

Database protection: how wide does it go?

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Database right has been in place in the UK since January 1998. It prevents 'extraction' or 're-utilisation' of the whole or a substantial part of the content

of a database –

- 'extraction' is a temporary or permanent transfer of the contents to another medium.
- 're-utilisation' is making the data available to the public.

The right subsists if there has been a substantial investment in the obtaining, verifying or presenting of the contents of a database. It protects the substantial investment in bringing together and organising the data, rather than the data themselves. The substantial investment must be independent of any investment in creating the database contents.

Substantial investment doesn't just mean financial investment. Recital 7 says: '...the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently.'

A database is defined as: 'A collection of independent works, data or other materials that are arranged in a systematic or methodical way and are individually accessible by electronic or other means.' The definition would cover many websites;

collections of data such as directories, or encyclopaedias, whether print or online; as well as statistical databases.

A database might be protected by both copyright and database right; by one or the other; or by neither. In order for a database to qualify for copyright protection it must be original. And it can only be considered original if 'by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation'.

The key concepts of database right are explained in *British Horseracing Board v William Hill* (ECJ case C-203/02). But a recent legal case sheds further light on what database right protects. On 9 October the European Court of Justice delivered its judgement in *Directmedia Publishing GmbH v Albert Ludwig-Universität Freiburg* (ECJ case C-304/07). This case deals with the extent to which Directmedia used and relied upon an anthology of poems by the University of Freiburg. The Freiburg anthology, a collection of verse from 1720 to 1933, was published as part of a project under the overall direction of Professor Knoop at Albrecht Ludwigs Universität. For the anthology, a list of verse titles was drawn up: 'The 1100 most important poems in German literature between 1730 and 1900'. It took

two-and-a-half years to complete at a cost of EUR 34,900. Directmedia published a CD-Rom in 2002 called *1000 poems everyone should have*.

Professor Knoop and the University of Freiburg took the view that Directmedia had infringed the copyright of Professor Knoop and the related right of the University of Freiburg as maker of a database.

Directmedia didn't replicate exactly the same list of poems but made their own assessment of what should be included, and they submitted that there is no extraction if the database is merely used as a source of information.

In the ECJ judgement

Continuing our series of exclusive articles taken from Facet Publishing's Keeping Within the Law online intelligence service, Paul Pedley discusses database right, and a new case that sheds light on what it protects.

published in October the court decided that '...it is immaterial, for the purposes of assessing whether there has been an "extraction", within the meaning of Article 7 of Directive 96/9, that the transfer is based on a technical process of copying the contents of a protected database, such as electronic, electromagnetic or electro-optical processes or any other similar processes (see, in this respect, recital 13 in the preamble to Directive 96/9), or on a simple manual process... even a manual copying of the contents of such a database to another medium corresponds to the concept of extraction in the same way as downloading or photocopying' (paragraph 37 of the judgement).

The judgement also makes it absolutely clear that an infringement of database right doesn't have to involve the making of a direct copy without adaptation. Paragraph 39 of the judgement says: 'It is also immaterial, for the purposes of interpreting the concept of extraction in the context of Directive 96/9, that the transfer of the contents of a protected database may lead to an arrangement of the elements concerned which is different from that in the original database. As is apparent from recital 38 in the preamble to Directive 96/9, an unauthorised act of copying, accompanied by an adaptation of the contents of the database copied, is among the acts against which that directive seeks, through the establishment of the *sui generis* right, to protect the maker of such a database'.

■ The KWtL subscription service includes a fuller write-up of this case, as well as a report of the *BHB v William Hill* case, and a factsheet on database right.

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PAY REPORT

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'It may be true that men tend to seek higher pay and career success but it was interesting to note that, of the jobs we filled in the last 12 months with a salary of over £50,000 p.a., 83 per cent were filled by women and 17 per cent by men, which suggests that women in the information profession are keen to seek those higher positions and salaries and are more than capable of landing top jobs,' Fiona comments.

Sue Hill herself also tends to go along with the IEA's conclusion about lifestyle choices. 'Most women are smart enough to realise lifestyle is a better way to career plan,' she suggests.

'In our industry it is the gender gap itself, rather than any pay differential between genders, that is the issue of concern,' adds Sue Hill's Head of Information Recruit-

ment Nicola Fanklin. 'Maybe the question should be: What is it about information management work that puts men off?'

'Given that the report concludes that pay gaps are "increasingly irrelevant" and to close the gap would be "impossible to achieve", I suggest that within the information world our time would be better spent in arguing for increased pay for all, regardless of gender,' comments Information Management's Francis Muzzu.

But Ayub Khan still believes there is a gender issue to be addressed. 'At CILIP's own AGM the entire top table – Chief Executive, President, President Elect and Treasurer – were white men in their 50s,' he points out. 'The majority of the audience were women – a stark contrast.'

■ Full report available at www.iea.org.uk/record.jsp?type=book&ID=442
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