

“ Plain speaking legal advice ”

## Intellectual Property Rights How To Protect Your Business’s Database(s)

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Most business will have developed at least one database, commonly a list of its customers and their contact details. Such information is very valuable to any business and large amounts of time and money are likely to have been invested in compiling it. It is therefore very important to take steps to protect your businesses database(s).

The law potentially protects databases in two ways, firstly under the law of copyright under the Copyright Designs and Patents Act 1988 ('CDPA') and secondly under the Copyright and Rights in Databases Regulations 1997 ('the Regulations').

### **Copyright**

Copyright in respect of the database will protect the structure of database itself and not the content of the same, which may be afforded protection in its own right.

In order to be protected under the CDPA a database must be 'original' (i.e. not copied). Databases created after 27<sup>th</sup> March 1996 are subject to a more stringent additional test in that they will only be considered 'original' if, by reason of selection and arrangement of the database contents, the database is the author's own intellectual creation. Essentially this means that the author must have directed his skill to the selection and arrangement of the data. The mere gathering of information will not be enough to warrant protection.

If a database does attract copyright protection, the database will be afforded automatic protection for a period of 70 years from the end of the calendar year in which the author of the database dies.

Copyright owners have the exclusive right to, amongst other things, copy and issue copies of the database. If another performs such acts without the permission of the author of the database, he will have the basis for a potential claim for copyright infringement.

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### **Database Rights**

Database Rights may exist in addition to or separately from any copyright protection. The right may apply to electronic or paper databases.

A database may qualify for protection under the Regulations where the author can demonstrate that there is substantial investment in obtaining, verifying or presenting the contents of the database. Substantial investment may take the form of any investment, whether of financial, human or technical resources.

Under the Regulations a person will infringe the Database Rights if without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database. Such infringement can also occur by the repeated extraction of small amounts of data from the database.

Database Rights arise automatically in respect of a qualifying database and last for 15 years from the end of the year in which the database was created. Where the contents of a database are changed significantly the 15-year protection period will recommence.

Unfortunately for businesses case law has confirmed that the protection afforded by Database Rights is not as wide as originally thought. The Courts have ruled that when assessing whether a 'substantial investment' has been made, only investment in respect of the collection and arrangement of existing data will be taken into account. Database Rights do not provide protection for the investment incurred in producing the data that makes up the database.

### **Practical Steps**

In order to maximise the chance of your businesses' database(s) gaining statutory protection it is important to keep a record of the resources expended on the creation and maintenance of your database(s) in case this is ever questioned. It is also advisable to update your database(s) regularly to ensure that the period of protection under the Regulations is as long

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as possible. Where possible previous versions of the database(s) should be kept to demonstrate the updating carried out.

Although Copyright and Database Rights are useful sources of database protection, they will not apply to all databases and are difficult and expensive to enforce, particularly where breaches occur abroad. Business should be taking practical steps to secure their databases, including:

- Ensuring that computer networks are secure and that firewalls are up to date
- Including copyright statements within the database(s) to deter potential plagiarists
- Staff security training and implementation of disciplinary procedures for breach

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If you have any questions or require any assistance in relation to the issues raised in this article please contact Yavan Brar, Company Law Partner, e-mail: [ysb@herrington-carmichael.com](mailto:ysb@herrington-carmichael.com)

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