Feist Pubs., Inc. v. Rural Tel. Svc. Co., Inc., 499 U.S. 340 (1991)

Justia Opinion Summary and Annotations

Annotation

Primary Holding
The standard for deciding whether a work can gain copyright protection is its originality rather than its creator's effort.

Facts
Compiling telephone directories from areas throughout Kansas, Feist Publications, Inc. obtained licenses from all of the local directories in a region except for Rural Telephone Service Company, Inc. Rural was a relatively small telephone cooperative in northwest Kansas that had a monopoly in its area that was granted by statute. It also was required to compile and distribute a free phone directory of its customers.

To identify illicit copying of its phone numbers, Rural had integrated a handful of inaccurate entries in its directory. When Feist copied 4,000 entries from the Rural directory without having obtained a license, some of the inaccurate entries were included. This made it virtually indisputable that unlicensed copying had occurred, which resulted in a lawsuit by Rural to seek damages for Feist's copyright violation. Rural prevailed in the

lower courts, since copyright protection was traditionally based on the time and effort expended on the material.

Issues & Holdings

Issue: Whether compilations of otherwise non-copyrightable facts may attain copyright protection.
Holding: Yes, as long as some modicum of originality is used in the way that the facts are selected or presented.

Opinions

Majority

- Sandra Day O'Connor
- William Hubbs Rehnquist
- Byron Raymond White
- Thurgood Marshall
- Anthony M. Kennedy
- John Paul Stevens
- Antonin Scalia
- David H. Souter

Acknowledging that facts cannot be copyright, O'Connor noted that compilations of facts can have sufficient originality to gain copyright protection. She repudiated the sweat of the brow test, which had been used by lower courts in copyright cases, and argued that the purpose of copyright protection is to promote creativity rather than effort. As a result, O'Connor felt that only a minimal degree of creativity and originality was needed to obtain protection. This extremely low standard could be met by a compilation because compilers can choose what information to exclude or include as well as how to present it. However, Rural could not meet this standard because it had simply organized the names alphabetically, which was entirely predictable, and had not gone beyond what it was required to do under law.

Assuming that Rural's directory had been copyrighted, Feist would not have violated the copyright if it had rearranged the order of the phone numbers in the directory or found a different way to format the information. As long as there is anything different about the selection and arrangement, a work competing with a validly copyrighted work may obtain its own protection without infringing on the protection for the original work.

Case Commentary

This case created the idea/expression dichotomy, in which ideas are not protected, but expression is protected. Mere facts cannot be copyrighted, but the selection and arrangement of them may be copyrighted if there is some originality to it. It is worth noting that something truly novel may be eligible for a patent, which sets a higher standard for eligibility but provides a stronger level of protection.

Syllabus Case

U.S. Supreme Court

Feist Pubs., Inc. v. Rural Tel. Svc. Co., Inc., 499 U.S. 340 (1991)

Feist Publications, Inc. v. Rural Telephone Service Company, Inc.

No. 89-1909

Argued Jan. 9, 1991

Decided March 27, 1991

499 U.S. 340

Syllabus

Respondent Rural Telephone Service Company is a certified public utility providing telephone service to several communities in Kansas. Pursuant to state regulation, Rural publishes a typical telephone directory, consisting of white pages and yellow pages. It obtains data for the directory from subscribers, who must provide their names and addresses to obtain telephone service. Petitioner Feist Publications, Inc., is a publishing company that specializes in area-wide telephone directories covering a much larger geographic range than directories such as Rural's. When Rural refused to license its white pages listings to Feist for a directory covering 11 different telephone service areas, Feist extracted the listings it needed from Rural's directory without Rural's consent. Although Feist altered many of Rural's listings, several were identical to listings in Rural's white pages. The District Court granted summary judgment to Rural in its copyright infringement

suit, holding that telephone directories are copyrightable. The Court of Appeals affirmed.

Held: Rural's white pages are not entitled to copyright, and therefore Feist's use of them does not constitute infringement. Pp. 499 U. S. 344-364.

(a) Article I, § 8, cl. 8, of the Constitution mandates originality as a prerequisite for copyright protection. The constitutional requirement necessitates independent creation plus a modicum of creativity. Since facts do not owe their origin to an act of authorship, they are not original, and thus are not copyrightable. Although a compilation of facts may possess the requisite originality because the author typically chooses which facts to include, in what order to place them, and how to arrange the data so that readers may use them effectively, copyright protection extends only to those components of the work that are original to the author, not to the facts themselves. This fact/expression dichotomy severely limits the scope of protection in fact-based works. Pp. 499 U. S. 344-351.

(b) The Copyright Act of 1976 and its predecessor, the Copyright Act of 1909, leave no doubt that originality is the touchstone of copyright protection in directories and other fact-based works. The 1976 Act explains that copyright extends to "original works of authorship," 17 U.S.C. § 102(a), and that there can be no copyright in facts, § 102(b).

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A compilation is not copyrightable *per se,* but is copyrightable only if its facts have been "selected, coordinated, or arranged *in such a way* that the resulting work as a whole constitutes an original work of authorship." § 101 (emphasis added). Thus, the statute envisions that some ways of selecting, coordinating, and arranging data are not sufficiently original to trigger copyright protection. Even a compilation that is copyrightable receives only limited protection, for the copyright does not extend to facts contained in the compilation. § 103(b). Lower courts that adopted a "sweat of the brow" or "industrious collection" test -- which extended a compilation's copyright protection beyond selection and arrangement to the facts themselves -- misconstrued the 1909 Act and eschewed the fundamental axiom of copyright law that no one may copyright facts or ideas. Pp. 499 U. S. 351-361.

(c) Rural's white pages do not meet the constitutional or statutory requirements for copyright protection. While Rural has a valid copyright in the directory as a whole because it contains some forward text and some original material in the yellow pages, there is nothing original in Rural's white pages. The raw data are uncopyrightable facts, and the way in which Rural selected, coordinated, and arranged those facts is not original in any way. Rural's selection of listings -- subscribers' names, towns, and telephone numbers --

could not be more obvious, and lacks the modicum of creativity necessary to transform mere selection into copyrightable expression. In fact, it is plausible to conclude that Rural did not truly "select" to publish its subscribers' names and telephone numbers, since it was required to do so by state law. Moreover, there is nothing remotely creative about arranging names alphabetically in a white pages directory. It is an age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course. Pp. 499 U. S. 361-364.

916 F.2d 718 (CA 10 1990), reversed.

O'CONNOR J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, MARSHALL, STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., concurred in the judgment.

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Oral Argument - January 09, 1991

Opinion Announcement - March 27, 1991