



Law and Licensing

Francis Davey

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Barrister – called to the Bar in 2003

- copyright and related rights
- information technology
- commercial and contract law
- digital media law

Act for and advise:

- startups and small companies
- public and private sector



Parameters

English law

- with reference to European law
- discussion of substantive law (i.e. statutes and cases) in order to provide background and context to the above
- being aware of the international dimension of the web

Practical application

- practicalities of licensing

Broad overview

Property rights

- database right
- database copyright

Licensing

Other use restrictions

Liability for data

- personal data protection

Property Rights

Owning data

Ownership of facts

You ought not to be able to own a fact

What about?

- maps
- still life sketches
- photographs
- arrangement of facts in a table
- selection of a compilation

Possible rights

Copyright

- in the database
- in the contents of the database

Database right

Other rights (confidentiality...)

Copyright

Sketch of copyright law

Copyright

Copyright, Designs and Patents Act 1988

Protects original works:

- literary, dramatic, musical or artistic works
- including computer programs and some databases

Arises automatically once a work is fixed

- no need to register, or use the © symbol

Owner is the author (or their employer)

Rights continue for author's life plus 50-70 years

Rights

- **Copying** (all or a substantial part)
- Issuing copies to the public
- Renting or lending to the public
- Performing, showing or playing the work in public
- **Communicating the work to the public**
- Making an adaptation of the work
- **or doing any of the above in relation to an adaptation**

... and

Authorizing any of the protected acts

Also:

- secondary infringement
- joint infringement

Criminal offences

- in the course of business; or
- prejudicially affecting the copyright owner

Beware

- Consultants and paying for the creation of materials
- Joint ownership
- The phrase “public domain”
- User generated materials
- Submitting your materials online
- Assignment must be signed and in writing

Exceptions

In UK law: many very specific exceptions

- Fair dealing
- Non-commercial research
- Private study
- Criticism and review
- Reporting

IP law & databases

EU harmonization

Trio of directives:

- Software directive
- Database directive
- Information society directive

Partial harmonization

- “own intellectual creation”

Relevance

Contents of the database – general copyright

- images
- text

Database software – software copyright

Structure of the database – database copyright

Investment in database – database right

“Database”

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

Database Right

Aimed at database promoters

Rewards **substantial** investment

- obtaining
- verifying
- presenting

Database right

Infringement

Infringed by

extraction

re-utilization

Repeated and systematic

Cases

Fixtures Marketing (collecting v obtaining)

Football Dataco v Sportradar (where)

Directmedia Publishing v Albert-Ludwigs-Universität Freiburg (how)

Apis-Hristovich v Lakorda (when)

UK

Football Dataco v Stan James (obtaining)

Fixtures Marketing

Fixtures Marketing v Organismos prognostikon agonon podosfairou
(C-444/02)

aka British Horseracing Board

Creating is not obtaining

organizational data is probably excluded from the right
value of the contents irrelevant

Directmedia

Directmedia Publishing v Albert-Ludwigs-Universität Freiburg

100 most important poems in German Lit. 1730-1900

Directmedia copied selectively and critically

still an extraction

does not matter that it was done by hand

does not matter that the arrangement has changed

Apis-Hristovich

Apis-Hristovich v Lakorda

When: when the contents appear in the new form

Multi-module database

extracting a single module may be sufficient

all depends on substantial investment

Football Dataco

Football Dataco v Stan James

football data

recorded by experts at sports grounds

measuring is “obtaining”

Copyright

Species of copyright

- most learning from literary copyright carries over
- infringement is much the same (reproduction, communication to the public etc)

“Own intellectual creation”

- selection
- arrangement

Football Dataco

Football Dataco v Yahoo!

Fixtures lists

- claim: copyright
- setting up fixtures requires lots of intellectual creation
- rejected: contents of the database do not matter
- database are **only** protected by European copyright

Related issues

Moral rights

Confidentiality

Rights in other countries

- hot news
- ancillary copyright for press publishers in Germany

Licensing

Introduction and overview of licence terms

License

A license is a permission

- need not be a contract
- permits all or only some acts that require permission

Copyright licenses may be limited by

- geography (eg UK only)
- use (eg print publication only)

Licence terms

Exclusivity

- non-exclusive v exclusive v sole

Right to sub-license

Many parameters, eg

- perpetual
- irrevocable
- royalty-free
- worldwide

Purpose restrictions

Purpose of licence

- educational/research
- commercial
- internal business purposes

Purposive restrictions are awkward

- for honest users
- for copyright owners to enforce
- and not open

Applying a license

The user needs a licence

- user cannot easily deny acceptance of a licence

Examples

- written agreement made between the parties
- website terms
- terms agreed to on obtaining an account/API key etc

Open licensing

Definitions and overview

OGL

Open government licence

- curated by the National Archives
- version 2.0 (since 28 June 2013)

Model simple open licence

- requires attribution/acknowledgment
- few, specific, exceptions (eg the Royal Arms)
- non-endorsement, no warranty

Creative Commons

Attribution

- use: none v non-commercial
- re-use: none v no-derivatives v share-alike

CC0

- waive all rights

CC Open licenses

CC0

CC-BY

CC-BY-SA

Open Data Commons

Open Data Attribution Licence

Open Data Commons Open Database Licence

viral licence – analogous to share-alike

Open Data Public Domain Dedication and Licence

CC v ODBL

ODBL

- Derivative database
- Collective database
- Produced work

CC

- Adapted Material

Public domain

CC0

includes database right
contents **and** data

PDDL

database only

Bespoke terms

Rights owner applies its own terms to a work

Never write your own open license
(unless ...)

Non proprietary use restrictions

What if?

Terms and conditions forbid data extraction or re-use

1. Stephen access a public website
2. Elaine takes data from the CD she bought from the publisher
3. Jo signs up as a user on a website and then uses data from the site

Possibly

1. Stephen commits a criminal offence (computer misuse)
2. Elaine is in breach of contract
3. Jo is both

Computer Misuse Act

Offences

- unauthorised access to computer material
- unauthorised access with intent to commit or facilitate further offences
- unauthorised modification of computer material

Penalties

- 2 – 10 years imprisonment
- fines

Contract

Terms and conditions of use may restrict further use
no requirement for ownership

Personal data

Definitions

“any information relating to an identified or identifiable natural person”

“an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”

Examples

- list of email addresses
- blog post about day at work
- anonymised patient data where the GP has the key

Problems

Data protection principles

- meets a condition for lawful processing
- more conditions for sensitive personal data
- transfer out of the EEA (cloud, website)
- purpose limitations

Data Protection Act offences

- knowingly or recklessly obtaining personal data from a data controller

Solutions

Meticulous adherence to data protection law

Consent

Anonymisation

- aggregation
- danger of re-identification

ICO guidance

Information Commissioner is the regulator

- responsible for most enforcement

Publishes useful guidance

- Data sharing code of practice
- Anonymization code of practice
- Data sharing checklists

Other Liability for Data

Inaccurate data

Negligence a *theoretical possibility*

- requires a duty of care
- very unlikely if sensible warnings are given (eg OGL)

Negligent misstatement for economic loss

- reliance
- reasonable