

# AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

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## ARTICLES

### **Copyright protection of broadcast program schedules: IceTV before the High Court** – *David Lindsay*

The appeal to the High Court from the decision of the Full Federal Court in *Nine Network v IceTV* raises important issues in relation to the subsistence and infringement of copyright in compilations that could be usefully clarified by the court. In particular, the case concerns the extent to which copyright in compilations that include a selection of facts may be infringed by copying the selection. This article identifies and analyses the unresolved issues before the court in the appeal. In doing so, it explains that reversing the decision of the Full Court would mean arriving at fundamentally different conclusions to those reached by the majority of the House of Lords in *Ladbroke*. The article also explains how denying protection to selections of factual material may undermine incentives for the production of such compilations, suggesting that any changes to the low originality threshold under Australian law should be left to the legislature, and not initiated by the courts. ....

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### **Compilation copyright: A matter calling for “a certain ... sobriety”** – *Justine Pila*

In this article I review the Anglo-Australian law of compilation copyright in the light particularly of the Australian Full Federal Court’s decisions in *Desktop Marketing v Telstra* (2002) 119 FCR 491 and *Nine Network v IceTV* (2008) 168 FCR 14. I criticise the court’s approach in those cases to both subsistence and infringement, while also offering a measured defence of the first instance decision of Bennett J in *IceTV*. In particular, I suggest that her Honour’s decision in that case is largely right, and reflects an important attempt by a judge to re-orient copyright around its works, and resist the past temptation of courts – including the Full Federal Court itself – to read copyright as a law of unfair competition, or a law of natural property rights subsisting in products of labour and value. ....

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