

T R FLANAGAN SMASH REPAIRS PTY LTD V JONES

[2000] FCA 625

16/05/2000

Introduction

This is a decision of a single judge of the Federal Court of Australia. It involves the issue of whether a compilation of information, which is generally known to the public has the necessary degree of skill, judgement and labour to attract copyright protection.

Background

The first applicant developed a computer software package for use in the motor vehicle panel beating industry (the “System”). The second applicant is the licensee of Auto-Quote with a right to sub-licence, which it has done in more than 1,000 cases. Relevantly, the System was provided to customers in a “read and write” form of access as opposed to “read only”.

The respondent was employed by the first applicant between 1987 and 1994 (with the exception of a period of approximately 4 months in 1991) as a programmer who together with other software programmers continued to develop and implement enhancements to the System. At the time of commencing employment the first applicant had sold 250 copies of the System to members of the panel beating industry in Australia and overseas.

The System mainly consisted of an operating programme, a motor vehicle database and a motor vehicle parts database.

The applicants allege that:

- the databases are literary works as defined in s10 of the *Copyright Act* (Cth) 1968 and that the first applicant was the owner of the copyright subsisting in those works;
- the respondent infringed the copyright by:
 - reproducing and publishing the works or a substantial part of them in material form;
 - selling a computer package called “FoxQuote 2000” which included the databases or a substantial part of them and which carried out a similar function as the System.

The respondent alleges that no copyright subsists in the two databases as:

- The ability of the customer to alter the files negated the subsistence of copyright in them;
- Both databases contained material that was available to anyone in the public domain;
- The compilations did not involve the application of the requisite degree of skill and judgement necessary to give rise to copyright protection.

The Compilations

Database of Motor Vehicle Models

In about 1980 Mr Flanagan of the first applicant compiled a handwritten list of motor vehicles in his own terms in which he described the key model elements and alphanumeric codes to identify each vehicle. The information was subsequently loaded on a computer when the business acquired one.

The database has two fields, the code and a description, both of which were devised by Mr Flanagan. For example:

Code	Description
FLKA	Ford Laser KA 3D/5D 81-82
FLKB	Ford Laser KB 3D/5D 82-85
FMGAGB	Ford Meteor GA/GB 82-85

By way of example, Ford also publishes a list of its motor vehicles however not all of the vehicles on the Ford list appeared in the database. His Honour found that this indicated an element of selection was involved in the compilation and that some skill and effort in the translation of the Ford directory was required. In addition the database often contained more information than in the manufacturer's list.

The Parts List

The claim was confined to three fields:

- the code;
- the description; and
- the part number.

In this database parts were listed in a sequence as they could be expected to be damaged in a collision. This was the "crash sequence". His Honour determined that arranging the parts in the "crash sequence" involved the application of Mr Flanagan's experience, skill and understanding as a panel beater. This experience allowed him to arrange the various body parts in the order in which they are removed and repaired

Other examples of compilations were given by the applicant to show that copyright could subsist in a compilation of information notwithstanding that being in the public domain.. The essential element was that “some skill, even very small, [had to be] applied to its preparation. “¹

Decision

There was no authority for the proposition that copyright was lost if a customer altered a file in which copyright subsisted. The alteration may give the customer the copyright in what they have produced but such interference would not negate the copyright that subsisted in the original work.

Although the databases contained information, which was in the public domain, copyright protection was still available. The protection extended to the expression of ideas not the concepts themselves.

His Honour found that Mr Flanagan’s steps taken to compile the databases involved sufficient skill and labour to warrant copyright protection. Particularly in relation to devising a uniform terminology for naming vehicle parts and the arrangement of the useful “crash sequence”.

Dimitri Eliades

¹ *Apple Computer Inc v Computer Edge Pty Limited* (1994) 53 ALR 225 at 234 per Fox J.

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