Investing in Databases

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The first case (British Horseracing Board v. William Hill), to be litigated in the UK under legislation created to conform with the European Directive on Database Rights is currently under appeal. This paper investigates the problems that were considered to exist in the pre-existing copyright based protection regime and how those were answered in the Directive by the creation of a new sui generis database right. It goes on to analyse the judgment in BHB to discover that the basis of database right protection lies in the investment made by the maker of the database rather than the information contained therein. The paper then goes on to consider how the protection of that ‘investment’ can be seen in various areas of the pre-existing international legal structure, usually as an aspect of competition law. An attempt is made to interpret the Database Directive along the same lines and a consideration is made of the various possible objections to this interpretation of the right. After rebutting these objections, the paper concludes that a protection very similar to copyright based protections, without reliance on copyright principles, can be offered to database right holders without at the same time restricting the use of otherwise unprotected information from the public domain.

KEYWORDS: database, database right, unfair competition, copyright, Database Directive

Introduction

The development of the storage capabilities of computer memories and their ability to process vast amounts of digitalised information at great speeds have contributed to the creation of the electronic database industry. Whilst provision of these services might previously have resulted in delegated representatives making searches of data, with the added communication abilities of the computer network, it is now possible to do all this on-line from a terminal in the office or the computer at home. Since anyone attached to the Internet has access to such a terminal, there has been a vast increase in the potential demand for database services. As the number of people using information over the Internet or via an independent network grows, modern understandings of information are becoming more and more dependent on the idea that information can be found in a computer. This encourages both the development of Information Technology skills and the need to ensure that providers of information are able to put their product in a digital memory. These developments have also required the law to consider how it handles the processing of information.

Traditionally, copyright law has provided protection to collections of information by looking at the manner in which information is organised. Although the courts have shown themselves unwilling to award copyright simply because this organization takes effort\(^1\) copyright protection is available for compilations and by extension the organization of the data in a database\(^2\). The actual individual elements of the data contained within the database, when the usual requirements for copyright are satisfied, will be protected independently. Copyright protection attached to a database, and to the independent contents of the database, may be subject to different standards\(^3\). Since there are two different types of copyright, the copyright for organization recognised in, for example Waterlow Publishers Ltd v Rose\(^4\) is not breached by the copying and re-use of an individual record within the database, even though any copyright over that record will be. Equally a database which is organised according to exactly the same standards as an earlier database but which contains entirely different information may still be in breach of the copyright attached to the database’s compilation. The two rights do not have to overlap.

At first sight it appears that a comprehensive scheme for the protection of databases has been established. There is, however, a problem concerning information which is not original and which will not reach the standards laid down for copyright protection. Mere fact is not protected\(^5\) although it may be the subject of the database. Indeed, database software has often been created to process fact and this ability is a contributory factor in the growth of unprotected databases. Databases of mere fact are now more valuable thanks to gains in processing speed. One example of this is the ability to closely monitor customer purchase preferences at the cash register. This has led to a change in the way retail stock is handled. Checking for credit card validity is also far more efficient than the days in which the whole process was handled by hand.

The power of the computer also permits haphazard techniques for information collection. Information in a database is basically gathered together to be retrieved by the software attached to the database, commonly known as a search engine. A simple collection of information connected to a search engine is the most basic form of a database and is called a free form database. More complex databases can be made which categorise data, placing it into fields which appear as separate parts of a record on a computer screen or print out. This may increase the speed at which information
is found and also permits the designer of the database to place some limits on how information can be discovered by the database user. Free form databases are not subject to the same inflexibility, enabling users to create searches which are more likely to create results not initially envisaged when the software was written. Yet the very lack of form means that there may well be no organization onto which copyright protection may attach. Furthermore, the processing power of modern computers has also reduced the need for structure in the database. Any benefits to be had in structuring information can also be obtained with the use of a more powerful search engine. The upshot of all this is that, if the subject matter of the database is ‘mere fact’, such as the telephone numbers in a telephone directory, there may be no protection under the general law for the information offered.

