiry was an unsubstantiated comment from the broadcaster:



- c) It was explained at length that discs with handwritten labels and photocopied manuals were not unusual in the secondhand market and indicated neither pirated nor illegal software:
- d) Describing Mr Robertson as *the* legitimate licence holder for Electronic Arts software was incorrect. His arrangement seemed to be with an Australasian subsidiary and parallel importing from the American parent was legal and, despite opposition from some within the computer industry, did occur.

In regard to the incident at Mr Lane's house, the letter referred to the District Court hearing and said that the full unedited sequence was watched twice by the judge. TVNZ's contention that Mr Lane opposed an investigation into computer piracy was not correct as it was an issue on which he had not commented.

Finally in relation to TVNZ's argument that some aspects of the complaint did not involve broadcasting standard matters, it was pointed out that the complaint involved matters which had been broadcast. The letter concluded:

By broadcasting film of conduct by the broadcaster's staff which has been found by a court to be criminal, and which occurred in the course of the compilation of the programme, the criminal conduct becomes a part of the broadcaster's "programmes and their presentation". Because film of such conduct is broadcast, the broadcaster is required to apply the standards which are laid out in section 4 of the Act. It is submitted that this approach is consistent with the intention and scheme of the Act, and on a common sense approach is a broadcasting standards issue.

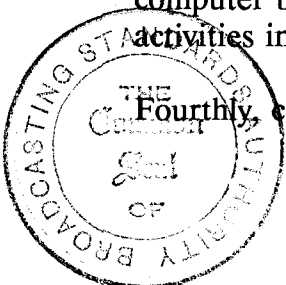
TVNZ's Final Response to the Authority

In view of some of the matters raised in Mr Lane's solicitor's letter of 17 September, TVNZ stated in a letter dated 6 October that aspects could not go unchallenged. First, it found strange the complainant's emphasis now placed on the criminal prosecutions as it had earlier described the charges as "immaterial". In their relationship to the p[resent complaint, TVNZ agreed with that description.

Secondly, it said that Mr Lane's property, not Mr Lane personally, had been the victim of criminal behaviour and that no charges had been laid at the time of the broadcast.

Thirdly, TVNZ agreed that Mr Lane's solicitor that the Authority should not resolve the question of Mr Lane's alleged criminal behaviour. However, it reported that Mr Robertson had laid a complaint with the police about the legitimacy of Mr Lane's computer business. Further, some of Mr Lane's solicitor's descriptions of his business activities involved questionable activities in view of the copyright laws.

Fourthly, company policy, rather than the contents of any particular tape, was the



reason for not releasing tapes of material which was not broadcast.

Fifthly, TVNZ maintained that public interest in computer piracy justified the broadcast.

Sixthly, TVNZ continued to maintain that a number of the issues raised were not broadcasting standards matters and the criminal proceedings, not initiated at the time of the broadcast, were a totally separate matter.

TVNZ concluded by again asserting that the broadcast breached none of the provisions cited.

Mr Lane's Final Response to the Authority

Through his solicitor, Mr Lane was asked whether he wished to add anything on matters raised in TVNZ's letter of 6 October.

In a brief reply dated 20 October, Mr Lane's solicitor argued that the real issues were:

- (a) Given that the conduct complained of was included in the broadcast programme, is such conduct part of "programmes and their presentation" in terms of section 4 of the Act?
- (b) Did the conduct of the broadcaster in preparing, compiling, and/or broadcasting the programme breach the provisions of the Act under which Mr Lane's complaints are made?

It noted that Mr Lane's total legal expenses were now \$5,076.83. It also offered to supply the Authority with a copy of the unedited tape which Mr Lane had earlier requested from TVNZ under the Official Information Act but had declined to obtain when told that the cost would be \$292.50.

Finally, Mr Lane's solicitor enclosed a copy of the Police Complaint Acknowledgment alleging assault which showed that although charges might not have been laid at the time of the broadcast, the complaint had certainly been lodged with the police well before that time.

