SINGAPORE

Question Q182

Database protection at national and international level

Questions

Database Protection – Analysis of Current Legal Situation.

1.1 **Legislation**

Is there any legislation in your country dealing specifically with databases?

No.

1.2 **Definition of Database**

Is there any definition of the term "database" in your country's legislation or case law? If so, does it extend both to electronic and non-electronic databases?

No.

1.3 **Copyright Protection of Databases**

1.3.1 *Subject Matter*

Does your country's law provide for copyright protection of compilations? If so, does it only cover collections of literary and artistic works or does it also cover compilations of other data or material other than literary and artistic work?

The Singapore Copyright Act provides for the protection of compilations as they form "literary works".

The Copyright (Amendment) Act also makes it clear that a compilation may be protected as long as it contains relevant materials, which include data and multimedia work etc., as long as it constitutes an "intellectual creation by reason of the selection or arrangement of its contents".

1.3.2 *Criteria of Protection*

If your country's law provides for copyright protection of compilations is the protection limited to compilations which "by reason of the selection or arrangements of their contents constitute intellectual creations"?

Yes. Copyright Act Section 7A(2).

Are there any supplementary criteria to selection and arrangement?

No discussion in local cases.

However, English cases may be instructive as the Singapore Copyright Act is similar to the UK Copyright Act.

The *locus classicus,* Ladbroke (Football) Ltd v William Hill (Football) Ltd established that a work could be granted copyright protection if the author displayed *sufficient skill, effort and judgement* in the creation of the work. The court also added that the correct approach was to consider the nature of the work as a whole and not assess the different components separately.

To look at the components of the compilation individually would almost always mean that there could be no copyright subsisting in the work.

The US courts appear to take a slightly different view and place greater emphasis on originality as a requirement. In Feist Publications Inc v Rural Telephone Services, the courts affirmed that the law does not protect effort but only originality.

ie Any compilation that displays originality in the selection, co-ordination and arrangement of the information is potentially protected by copyright law.

It is also noteworthy that the EC Database Directive that followed soon after confirms the Feist position. The importance of the English cases in the Singapore context may be diminished if the provision in the Copyright Act on compilations is deemed to have been made to correct the approach adopted by English case law.

What is the level of originality required for a compilation to be considered a work? Does hard work in gathering data, known alternatively as "sweat of the brow" qualify a compilation as original?

Based on the requirements under the Singapore Copyright Act, it is arguable that Singapore adopts the US position and places emphasis on the "creative spark" involved in the creation of the compilation and not a mere "industrious collection".

The test of "sweat of the brow" is not sufficient to grant a copyright.
It is important, however, to note that the level of creativity is minimal. This is largely due to the inherently mundane nature of compilations which tend to leave little room for originality to begin with. As reiterated in Feist, there may be copyright in the selection and arrangement of a work "so long as they are made independently by the compiler and entail the minimum degree of creativity…" If this low threshold is satisfied, the compilation may be sufficiently original.

1.3.3 Scope of Protection

What is the scope of copyright protection of a compilation? To which extent can a compilation be copied without infringing the copyright in the compilation?

Since Singapore Copyright law protects only the expression of ideas and not the facts or data *per se*, it may even be possible for someone to extract all the data from a work and yet not infringe the work as long as the work is not reproduced in the same arrangement or presented in the same form.

1.4 ***Sui generis* protection of Databases**

Does your country's law provide for sui generis protection of compilations of data such as databases?

There is no legislation specific for the protection of databases.

1.5 **Possible alternatives for *sui generis* system**

1.5.1 *Unfair competition law*

Does your country have a law of unfair competition?

To date, Singapore has yet to enact a formal law of unfair competition.

1.5.2 Other Means of Protection

Does your country provide for any other means of protecting databases? If so, in which legal areas and by what mechanisms?

There seems to be no alternative protection for databases *per se*. However, a database may be given protection in the following instances:

(a) If there is an existing contract with regards a license to use such data, an action may be founded in contract; However, any action is limited to the terms of such a contract.

