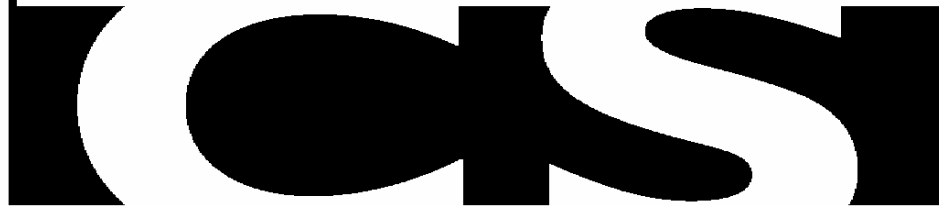


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# Telstra Corporation Ltd v Phone Directories Pty Ltd

The importance of identifying both an *author* and a contribution of an *authorial* kind

Copyright Society  
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# Background

- Telstra subsidiary Sensis publishes White Pages and Yellow Pages
- Production of the directories very largely automated
  - Genesis computer program
  - The Rules
- Proceedings commenced in 2007 (post Desktop Marketing but pre IceTV)
- Subsistence was dealt with as a preliminary question
- Telstra failed to prove that copyright subsisted:
  - Not able to identify the authors
  - Not able to point to “authorial” contribution

# The works sued on

- White Pages

- *The expression, including the content, form and arrangement of information in individual listings, and the overall arrangement of individual listings into the whole*

- Yellow Pages

- *The same as above, with the addition that arrangement occurs under headings and includes cross-references*

# Who were the authors?

- Works in evidence bore notation © Telstra
- List of “authors” for Sample Directories was tendered
  - “...current team members have been identified where reasonable inquiries could not confirm the particular members of the team who contributed to the Sample Directories”*
- Gordon J stressed centrality of authorship to subsistence of copyright

# Who were the authors?

- Problems with Telstra’s approach:
  - Not clear, and probably unlikely, that all “authors” named in the list contributed to the Sample Directories
  - It was clear that list did not include names of all individuals who contributed to the directories
  - List included hundreds of names, most of whom did not give evidence
  - There had been contribution by large number of contractors, many of whom were unidentified and many of whom had not assigned copyright
  - Substantial parts of the directories had no human authors

# Who were the authors?

- Telstra sought to rely on passage in Laddie, Prescott and Vitoria regarding authorship in compilations – appeared to suggest that the statutory presumptions may need to be relied on where there is “no identifiable author”
- Submitted that the presumptions in ss 128 and 129 make clear that copyright *can* subsist notwithstanding that author cannot be identified
- Gordon J did not agree
- Ultimately found that no authors had been identified
- No need to determine whether staff performing function separate from, and oblivious to, each other could be considered “joint authors”

# Authorial contribution - what is test?

- Single judge “overrules” Full Court in Desktop
- Discussion of High Court in IceTV
  - Subsistence not in issue in that case – originality only considered for the purpose of infringement
- Gordon J adopts the two IceTV formulations for originality:
  - Independent intellectual effort
  - Sufficient effort of a literary nature
  - Also refers to “creative spark”
- Also from IceTV – any “authorial” contribution must not be anterior to the work first taking its material form

## Authorial contribution – why did Telstra fail?

- While there *was* intellectual effort expended on The Rules, this was anterior to work first taking material form
- Evidence suggested that the production of the directories was largely automated, human intervention/decision making extremely limited
- Tasks by humans were “mechanical in nature”
- No independent intellectual effort/sufficient effort of a literary nature
- If necessary to decide, no creative spark

## Where to now?

- Telstra goes further than Feist and IceTV – both cases were just about infringement
- Implications beyond compilations
  - Computer generated works? Cf UK
  - Court transcripts?
- Even if a compilation is “original”, real difficulties identifying authors of a major commercial database
- Lead to pressure for database right?

# Questions

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