

IceTV defeats Channel 9 in High Court over electronic program guide: What does it mean for free to air TV and Telstra's other monopoly?

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The recent High Court decision in favour of IceTV will have far reaching implications for all Australians. As might be expected it contains an interesting discussion about the concepts of copyright law and when copyright is created. However it is likely that over time, this decision will be better known for the ramifications in and for the free to air TV industry as well as other "free" databases such as telephone directories and bus timetables.

While the facts of the case are complex, when distilled down to the key issues they are reasonably straight forward: IceTV produced an electronic TV program guide (EPG) based on information from (amongst other things) the TV Schedule produced by the networks. The EPG enabled people to download information about what TV shows were on, and when, from the internet. The EPG could then be used to record TV on a home computer or hard disc recording device (commonly known as PVR's or personal video recorders). Channel 9 objected to IceTV's use of the information and asserted that in creating the EPG, IceTV infringed Channel 9's copyright.

On 22 April 2009, Channel 9 lost its appeal in the High Court and not surprisingly, IceTV has already updated its EPG to include the Channel 9 programming. Doubtless there will be other EPG's available soon.

Why does this impact Free to air TV?

As noted at the outset, the decision is very interesting for copyright and technology lawyers around Australia, however the lasting impact of this decision could be on free to air TV and in particular the commercial channels that rely on advertising for their revenue

Time shifting

With an EPG it is no longer strictly necessary to watch the TV show at the time designated by the station owner. Podcasting and Vodcasting have, in recent years introduced many Australians to the concept of time shifting their favourite programs, so that they can be listened to or watched at a time that suits the consumer.

However these concepts, whilst popular and growing have not yet been adopted by the mainstream. This is likely to be in part because podcasting, and the mechanics of doing it, are still a little "techie" (although getting easier with every release of iTunes!). The author submits that the failure of pod/vodcasting to reach the mainstream is because it is not in the interests of the major commercial networks for that to occur. It is worth noting that those broadcasters that have had the most successful take up of podcasts are the public broadcasters such as the ABC and BBC.

With a PVR loaded with an EPG it is easy to record the shows you want. No more complicated programming the VCR only to find you set it for the wrong day, or the wrong channel! With a PVR the name of the show you want to record is shown on the screen of your TV. Anyone who has used the Foxtel IQ box will be familiar with it.

Ad skipping

With the entry of third party EPG's and PVR's the balance of power shifts slightly. PVR manufacturers can respond to consumer demand to make ad skipping easier. Many PVR's already have a "skip 30 seconds" button on the remote. As its name suggests, this enables the operator to

simply skip forward in time 30 seconds, something that is quite simple in a digital world but a quantum leap from the old fashioned fast forward button on a Video machine.

By way of comparison, Foxtel produces its own EPG and PVR (Foxtel IQ). However as Foxtel is both the broadcaster and controls the delivery of the Foxtel IQ boxes, users are still forced to fast forward through the ads, just like the old video machines.

However without an EPG, these devices have struggled to live up to market expectations (the author has not tried the recently released TiVO promoted by Channel 7, however understands that ad skipping is not available on it).

Skipping ads in 30 second (or 1 or 2 minute) increments means none of the visual content of the ad is seen by the viewer at all. At least in fast forward mode the viewer is forced to watch the ads, indeed arguably more closely (the author is increasingly of the view that his children know the ads better as a result of learning to “time” when to revert to normal speed).

Ad skipping must have a significant adverse effect on advertising revenue. As a side note this idea was explored in 1985 by author Carl Sagan in his novel Contact.

Fighting it

The commercial TV channels do not appear to be giving up without a fight. Recent changes to programming suggest that some steps are already being taken to try and defeat these techniques. Shorter ad breaks, non standard ad lengths, station breaks (once a ‘marker’ for the end of the ad block) in the middle of ad blocks and significant departures from advertised start times appear to be aimed at the digital, time shifted viewer with a PVR!

Of course like all good battles for survival, evolution is inevitable and Foxtel now includes a feature to extend recording by 20 minutes past the advertised ending and software developers in the USA have developed tools to “recognise” the ads, and skip them altogether.

The Future of Free to Air TV

EPG’s, PVR’s, time shifting and ad skipping create challenges for the free to air TV industry (at least those that rely on advertising revenue). Combine this with the Rudd Government’s announcement on the NBN that we will all have fibre to the premises (FTTP) that promises 100Mbps (more than enough to stream HDTV) and the old free to air TV model has some serious issues to confront in the coming years.

Impacts for Telstra’s other monopoly

Telstra, through its Sensis business unit has a monopoly over the information in its white and yellow pages built up from its days as the only show in town.

Previously it was thought that Telstra owned the copyright in the White and Yellow Pages directories, however the IceTV decision paves the way for a High Court challenge to this view, and may see any number of businesses try and replicate some or all of these or other simple databases (such as bus timetables).

Google has already challenged the way many of us think about information. The expression “google it” has arguable entered the modern English language. Google Maps probably more than any other mapping product (although Sensis maps, street directories and GPS devices have assisted) has changed the way we find out where we are and where we want to go.

If the details in Telstra’s WhitePages are added into this mix, there seems to be ample opportunity for further changes ahead.

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