(b) The law of confidence protects such works if it may be classified as 'confidential information' that has not been made available to the public; This means that the information will be protected so long as: -
   (1) the information to be protected had the necessary quality of confidence about it;
   (2) the information had been imparted in circumstances importing an obligation of confidence; &
   (3) there was an unauthorized use of the information to the detriment of the party who originally communicated it.

   Again, the scope of protection is offered only in this limited context. A work, such as a compilation, does not get protected on its merits, but rather as a result of the continued confidentiality of the information shared between parties with an obligation to secrecy.

(c) The Computer Misuse Act has created a number of offences with regard to the use of unauthorised access to data held in any computer. These include:-
   (1) unauthorised access to any program or data held in any computer;
   (2) unauthorised access to any program or data held in any computer with intent to commit or facilitate the commission of further offences involving property, bodily harm, fraud or dishonesty;
   (3) unauthorised modification of the contents of any computer; &
   (4) unauthorised use or interception of computer services.

However, this is limited to “unauthorised access” and does not seem to protect databases that are not stored in computers. Nonetheless, the above provisions may serve to protect the interests of authors of compilations or databases independently of copyright law.

2. Proposals for Adoption of Uniform Rules

The National and Regional Groups are invited to put forward any proposal for adoption of uniform rules alleviating potential deficiencies of current database protection regimes. More specifically, the Groups are invited to answer the following questions.

2.1 Legislation

Should legislation be enacted to deal specifically with databases? If so, should national legislation be enacted or is there a need for an international treaty on the protection of databases?

In Singapore, the protection of databases is governed mainly by the Singapore Copyright Act. As with many other jurisdictions, copyright law is at times ill suited to provide databases with adequate protection, given the amount of time and effort that may have been put into selecting and arranging the information in it, but which do not necessarily make the compilation original. As such, we do support the call for specific legislation to be enacted to govern the protection of such databases.

As the movement towards the international harmonisation of laws gather speed, we would support the formulation of a Model Law for the protection of databases, that countries could then choose to adopt, with or without modifications to suit their own national interests.

2.2 Definition of Database

If you think that legislation should be enacted to deal specifically with databases what should the definition of "database" be? Should it extend to both electronic and non-electronic databases?

The definition of “database” should certainly extend to cover both electronic and non-electronic databases, and if possible be technologically neutral. We believe that the practical reality is that all commercially important databases in future would certainly (also) be in electronic or digital form.

In this respect, we believe that the EU and English definition of databases is acceptable:

> "database" means 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.

2.3 Copyright Protection of Databases

Do you think that copyright protection should be granted to databases? If so, what should the criteria of protection be? Do you think that the level of originality required for a database to be copyrightable should be low, so that "sweat of the brow" databases qualify as copyrightable? What should the scope of copyright protection be?

Copyright protection should be granted to databases in so far as it meets the requirements or originality, etc. as accorded to other forms of works. However, to afford copyright protection to databases simply because substantial effort had been put into compiling the databases (i.e. requiring a low level of originality) would be to stretch the limits of copyright law artificially. If as a matter of policy, it is felt that such “un-original” databases should still be granted some form of protection, then we believe that it is better to enact *sui generis* legislation to deal with the matter.

2.4 Sui generis Protection of Databases

2.4.1 System of Protection and Subject Matter

Do you think that sui generis legislation should be enacted to protect databases? If so, should there be a registration system to secure sui generis protection? Should the sui generis system only cover un-original databases or should there be the possibility to

obtain cumulative sui generis protection also for original databases protected by copyright?

We believe that *sui generis* legislation is needed to protect databases in general, whether or not they are considered original under the Copyright Act (and therefore deserving of copyright protection as well). As such, the criteria for protection under this *sui generis* legislation ought to be independent of copyright criteria, and should be related to other factors such as the amount of investment that had been put into the process of obtaining, verifying and presenting the contents of the database.

