
STATUTORY INSTRUMENTS

1997 No. 3032

The Copyright and Rights in Databases Regulations 1997

PART III

DATABASE RIGHT

Interpretation

12.—(1) In this Part—

“database” has the meaning given by section 3A(1) of the 1988 Act (as inserted by Regulation 6);

“extraction”, in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;

“insubstantial”, in relation to part of the contents of a database, shall be construed subject to Regulation 16(2);

“investment” includes any investment, whether of financial, human or technical resources;

“jointly”, in relation to the making of a database, shall be construed in accordance with Regulation 14(6);

“lawful user”, in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database right in the database or otherwise) has a right to use the database;

“maker”, in relation to a database, shall be construed in accordance with Regulation 14;

“re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means;

“substantial”, in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

(2) The making of a copy of a database available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

(3) Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of paragraph (2).

(4) Paragraph (2) does not apply to the making of a copy of a database available for on-the-spot reference use.

(5) Where a copy of a database has been sold within the EEA by, or with the consent of, the owner of the database right in the database, the further sale within the EEA of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

Database right

13.—(1) A property right (“database right”) subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.

(2) For the purposes of paragraph (1) it is immaterial whether or not the database or any of its contents is a copyright work, within the meaning of Part I of the 1988 Act.

(3) This Regulation has effect subject to Regulation 18.

The maker of a database

14.—(1) Subject to paragraphs (2) to (4), the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.

(2) Where a database is made by an employee in the course of his employment, his employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Subject to paragraph (4), where a database is made by Her Majesty or by an officer or servant of the Crown in the course of his duties, Her Majesty shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of the House of Commons or the House of Lords—

(a) the House by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database, and

(b) if the database is made by or under the direction or control of both Houses, the two Houses shall be regarded as the joint makers of the database.

(5) For the purposes of this Part a database is made jointly if two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

(6) References in this Part to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

First ownership of database right

15. The maker of a database is the first owner of database right in it.

Acts infringing database right

16.—(1) Subject to the provisions of this Part, a person infringes database right in a database 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.

(2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

Term of protection

17.—(1) Database right in a database expires at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is made available to the public before the end of the period referred to in paragraph (1), database right in the database shall expire fifteen years from the end of the calendar year in which the database was first made available to the public.

(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection.

(4) This Regulation has effect subject to Regulation 30.

Qualification for database right

18.—(1) Database right does not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was—

- (a) an individual who was a national of an EEA state or habitually resident within the EEA,
- (b) a body which was incorporated under the law of an EEA state and which, at that time, satisfied one of the conditions in paragraph (2), or
- (c) a partnership or other unincorporated body which was formed under the law of an EEA state and which, at that time, satisfied the condition in paragraph (2)(a).

(2) The conditions mentioned in paragraphs (1)(b) and (c) are—

- (a) that the body has its central administration or principal place of business within the EEA, or
- (b) that the body has its registered office within the EEA and the body's operations are linked on an ongoing basis with the economy of an EEA state.

(3) Paragraph (1) does not apply in any case falling within Regulation 14(4).

(4) In this Regulation—

- (a) “EEA” and “EEA state” have the meaning given by section 172A of the 1988 Act;
- (b) “the material time” means the time when the database was made, or if the making extended over a period, a substantial part of that period.

Avoidance of certain terms affecting lawful users

19.—(1) A lawful user of a database which has been made available to the public in any manner shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.

Exceptions to database right

20.—(1) Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if—

- (a) that part is extracted from the database by a person who is apart from this paragraph a lawful user of the database,
- (b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose, and
- (c) the source is indicated.

(2) The provisions of Schedule 1 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

Acts permitted on assumption as to expiry of database right

21.—(1) Database right in a database is not infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of the maker, and
- (b) it is reasonable to assume that database right has expired.

(2) In the case of a database alleged to have been made jointly, paragraph (1) applies in relation to each person alleged to be one of the makers.

Presumptions relevant to database right

22.—(1) The following presumptions apply in proceedings brought by virtue of this Part of these Regulations with respect to a database.

(2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved—

- (a) to be the maker of the database, and
- (b) to have made it in circumstances not falling within Regulation 14(2) to (4).

(3) Where copies of the database as published bear a label or a mark stating—

- (a) that a named person was the maker of the database, or
- (b) that the database was first published in a specified year,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In the case of a database alleged to have been made jointly, paragraphs (2) and (3), so far as is applicable, apply in relation to each person alleged to be one of the makers.

Application of copyright provisions to database right

23. The following provisions of the 1988 Act—

- sections 90 to 93 (dealing with rights in copyright works);
- sections 96 to 98 (rights and remedies of copyright owner);
- sections 101 and 102 (rights and remedies of exclusive licensee);

apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

Licensing of database right

24. The provisions of Schedule 2 have effect with respect to the licensing of database right.

Database right: jurisdiction of Copyright Tribunal

25.—(1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under the following provisions of Schedule 2—

- (a) paragraph 3, 4 or 5 (reference of licensing scheme);

- (b) paragraph 6 or 7 (application with respect to licence under licensing scheme);
 - (c) paragraph 10, 11 or 12 (reference or application with respect to licence by licensing body).
- (2) The provisions of Chapter VIII of Part I of the 1988 Act (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.
- (3) Provision shall be made by rules under section 150 of the 1988 Act prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2 (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.