



Legal protection of databases



Dr. Mindaugas Kiškis

E-mail: mindaugas@irii.lt



What is a database?

- A collection, assembly or compilation of works, data, information, or other materials arranged in a systematic or methodical way
- Main tool used to control information
- Databases are both electronic and manual compilations



Main components of the database

- Data and interface
- If computer programs are integrated as a database components, such database components can be protected by the database law (e.g. interfaces), if they are mere tools for creation or control of a database then database law does not apply
- Database components may be subject to several different IPR's



Where are databases in the real world?

- Most databases are latent and used as system reference, which is not accessible to the user
- Most public bodies (citizen and public servant databases, military, administrative/criminal records)
- Most business entities (invoices, inventory, customers and employee databases)
 - “White pages”, Telephone directories
 - Credit rating agencies, Employment agencies
 - Banks and Insurance companies



Legal protection available to databases

- **Copyright** (Berne convention, TRIPS & national laws);
duration of 70 + 70 years
- **Sui generis** (EU Directive 96/9/EC and national laws);
duration of 15 years, however may be renewed
- **Commercial secret and Data protection**
- **Technical protection measures**
- All require no registration or other formal procedures
- No prejudice principle
- International uniformity and reciprocity principle (in respect of sui generis)



What in a data base is protected by copyright?

- Creativity in the selection and arrangement
- Data themselves is unprotectable elements of a data compilation
- No copyright infringement to reselect and rearrange data taken from another's database
- An unoriginal compilations will not qualify for copyright protection, notwithstanding of investment therein



DB copyright limitations (user's rights)

- General copyright limitations
 - Personal use
 - Quotation
 - Teaching and research
 - Public interest (national security, judicial proceedings)
- Specific DB copyright exceptions
 - Actions necessary to access to and legitimately use the contents of a database (including reproduction, adaptation, transfer)
- Contractual limitation not possible

Legal protection of data base contents (sui generis rights)

- ‘Substantial investment’ doctrine
Legal protection against unauthorized extractions and reuses of all or substantial parts of a database, which required substantial investment in the collection, assembly, verification, organization, or presentation of the database contents
- Substantiality judged in quantitative and qualitative terms
- Investment - intellectual, financial, organizational

Legal protection of data base contents (sui generis rights) (2)

- Compiling useful data, keeping it accurate, and making it available in mass-marketed products – is it a substantial investment?
- Renewal and updating of data perpetually extends sui generis rights for
- Conflict with IPR to DB contents owned by third parties
- Ethical issues - special types of data as a DB contents (personal data, especially medical data, genetic data, etc.)



Sui generis limitations (exceptions)

- Extraction and reuse of insubstantial part of contents for any purpose whatsoever
- Insubstantiality also judged qualitatively and quantitatively (usually <10%)
- Extraction and reuse of substantial part of database contents is allowed only for:
 - private non-commercial purposes in case of a non-electronic databases
 - teaching and research, subject to indication of source and to the extent justified by the non-commercial purpose
 - public interest (security, judicial procedure)
- Technical protection measures may eliminate the exceptions



Case Law

- Case law is scarce and diverse
- Spin-off doctrine – if database is a mere by-product of other activities, it shall not be protected
- *Fixtures v. Veikkaus* (the District Court of Vantaa referral to the ECJ)
- Main notions remain to be established by the ECJ
 - substantial investment
 - repeated and systematic



Future prospects

- ECJ opinions are pending
- Public sector information databases
 - EU Directive proposal
 - Encouraging of availability for commercial and private reuse
- WIPO Database treaty
 - Unification of worldwide database law – a long shot?