Databases contribute to the spread of information. It may well be therefore that people merely want to make their information available and the lack of legal protection will not prevent that from happening. Many telephone directories are provided for free to their subscribers by provider companies, who need to make this information available for their service to function effectively. However, most commercial enterprises will be looking to recoup their expenditure and make a profit. There are a number of alternatives to selling copies of all or part of the database. A commercial or government sponsor may be prepared to pay for the creation and publication of the database. Advertising revenue may also be obtained, especially when the database is on-line. Alternatively a combination of technological measures and contract law may put sufficient (though not necessarily total) limitations on the users of the database to ensure that revenue can be collected and the information protected. Despite these options, there have been numerous calls for a more comprehensive approach from the law to the protection of commercial databases. Many countries have responded by clearly incorporating rules for databases into their copyright law. It is the European Union which has taken a somewhat controversial lead in establishing a new and independent right for the protection of databases, on-line or otherwise. This paper will not be making a review of database protection law, but of the manner in which collections of unoriginal information are handled without copyright protection.

The Database Directive

The EC Council Directive on the Legal Protection of Databases (hereinafter referred to as the Directive) required compliance from member states by 1st January 1998. In England, compliance took the form of the Copyright Rights in Databases Regulations 1997. In simple terms the Directive defined the circumstances in which a database could benefit from copyright protection within the EU and a new independent right to cover databases of ‘mere fact’. The sui generis right introduced by the Directive provides that a substantial investment in a database should entitle the maker to 15 years of protection from unauthorised extraction or re-utilization. Further investment will extend the protection.

This basic structure seems to have provided the sort of protection that the industry required as there has been very little disruption of services or litigation concerning the Database Directive or implementing legislation. On the other hand it may well be that litigation is not yet an option for many of the companies that are seeking to establish a presence online. Certainly among the smaller and medium sized companies of the EU, protection of information via patent does not appear to be a terribly important strategy, perhaps the same thing applies to database protection.

Another possible reason for the apparent lack of litigation is that there was no real call for these rights in the first place, this would be the case if the companies that really wished to use them are able to maintain a tight grip over their clientele with technical measures and contractual stipulations. Especially when there is only one possible cheap source of the information in question, the threat of loss of access would have a chilling effect on the activities of users and thus encourage the settlement of any disputes which might arise between the parties. For whatever reason, it was not till 2000, more than a year after the implementation of the Database Directive that a case came to judgment in the UK. British Horseracing Board v William Hill involved a database that pre-existed the new regulations. The presiding judge, Laddie J handed down a comprehensive analysis of the Database Directive which provides a good opportunity to review the use to which the Directive will be put in the UK.

Before embarking on a consideration of the case, it is worthwhile reflecting on its ultimate influence. The protection under the Directive is only available to EU nationals and nationals of those countries who offer reciprocal rights. Although there has been no real rush to introduce comparative legislation in other jurisdictions, the pressure for legislative reform continues, especially in America, pressure which has increased as a consequence of the existence of the EU Directive. As a majority of database services in the European Union are in English, it can be assumed that the early British litigation in this field is likely to have important international repercussions amongst database providers. As international cooperation in the field of intellectual property law continues, national and regional jurisdictions are keeping one eye on developments outside of their immediate control. In such an environment, the interpretation of the Database Directive will influence and be influenced by developments in both America and the EU’s constituent members.

British Horseracing Board v William Hill

The Facts

The British Horseracing Board has the authority in Great Britain to coordinate the various horse racing meets which
take place across the country. This involves obtaining information from the various racecourses to discover where and what type of races are being held throughout the year in order to maintain a balance between the types of races being shown to the public and also to ensure that there are enough horses available to take part. A more complete description is given in by Laddie J.\(^{27}\) Taken altogether this involves the collection, organization and presentation of vast amounts of data. With upwards of 1200 race meetings; 15,000 horses in training and over 175,000 entries made across the more than 7,000 races held each year, it is a task crying out for computerisation. It is not surprising then that the BHB’s predecessor began computerising records in 1964.

