



an introduction to database rights

The legal definition of a database is "a collection of independent works, data or other materials which

- Are arranged in a systematic or methodical way; and
- Are individually accessible by electronic or other means."

A 'database' will not only cover information held in electronic form but also information held only as paper documents. There are effectively two levels of protection for a database under the laws of England and Wales.

Copyright

This right will arise automatically where a database has been created. Copyright will arise automatically provided that the database is original, i.e. not copied and there has been a sufficient level of the author's intellectual skill and care gone into its creation or the way the data is organised. This is often hard to show as most databases are created fairly routinely. For further information on copyright please see "an introduction to copyright"

Database Rights

What is protected?

A database right will arise automatically where there is a substantial investment in obtaining, verifying or presenting the contents of the database (as defined above).

A substantial investment can include any investment whether of financial, human or technical resources but recent case law from the European Courts of Justice has made it clear that the investment must be in the database itself and that the creation of the database must not be incidental to another activity such as obtaining the data for other purposes.

Who owns database rights?

Ordinarily, the maker of the database will be the person who takes the initiative in obtaining, verifying or presenting the contents of the database and who assumes the risk of investing in the creation of the database.

However, this will not be the case where a database has been created by an employee during the course of his/her employment. In these circumstances, the database right is owned by the employer.

What are the benefits of database protection?

Database rights give the holder the right to control use of his/her material by giving them a right of action to prevent others who might extract or re-use information from the database without permission.

How long do database rights last?

The database right lasts for the longer of 15 years from the end of the calendar year:

- Of completion of the database; or
- During which the database was first made available to the public.

A substantial new investment in the database will "top up" the right so that the period starts again. Databases that are continually updated may therefore attract perpetual protection although this is a question which has still to be addressed by the courts.

However, if the database attracts copyright, it will last for 70 years after the end of the calendar year in which the author dies.

What are the benefits of database protection?

Database rights give the holder the right to control use of his/her material by giving them a right of action to prevent others who might extract or re-use information from the database without permission.

This can mean either extraction or re-use of a large part of the data, or it could mean the repeated extraction and/or re-utilisation of an insubstantial part of the database.

How can I protect my work?

Database rights do not have to be registered, they arise automatically. However, it is important for the owner to be able to prove ownership of the database by recording and keeping evidence of the investment of human, technical and financial resources in its creation. Infringers can also be deterred by using appropriate warning notices and enforcement action. It can also help in some circumstances to use "phantom" database contents for example fictitious names or unique phrases to prove copying by a third party as these "phantom" entries will also be copied.

What should I do if I suspect that my database right has been infringed?

If you suspect your database right has been infringed it is advisable to obtain legal advice from an IP specialist as soon as possible as you may need to go to court to prevent further copying. Courts can grant a range of remedies, such as damages for loss of business or revenue brought about as a result of the infringement, injunctions to stop the other person making use of the material or orders to deliver up or destroy infringing goods.

Can a database right be transferred?

Yes. Database rights are a form of intellectual property and can be bought and sold, inherited or otherwise transferred. Database rights can also be licensed by the owner or the subsequent owner of the right.

However, a database right does not necessarily pass on the transfer of the physical work itself, it is an independent right. For example, if you buy a database, you only own any rights in it if that also has been transferred to you.



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