Intellectual property rights on databases

Hakim Haouideg

10 June 2008

ALLEN & OVERY

Object of the protection

- The database
  - Definition :
    - collection of independent works, data or other materials
    - arranged in a systematic or methodical way
    - individually accessible by electronic or other means.
  - Examples : telephone directory, clients list, museum inventory, etc…

Object of the protection

- Not information itself
  - Other forms of authorisation may be required to «exploit» the information
    - Patent holder, copyright holder, data subject, etc…

Two types of protection

- The originality to structure the data
  - Copyright protection
- The investments to collect the data
  - « sui generis » right
- Independant from each other

Sui generis protection

- Protects the investments made
  - Qualitatively or quantitatively substantial investments
  - In either obtaining, verification or presentation
  - Examples

Sui generis protection

- Maker of the database has the exclusive right to prevent anymone from:
  - Extracting or re-utilizing :
    - The whole of a database
    - Substantial parts of the content of the database (quantitatively or qualitatively);
    - The repeated and systematic extraction or re-utilization of insubstantial parts when it conflicts with a normal exploitation of the database or unreasonably prejudices the legitimate interests of the maker of the database

Sui generis protection

- Exceptions for lawful users :
  - Extraction or re-utilization of insubstantial parts
  - Teaching and scientific research (optional) **if**
    - Source is indicated
    - Justified by the non commercial purpose to be achieved
    - Does not unreasonably prejudice the legitimate interests or conflicts with the normal exploitation of the database

Sui generis protection

- Duration
  - 15 years from the completion of the database or the first publication
  - Renewal with each new substantial change (quantitatively or qualitatively)

Copyright protection

- Applies to the structure of the database
  - If the « selection or the arrangement » of the content is original
  - Examples

Copyright protection

- Owner of the copyrights has the exclusive (broad) rights to :
  - Reproduce (make temporary or permanent copies);
  - Communicate to the public (offer access via the Internet)
  - Number of exceptions, incl. Teaching and scientific research **if**
    - Source is indicated
    - Justified by the non commercial purpose to be achieved
    - Does not unreasonably prejudice the legitimate interests or conflicts with the normal exploitation of the database

Copyright protection

- Duration
  - 70 years after the death of the author

Database protection and research consortia

- Who owns the rights ?
  - Copyrights
    - The author : BE, FR, DE, IT, etc.
    - The employer : UK, NL, IR, etc.
  - Sui generis rights
    - The person who takes the initiative and the risk of investing (usually not the subcontractor or the employee)
  - Protection is automatic
  - Joint ownership

Database protection and research consortia

- Access rights
  - Pre-existing know-how & Knowledge
  - Carry out reseach & Use

Database protection and research consortia

- Publication and commercialisation
  - Consortium agreement
  - Draft terms and conditions
  - Rights on the information

Further information

- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (http://ec.europa.eu/internal_market/copyright/prot-databases/prot-databases_en.htm)

- IPR-Helpdesk (http://www.ipr-helpdesk.org)