As entries are made and withdrawn, race cards canceled and new owners requiring new colours appear, changes must be made to the database. This means that there is continual reinvestment in maintaining the quality of the database. Maintaining the accuracy of the database involves daily updating of the various changes that are made.

The creation and maintenance of the database are not the sole functions of the BHB but the database itself is an important source of revenue. The information collected is made public in a number of ways, in electronic format and also on paper in racing magazines and daily newspapers. It appears that there is limited access to the database over the Internet\(^{28}\). Each of these systems provides the BHB with the ability to release information at a price and by stratifying its market, it is able to get the maximum remuneration possible. Even though the database is not necessarily created to be a product, opening access to it in this way helps to cover part of the running costs and this is one of the aims of the Directive. The information is also offered in a more direct manner to bookmakers like the Defendant, in this case, in physical and electronic formats. In particular a company called Satellite Information Systems Ltd is authorized to provide a raw data feed from the database to clients who include the defendant.

Bookmakers will at some stage have to rely heavily on the information in the BHB database no matter from where it is obtained. When the Defendants decided to add to their services by creating a betting site on the Internet, the need for race card information in an electronic format was initially satisfied by manual entry of a small number of races. Once the success of this site called for a more comprehensive service, the Defendants made use of the database entries they received via the raw data feed from SIS. There was no express right under the contract between SIS and the Defendants which would have licensed the use of the information from the BHB database on the Internet.

**Preliminary matters**

The arguments in the case follow an important theme in modern intellectual property law. BHB wanted to argue that although it permitted the use of its database for various reasons, it also wished to restrict its use in the manner delineated within its license contracts. The Plaintiff might have had an action in copyright\(^ {29}\), but chose to rely solely on the database right for this action. The Defendant’s position boils down to an argument that once it had paid to legally receive the information in the database, there was no longer any restriction on how the information could be handled. A position based on the argument that there was no property in the information in the first place rather than the exhaustion of any property rights that might have existed over the data, thus placing the information outside of the range of any possible contract. It is perhaps worth noting that William Hill did not appear to incur the Plaintiff’s wrath when it was making manual entries on a small scale for its Internet site. Whether this was because the use made of the database was relatively minor or whether this was because William Hill was making an independent investment is not recorded. Within discourse surrounding the database right, the question of what is infringement will always be partially answered by Plaintiffs who will not undertake extensive litigation without a clear sense of loss, thereby establishing minimum standards for the concept of infringement. In this case, this sense appears to have been occasioned by the possibility that anyone who wished to obtain data from the BHB database would have been able to do so by accessing William Hill’s website. This would allow William Hill to compete with BHB or at least interfere with BHB’s market whilst free-riding on the database itself. Remediying this situation seems to have been the main concern of the court and so the court’s argument concentrates on interpreting the Database Directive in a manner consistent with achieving this aim.

Before considering the reasoning, it is worth noting that although the UK law concerning the database right is expressed in the implementing Regulations\(^ {31}\), Laddie J based his entire analysis on the Directive which is not officially part of English law. Departing from usual practice and embarking on an analysis of the underlying Directive rather than the incorporating regulations is probably to be welcomed, as ultimately it will be the Directive which governs national law through its interpretation in European Union institutions.

**The Arguments Before The Court**

Much of the interpretation surrounding rights in databases depends on a copyright analogy which is of spurious value\(^ {32}\). It was the failure of copyright provisions to provide protection which initiated legislation in this area. Protection in the copyright tradition focuses on the subject matter of the database and this requires consideration of the information or the software through which the information is presented. Both of these techniques would cause the sui generis right to overlap with copyright protection. It seems a reasonable assumption therefore, that there should be another aspect of the database which will be the focus of the remedies offered in the Directive. The arguments surrounding this case focus on this tension in the discourse of protection.
Information

As we have seen protecting unoriginal information per se is something the courts have tended to avoid in copyright cases. Even though Anglo-American law has been more generous in this area, there was always the possibility that protection would not be available. There are numerous policy reasons for this restriction. One of the more modern ones specific to database protection is that many databases contain personal information which is of necessity ‘mere fact’, but over which a certain amount of individual control will be necessary in order to protect the data subject. In such cases, extending protection to the actual information within the database is something that should be avoided as a matter of policy. Otherwise, the rights of database makers would clearly conflict with the rights of the database subjects.

