

Database Rights - What are they?

What is a database?

Databases are protected in the Bailiwick under The Database Rights (Bailiwick of Guernsey) Ordinance, 2005 (the “**Database Ordinance**”) and The Copyright (Bailiwick of Guernsey) Ordinance, 2005 (the “**Copyright Ordinance**”).

A database is defined under the Database Ordinance as “a collection of independent works, data or other materials which (a) are arranged in a systematic or methodical way, and (b) are individually accessible by electronic or other means”.

This is a wide definition and will cover for example traditional mailing lists, telephone directories, knowledge management systems, intranets, back-office inventory systems, purchase order systems, websites and document management systems.

What is a database right?

A database right protects the compilation of information comprising the data. It is a property right which subsists where there has been a substantial investment in the collation of the contents of the database. This will include financial, human or technical resources.

Database rights, like other property rights, can be sold, licensed or assigned to third parties. A database is often a valuable asset that businesses are increasingly looking to exploit in their own right.

Similar to copyright, a database right is an automatic right and subsists from the moment the database is created in a recorded form. Database right last for a period of 15 years from the end of the calendar year in which the database was completed. Where a database is made available to the public before the end of the 15 year period, the protection period will be extended by a further 15 years from the end of the calendar year in which it was first made publicly available. Additionally, if there is a substantial change to the contents of the database then the 15 year protection period recommences. In effect, this means that an indefinite term of protection is available for many databases that are continually updated.

Copyright in a database

Copyright (if any) exists independently of database rights. Databases are treated as a class of literary works and may be protected under copyright law, as a table or compilation where the author has used his own skill and effort in creating the work. The author’s time, skill and labour must be directed to the selection and arrangement of the database, and not the mere gathering of information.

Copyright may also subsist in each work comprising part of a database. A database of photographs, for example, may be protected by copyright in the database itself and separate copyright in each photographs included in the database.

Copyright protection in a database, table or compilation will last for a period of 70 years from the end of the calendar year in which the author dies.

Ownership of a database right

The maker of a database is defined under the Database Ordinance as the first owner of the database right. The maker is the person who takes the initiative in collating the contents of a database and assumes the risk of investing in that collation. Where a database is made by an employee in the course of his employment, the employer shall be regarded as the maker (subject to any agreement to the contrary). A database is made jointly if two or more persons acting together in collaboration take the initiative and assume the risk of investing in the collation.

Ownership of Copyright

The first owner of copyright in a database will be the author of the database (that is, the person who creates it). This means that if a business commissions a contractor to create a database for it, the contractor is likely to be the first owner of copyright in the database. It is therefore important that, if a business has engaged a contractor to create a database for it, and wants to own copyright in that database, it enters into an agreement with the contractor which contains an assignment of copyright.

Acts of Infringement

A person infringes a database right 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. "Extraction" is defined as "the permanent or temporary transfer of those contents to another medium by any means or in any form". "Re-utilisation" is defined as "making those contents available to the public by any means". It should also be noted that repeated and systematic extraction or re-utilisation of insubstantial parts of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

A lawful user of a database which has been made available to the public in any manner is entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

The principles of infringement of database copyright are the same as those for other types of copyright work.

Exceptions to database rights

A 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 lawful user extracts that part of the database
- for the purpose of illustration for teaching or research and not for any commercial purpose, and
- the source is indicated

In addition, a database right is not infringed by anything done for the purposes of proceedings in the States of Deliberations, the States of Alderney or the Chief of Pleas of Sark or judicial proceedings or the purposes of reporting such proceedings.

There is no infringement by the extraction or re-utilisation of a substantial part of the contents of the database where it is not possible by reasonable inquiry to ascertain the identity of the maker and it is reasonable to assume that the database right has expired.

Further information

For further information regarding registering your intellectual property please contact us:

By email: enquiries@guernseyregistry.com

Telephone: +44 (0)1481 743800

Web: <http://ipo.guernseyregistry.com>

Please note: The purpose of this guidance note is to provide information regarding database rights.

It is not intended to be definitive legal advice and should not be relied upon as such.

The interpretation of legislation is a matter on which the Guernsey Registry cannot advise.

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