

# Copyright

## IceTV's High Court win over Channel Nine a victory for the rights of the reading public

On 22 April 2009, the High Court allowed the appeal in *IceTV v Nine Network*. IceTV provides a subscription-based electronic television program guide for use with digital personal video recorders.

Channel Nine claimed that IceTV infringed copyright in its weekly schedules by directly reproducing details of program titles and broadcast times. It claimed this information was a substantial part of the weekly schedules (which IceTV conceded were copyright works). That claim was rejected at first instance, but upheld by the Full Court of the Federal Court of Australia. IceTV appealed against that decision to the High Court of Australia.

The High Court considered what constitutes a 'substantial part' of a copyright work (a compilation in this case). That is, how much material can be used from a copyright work before it becomes a 'substantial part' requiring permission from the copyright owner? All six judges sitting in the High Court ruled that IceTV did not infringe Nine's copyright when they used some of the time and title information in Nine's program guides.

"Ice TV case has turned Australia's copyright law upside down" claimed Professor Mark Davison from Monash University on the ABC Law Report on 5 May. Professor Davison, looking at the decision from a commercial point of view, said that it has pulled the intellectual property rug out from under anyone who has ever sought to protect their copyright interest in databases or lists of factual material. However for users of copyright material, the case shows a balanced approach to copyright that recognises the importance of maintaining a robust public domain which allows people and organisations to use, re-use, and build upon materials to produce innovative new works.

The Australian Digital Alliance (ADA), of which ALIA is a member, was successful in its application to intervene as a 'friend of the court' in this case, and made submissions that outlined important public interest considerations and the implications that this case would have upon users of copyright materials. Telstra supported Channel Nine in the High Court as it was concerned at change in the level of protection on factual databases. Only a few years ago,

the High Court refused to hear an appeal by *Desktop Marketing*, which had effectively reproduced Telstra's White Pages.

ALIA past President and ADA Chair, Derek Whitehead said:

"The conventional view of copyright law is that it protects creative expression but not facts – anyone is free to use and re-use information as they wish.

"But after the Full Federal Court, it seemed that Australian copyright law was now giving copyright holders monopoly control over the use of even small slivers of information contained in copyright works.

"We might have ended up in a situation where copying parts of a train timetable, or even your city and the temperature forecast becomes an infringement of copyright."

Copyright does not confer a monopoly on facts or information because to do so would impede the reading public's access to and use of facts and information. Information is not protected by copyright; it is only the expression of information which is protected. That facts are not protected is a crucial part of the balancing of competing policy considerations in copyright legislation. When the information can only be expressed in one way, such as stating that Channel 9 News is at 6pm, you are not now going to have copyright in that information.

The ALIA copyright advice service is free to all ALIA members. <http://www.alia.org.au/advocacy/copyright/copyright.service.html>. Helen is available for consultation by phone on Tuesdays and Thursdays on 02 62158237 or by email at [helen.roberts@alia.org.au](mailto:helen.roberts@alia.org.au).

The transcript of the case is available at <http://www.austlii.edu.au/au/cases/cth/HCA/2009/14.html>

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## Workwatch

The theme of this month's *inCite* is the role of library technicians. The link to ALIA's recommended salary and worklevel guidelines for library technicians is at <http://www.alia.org.au/employment>, clicking on 'Salary and worklevel guidelines'. A general guide to job prospects for library technicians (and their counterparts in galleries and museums) is at <http://joboutlook.gov.au>.

One of the most common employment-related matters raised with ALIA is that of library technicians being asked to undertake tasks that might normally be expected of more highly-paid employees. Where library technicians believe that they are being underpaid or not receiving due professional recognition in any sense, they should refer in negotiations with employers to the ALIA worklevel guidelines and training level specifications. ALIA also hears increasingly about advertisements for library technician posts where it is stated that no formal qualifications are necessary, or are at most desirable. These situations are unacceptable, given that library technicians are a recognised professional category within the library and information sector, requiring specialised training. One of ALIA's significant roles is to make representations where appropriate professional recognition is not given to any group within the sector. ALIA members should not hesitate to approach the national office or local liaison officers about these issues.

### Fair Work Act applies from 1 July

Most provisions of this legislation now apply. Detailed information about the new workplace relations system for both employees and employers is at <http://www.deewr.gov.au/WorkplaceRelations>

Organisations whose bargaining processes for new collective agreements are due to begin should note that negotiations and approval processes will now be covered by the *Fair Work Act*.

### Teacher librarians: salary campaigns

At the time of preparing this article, teachers in Queensland and South Australia were continuing their campaigns for salary increases following expiry in those states earlier this year of collective agreements. In Tasmania a campaign has begun following disagreement with the State Government concerning the level of pay rise to be granted. To now, there has been a level of agreement that salaries for teachers in Tasmania should be on a par with those paid to Victorian teachers, but the Tasmanian Government is now arguing that local living costs are lower than in Victoria so that the salary nexus need not be maintained.

Updated information on salaries and other issues in schools is on the website of the Australian Education Union at <http://www.aeufederal.org.au>, clicking on the links to state and territory branches.

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