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Commercial Law ealert

Are telephone directories, train timetables, football fixtures and television program schedules protected by copyright?

Ice TV Pty Ltd –v– Nine Network Australia Pty Ltd (High Court of Australia, 22 April 2009)

Following the High Court decision in *Ice TV –v– Nine Network Australia* last week, there is a strong argument that some telephone directories, train timetables, football fixtures, television program schedules and other similar compilations of factual information are not protected by copyright, or that there is far less scope for protection of such compilations than previously accepted.

It has always been the case that copyright does not protect mere factual information. However, before the decision in *Ice TV –v– Nine Network Australia*, it was widely considered that there was copyright in compilations of factual information if significant effort was expended in the collection or preparation of that information. But the High Court decision suggests that may not be the case.

The case concerned copying by Ice TV of some of the names and times of television programs from Nine Network's weekly television program schedule.

All six judges found there was no copyright infringement by Ice TV. The reason for this according to three of the judges was that there was not sufficient originality in the way in which the names and times of the television programs in Nine Network's television program schedule was expressed. That is, the way in which that information can practically be expressed, by a chronological listing of the program names and the start time for each program, is very limited. The significant effort which Nine Network expended in selecting programs and determining program times was not relevant.

The same issue arises in relation to telephone directories, football fixtures and train timetables. For example, consider a telephone directory. The names, phone numbers and addresses in the directory are all factual information, and facts themselves are not protected by copyright. But is there copyright in the way in which that information is expressed? As with television program schedules, the way in which such a telephone directory can practically be expressed, by alphabetical listing of names with a telephone number and address for each name, is very limited. The effort expended in collecting the names, phone numbers and addresses is probably not relevant. Therefore, following the decision in *Ice TV –v– Nine Network Australia*, there is a strong argument that there is no copyright in such a telephone directory, or that the scope for protection is very limited.

We do not yet have absolute certainty about these issues. The High Court only considered the issue of infringement and not whether there was copyright in Nine Network's television program schedule, but there is undoubtedly a close relationship between those issues. Also, in some cases, whether there is infringement may still depend on the extent of copying. So, the question of whether there is copyright in any particular compilation of facts and the scope of copyright protection, must still be considered on a case by case basis. But the High Court decision indicates that it will be far more difficult in the future to establish copyright protection in compilations of facts, such as telephone directories, train timetables, football fixtures and television program schedules.

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