Electronic Frontier Foundation

DATABASE PROTECTION IN THE UNITED STATES OF AMERICA

The Electronic Frontier Foundation (EFF) has serious policy reservations about the extension of intellectual property protection to the contents of databases. Despite some recent statements implying the contrary, U.S. law is clear on the status of database protection. Though copyright-like protection for facts and data within databases has been considered in a variety of U.S. policy forums, it has been rejected. In fact, such a policy would be a radical departure from traditional U.S. intellectual property norms.

1. U.S. Copyright Law Does Not Protect Facts Within Databases

U.S. copyright law does not extend to factual information. This is clear from sections 101 and 102(b) of the U.S. Copyright Act. This is so even though the U.S. is the world's largest exporter of intellectual property and has a highly developed body of intellectual property law. Although factual information is not copyrightable, U.S. law grants compilations of facts a "thin" copyright in their original arrangement and selection. However, in recognition of the importance of the free flow of information to social development and democratic discourse, under U.S. law facts within a thinly copyrighted database can still be copied freely.

2. U.S. Courts Reject Attempts to Extend Copyright to Facts Within Databases

The United States Supreme Court has clearly rejected attempts to apply copyright to facts in a database. In *Feist Publications, Inc. v. Rural Tel. Service Co.*, 499 U.S. 340 (1991) the Court stated that an investment of time and effort in collecting uncopyrightable facts, or "sweat of the brow," is not sufficient to qualify for copyright protection. At best, compilations of facts receive a limited copyright on their particular arrangement and selection, but copyright does not extend to the component non-original data.

3. Recent Legislative Efforts to Protect Facts Have Repeatedly Failed

No fewer than six legislative attempts have been made to expand copyright protection to compilations of facts since 1991.[1] All have been unsuccessful. In fact, a single Congressman, Rep. Howard Coble, has been responsible for most of these initiatives. The continued and consistent rejection of these proposals is a strong indicator of how intellectual property protection for non-original databases is viewed as a radical change in U.S. policy circles. In particular, the bill currently before Congress, the Database and Collections of Information Misappropriation Act, has been strongly and vocally opposed by a broad coalition of 37 entities, including database producers, research and educational institutions, libraries, consumer interest groups, Internet and communications companies, financial service providers and large corporations.[2]

FOR MORE INFORMATION ABOUT COPYRIGHT LAW AND DATABASES, PLEASE CONTACT CORY DOCTOROW, EUROPEAN AFFAIRS CO-ORDINATOR OF THE ELECTRONIC FRONTIER FOUNDATION, AT cory@eff.org.

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[1] Database Investment and Intellectual Property Act, H.R. 3531, 104th Cong. 2d. (1996); Collections of Information Antipiracy Act, H.R. 2652, S.2291, 105th Cong. 2d. (1998); Collections of Information Antipiracy Act, H.R. 354, 106th Cong. (1999); Consumer and Investor Access to Information Act, H.R. 1858, 106th Cong., (1999); Database and Collections of Information Misappropriation Act, H.R. 3261, 108th Cong., (2003), pending before Congress, Consumer Access to Information Act, H.R. 3872, 108th Cong. 2d (2004), currently pending before Congress.

[2] See letter to U.S. Congress Committee on the Judiciary and Committee on Energy and Commerce, January 15, 2004, at <www.arl.org/info/frn/copy/dbcoalition**letter**011504.pdf>.