



**The AHRC Research Centre for Studies in  
Intellectual Property and Technology Law**

# E-repositories and e-collections

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# The Database Directive



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European wide sui generis intellectual property right

Copyright in structure of a database if it meets test of author own intellectual creation  
Database right protects investment in contents (although data per se are not protected).

Note that both copyright and database right can exist in a collection

Definition:

‘a collection of independent works, data or other material arranged in a systematic or methodical way and individually accessible by electronic or other means.’

Criteria for subsistence

Independent materials

Individually accessible

Informative value

# Criteria for subsistence of database right



Substantial investment in

obtaining  
verifying  
presenting

the contents of a database consisting of the deployment of financial resources, and/or the expending of time, effort and energy.

Obtaining – collection and not creation of data

Verifying – accuracy once materials in the database

Presentation – of the contents of the database

# Sui Generis Right



To prevent

Unauthorised extraction

And/or

Re-utilisation

Of the whole or a substantial part of the contents of the database

Extraction – permanent or temporary transfer of the contents – e.g. from repository to paper

Re-utilisation – making available to the public – e.g by copying to others

Right lies with the maker (the person who has invested).

Infringement if no authorisation (licence needed).

# Exceptions/Limitations

A researcher can extract (but not re-utilise) a substantial part for the purposes of non-commercial research

A lawful user (e.g. under contract) may extract and re-utilise an insubstantial part for any purpose

Contract prohibition void.

What amounts to an insubstantial part?

No case law as yet – but negotiations could be driven by the needs of researchers (c.f. fair dealing).

# Recent case law



Recent case law

Prohibits extraction of qualitative and quantitative substantial part of contents

How much?

Quantitative – over 50% of contents?

Qualitative – more difficult but would be measured in accordance with the investment in the part extracted

Does not protect data as such

# Examples



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Many digital collections will have protection via the database right

AHDS – collection of works

ESCRIP – collection of distance learning modules/materials

GRADE - collection of geospatial data

# Areas of tension

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Geospatial data and use within the research sector (GRADE project)

Does the licensing strategy reflect the underlying IPR?

Copyright? Or rather database right?

Limitations on extraction for purposes of research

Limitations on what may be extracted and re-utilised usually by way of size of output (insubstantial part?)

Do the licences reflect the limitations on the right? Are researchers being needlessly hampered in their work?

# Areas of development

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## Metadata

Would this fall under the protection accorded by the sui generis right?

If so – a valuable resource to be exploited? Or rather to be kept free?

## Talis Community licence

Talis: provider of library products and services

Problem: Fragmentation and inaccessibility of data pertaining to these services

Action: Develop a licensing strategy

Aim: to encourage the dissemination and re-use of this data available to all (CC principles).

# Database right – the future



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Only now starting to seep into consciousness

Pro-active management will ensure that does not become a future stumbling block

Must assess if/where the database right might be relevant in any e-project and manage accordingly