

Television Broadcast Copyright: The Australian Experience

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In the field of broadcast copyright, most attention is currently being paid to the negotiation in WIPO of a Treaty on the Protection of Broadcasting Organisations, which is designed to extend the rights of broadcasters. However, little attention is being paid to certain fundamental, unresolved questions about the very nature of broadcast copyright law. Most notably, issues such as how we understand the concept of a “broadcast” as a species of copyright subject matter, and what consequences follow from such an understanding, have been left largely unexplored. This paper focuses on the recent decision of the High Court of Australia in *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 205 ALR 1, which now represents the highest appellate consideration of television broadcast copyright in the Commonwealth. In this case the High Court was asked whether copyright subsists in each and every visual image and accompanying sound broadcast by way of television, or whether the boundaries of the copyright work are to be defined by reference to a different standard, such as a broadcast “programme”. It is suggested that the High Court’s decision is valuable in the way in which it addresses the relationship between the broadcast as ephemeral signal and the broadcast as perceptible content, which will be discussed in detail. The limitations of the decision, as well as issues relating to broadcast copyright left unresolved by the decision (most notably the question of what constitutes a “substantial part” of a broadcast), will also be considered. The paper will conclude by suggesting that despite the High Court’s success in dealing with the immediate question before it, greater judicial sensitivity will be needed in dealing with broadcast copyright in the future, which may require a critical re-evaluation of certain long-standing copyright principles.