



HIGH COURT OF AUSTRALIA

Manager, Public Information

22 April 2009

ICETV PTY LTD & ANOR v NINE NETWORK AUSTRALIA PTY LTD

IceTV provides a subscription based electronic television program guide known as the "IceGuide", which uses time and title information obtained in part from aggregated guides such as those published in newspaper TV guides and online. The aggregated guides are based on TV program scheduling information provided to media outlets by the television networks. The Nine Network provides a weekly schedule which is incorporated into the aggregated guides. The High Court today decided that IceTV's use of some of Nine Network's time and title information obtained from aggregated guides did not infringe Nine's copyright in its weekly schedules.

The IceTV guide originated from templates of the daily programming of the Sydney channels, Nine, Ten and Seven prepared by an employee of IceTV who watched television continuously for a period of weeks and wrote down time and title information of programs broadcast throughout that time. The template was then used to predict programs to be broadcast for the purposes of the IceGuide. The IceGuide itself was corrected from week-to-week by reference to the aggregated guides.

The aggregated guides are schedules of programs to be broadcast on various television stations over a given week and are published in various media. They are produced from information provided by free-to-air television broadcasters including information provided by the Nine Network via its weekly schedules. The weekly schedule is a schedule of programs to be broadcast on Nine Network stations in a given week and is produced from an electronic database. It contains various elements including the time and title of programs to be broadcast, whether a program is a repeat or live screening, format and classification information, and program or episode synopses.

When the IceGuide is downloaded on to certain devices it displays details of programs scheduled to be broadcast by free-to-air television stations for the coming six to eight days, including stations in the Nine Network. In preparing information to be included in the IceGuide for a given day in a current week, IceTV employees would use information usually in the previous week's IceGuide for that specific day, then compare it with the published aggregated guide for that same day in the current week. If there were a discrepancy between the IceGuide and the aggregated guide, the IceGuide would be amended to reflect the aggregated guide in almost all circumstances.

Nine Network argued before a single Judge of the Federal Court that IceTV's reproduction of time and title information from the aggregated guides amounted to reproduction of a substantial part of the weekly schedules which had been prepared by Nine Network staff. On that basis the Nine Network argued that IceTV had infringed Nine's copyright in the weekly schedule. The trial judge disagreed. The Nine Network appealed to the Full Court of the Federal Court which

allowed the appeal. The High Court granted IceTV special leave to appeal against the Full Court's decision.

Today the High Court allowed IceTV's appeal having determined that its use of time and title information in the IceGuide did not infringe Nine's copyright in either the weekly schedule or the database from which the weekly schedule was produced, assuming without deciding that Nine had copyright in the database. The judges of the Court produced two separate sets of reasons.

Three judges were of the view that a program's title was ordinarily bestowed by the producer of the program rather than the person or persons who authored the weekly schedule and that expression of the time at which a program is shown can only practically be done by using words or figures based on either a 12 or 24 hour time cycle for a day. Thus there was little originality in the expression of time and title information. The level of skill and labour required to express the time and title information was minimal. These considerations led to the conclusion that the time and title information was not a substantial part of the weekly schedule or of Nine's database. Their Honours determined that IceTV had not infringed Nine's copyright in the weekly schedule or the Nine database when it utilised time and title information from the aggregated guides in the IceGuide.

The other three judges considered that the originality of Nine's weekly schedule lay not in the time and title information but rather in its selection and presentation together with additional program information and synopses to produce a composite. They considered that setting down program titles in particular time slots required only modest skill and labour. IceTV's use of the time and title information from the aggregated guide therefore could not be characterised as reproduction of a substantial part of the weekly schedule or of the Nine database.

The High Court set aside the orders of the Full Federal Court and restored the orders made by the trial judge.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*