



Database Guidance Note



Regulations governing databases were introduced into the UK on 1st June 1998, pursuant to the 1996 European Directive. The regulations operate to protect rights and interests in databases. The Copyright and Rights in Databases Regulations 1997 give rights over and above those provided by the Copyright Designs and Patents Act 1988. This latter Act is designed to protect examples of human creativity; a concept which sits uneasily in its application to the compilation of a database.

What is a database?

“A collection of independent works, data, or other materials which

- (a) are arranged in a systematic or methodical way, and
- (b) are individually accessible by electronic or other means”

(Section 3A of the Act, inserted by the Regulations)

Note that a database will therefore cover not just computer databases, but paper ones too, such as telephone directories.

Database Rights compared with Copyright

- In order for a literary work to attract the protection of copyright, it must be “original”. It must involve the expenditure of skill or effort. The Act contained no definition of “original”.
- The Regulations amend the Act by providing a definition, but only insofar as it applies to databases. A database is original “if, and only if, by reason of the arrangement of the contents of the database, the database constitutes the author’s own intellectual creation”. (Section 3A (2) of the Act). Accordingly a database might have had the protection of copyright under the Act but not under the Regulations as lacking the requisite intellectual creativity.
- The Database Right to protection is for only 15 years; copyright lasts until 70 years after the death of the author.
- The Database Right is involved with controlling the extraction and reutilisation of what is on the database. Copyright gives rights to the creators of certain kinds of material to control the uses to which the material may be used.
- Exceptions to the Copyright owner’s rights are different. Limited use of Copyright works may be possible for research and private study, judicial proceedings and teaching in schools.
- The owner of a Database Right must be a national of a European Economic area or habitually resident in the EEA at the time of the creation of the database. Unlike copyright, the Right is not available outside the EEA, as it is not part of any wider convention on Intellectual Property.
- Database Rights can only be enforced through the civil courts permitting the owner to seek damages or an injunction. Copyright entitlements can be enforced through criminal and civil sanctions.

What acts are restricted by the Regulations?

- The temporary or permanent reproduction in any form or by any means in whole or in part of the database
- Any form of distribution to the public of the database or part of the database
- The adaptation, translation, arrangement or any other alteration of the database
- Any communication, display or performance to the public of the database
- Any reproduction, distribution, communication, display or performance to the public of the results of any translation adaptation arrangement or any other alteration of the database

How do I obtain permission to use another’s material?

It is usually necessary to have the permission of the owner of the database or copyright; however they may refuse. It will rarely be possible to use it even if permission has been refused. For example, if the matter breaches the Competition Act, the matter could be referred to the Office of Fair Trading. Alternatively it may be possible to seek a licence under the compulsory provisions in patent law. In some instances, the rights are exercised by collective licensing. Even if they cannot grant a licence for use they may be able to put you in contact with the owner of the right.

The following represent right holders in software and multimedia:

- British Computer Society
- Business Software Alliance
- Computing Services and Software Association
- Educational Software Publishers Association
- The European Leisure Software Publishers Association (ELSPA)
- The Federation Against Software theft (FAST)
- British Interactive Multimedia Association Ltd

All of the above may be accessed through standard search engines.

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