There are both advantages and disadvantages in having a registration system to secure such *sui generis* protection. The main advantage we see is the benefit of certainty, in knowing exactly which databases are protected and which are not, and the extent of protection that may have been granted to a particular database. The main disadvantage of a registration system is the added cost to the database owner in having to secure such registration. On balance, we feel that a registration system is still desirable, and the issue of cost may perhaps be alleviated by having a one-stop international registry to administer and maintain the system.

2.4.2 Criteria of Protection

If you think that sui generis legislation should be enacted to protect databases, what should be the criteria of protection? If you think "substantial investment" should be one of the criteria of protection what should be the level of investment required for an investment to be considered substantial?

As discussed above, the criteria should include the amount of investment that has been put into the process of obtaining, verifying and presenting the contents of the database.

While the level of such investment should certainly be substantial, we do not believe that it is possible to fix an objective standard concerning substantiality for

all countries to follow. National countries should therefore be free to determine what this standard should be in their country. Alternatively, if an International Registry is created, this body may then be given the discretion to formulate guidelines on this matter.

2.4.3 Rights granted and Scope of protection

What rights should be granted to the database maker? If you think that "extraction" and "re-utilisation" should be covered by the rights to be granted how should these notions be defined? If you think that "substantial part" should be relevant in determining the scope of protection, how should this concept be defined?

The database maker should be granted property rights over the database, and we accept that this should include the right to prevent others from extracting and/or re-utilising all or a substantial part of the contents of the database without permission. The database maker should also be allowed to deal with such rights as he may deal with his own personal property, i.e. he should be allowed to assign or license such rights.

We believe that we may also accept the EU definitions as follows:

- “extraction” may be defined as the permanent or temporary transfer of all or a substantial part of the contents of the database to another medium by any means or in any form; and
- “re-utilisation” may be defined as any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

It should also be made clear that repeated and systematic extractions and/or re-utilisation of insubstantial portions of the database will not be tolerated.

However, we do not believe that “substantial” can or should be defined, as this should fall within the purview of the courts or other national agency of the respective countries to decide upon.

2.4.4 Limitations and Exceptions

Should limitations or exceptions be granted? If so, which ones (e.g. private use, scientific research, education, public security, government purposes)? Should there be any compulsory licensing provisions?

We believe that there must be limitations and exceptions to database rights, just as there must be compulsory licensing schemes, for the same reasons that these are found in our Copyright Act.

As such, it would be prudent to look at the limitations and exceptions and compulsory licensing provisions found in the Copyright Act, and enact similar provisions in the *sui generis* legislation pertaining to databases.

2.4.5 Duration of Protection

How long should the sui generis protection be?

In England, the term granted is 15 years. If the database is updated significantly, the entire database is granted protection for a further 15 years. We believe that this term is acceptable.

2.4.6 Assessment of existing sui generis systems

If your country already provides for sui generis protection of databases, do you think the system should be revised? If so, why and in what ways?

We have no *sui generis* protection for databases at present.

2.5 Possible Alternatives for a sui generis system

If your country does not have unfair competition rules or if your country's unfair competition law does not have a role in the protection of databases do you think your law should be changed, so as to provide database protection on the basis of unfair competition law?

Should there be any other means of protecting databases which your country does not offer or not fully take into account? If so, which ones?

At present, Singapore does not have a specific law to govern over unfair competition. Instead, reliance is placed mainly on the law of passing off, which derives from the English common law on passing off. We believe that the law of passing off does not adequately protect databases.

In addition, a new law is currently being proposed in Singapore, the *Consumer Protection (Fair Trading) Bill*. However, this legislation when passed, would also not impact on the protection to be granted over databases.

3. Miscellaneous

The National and Regional Groups are invited to comment on any additional aspect which they find relevant with regard to the foregoing questions and the specific aspects of database protection.

As there is no *sui generis* protection for databases in Singapore currently, we are heavily reliant on the law of copyright for this purpose. However, we believe that this does not mean that Singapore does not recognise the importance of such databases.

It is hoped that if and when a Model Law on the protection of databases is passed, Singapore will seriously consider adopting the same, with modifications to suit our own local context.

3. **Miscellaneous**

No further comments are provided by the Group

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