

**DATA ACCESS CORPORATION V POWERFLEX SERVICES PTY LTD [1999] HCA 99**

**FACTS**

Data Access is the publisher of the Dataflex software package. Powerflex created the Powerflex software package to complement the Dataflex package. Powerflex was compatible with Dataflex and used certain macros and reserved words used by Dataflex. However, the service code for the macros and reserved words was different. It was also accepted by the parties that the object code used by the two programs for the commands and reserved words was not necessarily the same.

Data Access claimed that Powerflex had breached copyright in the reserved words, some macros and a data compression table.

**ISSUES**

1. Had Powerflex infringed Data Access copyright in the reserved words or macros?
2. Had Powerflex infringed Data Access copyright in the data compression table?

**FINDING**

A single command, macro or reserved word used in a computer program is not by itself a computer program though the source code behind the command or macro may be protected by copyright. Using an identical command to another computer program by itself does not mean copyright in part of that program has been infringed.

The data compression table was protected by copyright as the table itself, independent of the computer program, was protected by copyright, as it was an original expression.

**QUOTE**

Gleeson CJ, McHugh, Gummow and Hayne JJ said:

*“In our opinion, none of the Reserved Words satisfies the statutory definition. Each Reserved Word is undoubtedly in “code or notation” – the dataflex language. It follows that whether a Reserved Word is a “computer program” within the meaning of the definition depends on whether it is an “expression.....of a set of instruction....intended...to cause a device having digital information processing capabilities to perform a particular function”. However, each of the Reserved Words is a single word; none is a set of instructions in the Dataflex language. Further, none of the Reserved Words intends to express, directly or indirectly, an algorithmic or logical relationship between the function desired to be performed and the physical capabilities of the “device having digital information processing capabilities”. Paragraph 52 of [1999] HCA 49 “Once these principals are applied to each Reserved Word in the Dataflex language, it is clear that they are not “computer programs”. Each Reserved Word compromise but a single instruction in that language. Each Reserved Word, considered alone, is not a “set of instructions” in that language. It is not a “computer program” expressed in the Dataflex language”.*

*“The conclusion that the reserved Words themselves are not a computer program in Dataflex does not mean that their expression in source code and object code is not a computer program”.*

*“The skill and judgement employed by Dataflex was perhaps more directed to writing the program setting out the Huffman algorithm and applying this program to a representative sample of data than to composing the bit strings in the Huffman table. Nevertheless, the standard Dataflex Huffman table emanates from Dataflex as a result of substantial skill and judgment. That being so, the Full Court was correct in holding that the standard Dataflex Huffman table constituted an original literary work”.*

## **IMPACT**

The High Court has confirmed that software developers are able to write computer programs that use similar commands to computer programs protected by copyright. It should be easier for software developers to write computer programs which are compatible with protected programs.

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