Updating construction

As a draftsman I found Judge Lewisohn's decision in ***R v Donnelly etc*** [1980] Crim LR 723 disturbing, and am thankful he has been reversed. You report him as holding that a video cassette does not fall within the phrase 'any film or other record of a picture or pictures' in s 1(2) of the Obscene Publications Act 1959. I drafted that phrase myself as it happens, and certainly intended it to include such developments as videotape (though, like what the soldier said, that is not evidence).

The judge 'was satisfied that the framers of the 1959 Act did not have video in mind'. In his commentary Professor Smith agrees with this. Yet it is not the case. The draftsmen were fully instructed on the technological developments since the Copyright Act 1911, and on what the future might hold. We were given conducted tours of television studios, sound laboratories and so forth. I remember watching Arthur Askey perform on a film set at Teddington.

In any case the question is not what the framers of the Act had in mind, but what the words used may fairly be taken to mean. An Act is always speaking, and over 1,000 Acts passed before the beginning of this century remain in force. The correct view was given by Stephen J exactly one hundred years ago. In holding that an Act passed before telephones were invented conferred monopoly powers over telephone messages he said-

> 'Of course no one suspects that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that they would, and it seems to me that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence'.[1]

CrimLR 23 Nov 1980

[1] *AG* v *Edison Telephone Company* (1880) 6 QBD 244.