

Database Treaties and bills

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European Database Directive (1996)

- Copyright protection for original selection and arrangement of facts in a database.
- *sui generis* protection for non-original databases, prohibiting the unfair extraction of a substantial part of any database reflecting significant investment.

Copyright

Congress shall have the power ...

To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.

EU Database Directive (con't)

- A database could simultaneously receive both types of protection
 - copyright protection for the expression - the selection and arrangement of data
 - *sui generis* protection against the extraction of a qualitatively substantial part of the data itself.
 - The *sui generis* protection lasts 15 years; the copyright protection lasts for the life of the author plus 70 years.

Feist v. Rural Telephone (1991)

- Supreme Court rules that the phonebook cannot be protection by copyright, since is simply a collection of facts.
 - Rejected sweat-of-the-brow doctrine

European Law impacting US

- Stated that protection for databases would not extend to countries that didn't pass similar legislation
- Database proposal defeated at WIPO
 - Academy Presidents' letter

Academy Presidents' Letter (the WIPO database proposal)

"We believe that these changes to the intellectual property law, if enacted in their present form, would seriously undermine the ability of researchers and educators to access and use scientific data, and would have a deleterious long-term impact on our nations research capabilities. Moreover, the proposed changes are broadly antithetical to the principle of full and open exchange of scientific data espoused by the U.S. government and academic science communities, and promoted internationally."

Coble Bill

- Prohibits the use of a "substantial part" of a database in many instances
- "...harm to the actual or potential market"
- Provides exemption for scientific and academic research that "does not harm directly the actual market"
- Other factors for exemption, eg "good faith"

"Current" US Database Bills

- HR 354 The Collections of Information Antipiracy Act (Coble R-NC) - 1/19/99
Reintroduction of HR 2652
- HR 1858 The Consumer and Investors Access to Information Act (Bliley R-VA) 5/19/99

Bliley bill

- Aims to prevent harmful, parasitic copying while enabling researchers' access to information and continual development of value-added databases.
- Imposes narrow restrictions on the transformative use of information
- prohibits outright duplication of databases to compete against the original one.

Comparison of database bills

- Both ban wholesale misappropriation of databases
- Differ on creation of new databases using material from existing ones (transformative use)

Penalties - Coble

- Criminal penalties: \leq \$250k and/or \leq 5 years; second conviction both can be doubled
 - Doesn't apply if material in database $>$ 15 years
- Civil action can be brought "without regard to the amount in controversy"
- Injunctions, impoundment of equipment, and monetary relief

Penalties: HR Bliley

- FTC has authority to enforce
- violation of HR 1858 treated as violation of rule respecting unfair or deceptive acts or practices under Federal Trade Commission Act
 - Cease and desist order
 - <=\$10K for each violation of order
- Civil remedies

Problems with Coble

- Proposals define databases too broadly
 - The definition of database is applicable to both print and electronic formats and would cover most directories, anthologies, CD-ROMs and online databases, reference works, and more.

Problems with Coble - as argued by opponents

- Proposals extend term of protection
 - Protection for 15 or 25 years
 - But, update resets clock

Problems with Coble

- Proposals provide exclusive right to control uses of databases
 - Moves from full and open exchange to pay per view.
 - Would severely impact the budgets of all institutions, educational, research or library, that rely on access to data.

Problems with Coble - as argued ...

- Proposals protect investment not creativity
 - Protection available for any database which is the result of an investment of human, technical, financial or other resources in the creation of the database. No creativity required.
- Protects "facts"
- Irreproducible databases e.g. astronomical observations, NY Stock Exchange ticker, etc.

Problems with Coble

- Radical new regime not necessary
 - No demonstration of market failure or lack of incentive to invest in databases that would require the implementation of such radical new protections for databases.

The Players

- Supporters: Reed-Elsevier (world's largest publisher of scientific journals), Thomson (owns West Publishing, legal publisher), AMA (Physician's Desktop Reference), stock exchanges, esp NYSE
- Opposed: Dun & Bradstreet, Bloomberg, AT&T, MCI, ALA, AAAS, USACM, Bell Atlantic, Academy Presidents, CSSP, ...

Database bill introduced in Georgia Senate

- SB 214 - Georgia Data Base Protection and Economic Development Act of 2001
 - http://www.legis.state.ga.us/Legis/2001_02/sum/sb214.htm
- Similar to Coble
- Killed by a "do not recommend" vote of House Judiciary Committee 3/28/02
 - USACM letter at http://www.acm.org/usacm/Georgia_Database_Bill.htm

Current status - not clear

- Chief Counsel of the House Judiciary Committee stated that a bill including many of the provisions of the Coble bill will be reported by the Judiciary Committee by the end of March.
 - No additional hearings necessary
 - The bill will bypass the Commerce Committee under an agreement struck by the two respective Chairmen.

British Horseracing Board Ltd. v. William Hill Organization Ltd

- Plaintiff the governing body for horse & dog racing in the UK; compiles info about upcoming races, maintaining info relating to races in a database.
- Defendant a bookmaker that offers betting services throughout the UK.
 - Gets information about horse races from a satellite service that distributes information under license from the plaintiff.

Current status - not clear

- Anti-Coble forces want Commerce involved
- According to Commerce, talks between two committees progressing, a verbal deal is close, but bill language on the bills still needs to be negotiated.
 - An agreement before Easter Recess seems doubtful, but possible.
- We don't know how academic, non-profit, fair-use of database is addressed

UK database case

- In 1999 defendant offered web site for placing bets - comprehensive info about upcoming races, similar to the info in its betting shops.
- Plaintiff sued under the UK implementation of the EU Directive
- Court ruled that defendant violated plaintiff's database rights.

Court ruled that

- Although for a database to be protected its data must be systematically arranged so that they are accessible, it is the data that is protected and not the form of the database.

Court ruled that (con't)

- That the information has been published does not insulate defendant from a "reutilization" claim.
- Replacing the scheduled times of the races with numbers indicating only the order in which the races were to be run and replacing the names of the horses with the numbers assigned to them in the race would have no impact on the extraction issue.

Court ruled that (con't)

- Although defendant used only a tiny proportion of the data on the database, the court refused to consider quantitative & qualitative issues separately. Because defendant was relying on the completeness and accuracy of the information, it was using plaintiff's investment in obtaining and verifying the data.
 - Fair use?

Court ruled that (con't)

- Taking the information from the satellite service rather than directly from the database does not change the analysis; an indirect taking is actionable if it is substantial.