The extra value to society that comes from having a database created is not so much each individual piece of information but the ability to select individual items from a greater number. A supermarket is just as keen to know that no one is buying a particular product as how regularly other products are being purchased. This negative information would not be protected if information was the subject of database protection because it is not ‘in’ the database to be protected, it is something that can only be ‘found’ by the user who inputs a search term and discovers this different result. Even so, [Colston, 2001] at 4.1 suggests that BHB v William Hill is authority for the proposition that future courts will be prepared to protect information if it is contained within a protected database. It is also possible to read the Court of Appeal’s judgment concerning a reference to the European Court of Justice in this way 33. However, this view is not necessary to the interpretation of the case and can be criticised for a number of reasons.

As Colston herself recognises34, the Directive is structured so as to avoid granting protection to the underlying information35 and not all extractions from a protected database can be restricted by the maker36. The judgment itself should be read as being inconclusive on this point, since the database right refers to protection of information in a database and references to contents can be understood to refer to the alleged infringements of rights of extractions and re-utilization. This would require courts to consider the manner in which the database is used at infringement, not the information that was taken from a database. Consistent with this view, in considering what was being protected by the Directive, Laddie J focused on the investment made in order to create a protected database rather than the information that was contained therein37. As the type of information is not relevant to the investment that is being protected, the protection provided has to depend on a threshold of investment38, and in its turn, may vary over time. The court did not pay attention to the type of information nor the manner in which the information itself was placed in the database or what information came from it. It remains to be seen whether future cases will support an interpretation which limits the function of the contents of a database to a discourse related to the extent of any infringement. However it is submitted that this is the correct approach and rights should be attached to the database and not to the underlying information.

Database-ness

The Defendants case impliedly supports this position as they specifically avoid an interpretation of the right which required investigation of the information in order to establish protection. This was probably based on a realisation that the information they were using would inevitably be the same as that which had found its way into the BHB database. For this reason, their eagerness to avoid a judgment which would protect the information itself can be easily understood. However, in trying to discover protection for the database without referring to the information contained within it, the Defendants choose to propose that there was a ‘database-ness’ about databases. Laddie J summarized the defence’s argument

“the ‘database-ness’ of a database must lie in the fact that the independent materials are arranged in a systematic or methodical way, and are individually accessible”.39

This argument is based on Article 1(2) of the Directive which attempts to define what a database is. If this definition is to be considered as a summary of what is to be protected it is tantamount to saying that the database right is equivalent to the copyright protection offered to the software elements of the database. The ‘systematic and methodical way’ which echoes the editorial elements of copyright protection and individual accessibility at least in the world of online databases, is occasioned by the search engine software used in conjunction with the information.

The judge offered a number of criticisms of this concept40. Ultimately it is very difficult to grasp what the concept of database-ness might protect. If the information in a free form database was stolen, jumbled and used with a different search engine then the elements of ‘database-ness’ would all have been changed. Once the data was in hand this would theoretically be very easy to do, thus rendering the database right virtually irrelevant. Laddie J himself rejected the Defendant’s proposals concerning amendments to their own home page so that the same information could be presented in a different format41. This confirms that there must be something in the collection rather than the mere aggregation of information per se which contributes to that which the database protects. It is to the element which Laddie J discovered to which we must now turn.

Investment

The sui generis right recognised by the Database Directive arises when a substantial investment has been made in
the creation of a database. Simply put, two databases which are exactly the same may not necessarily attract the same protection from the law, because the level of investment will not, of necessity be the same. When the only protection available for the database was copyright, then, as long as the two databases had been made entirely independently of each other, both databases could have attracted copyright if they were sufficiently original creations. Liability would have only attached if one database was a copy of the other. If the level of investment is the criterion for creation, then if two databases are substantially the same and it can be shown that one relies on the other, in order to protect investment, not the ‘sweat of the brow’ of the maker, the reliance will be made subject to liability. The subtleness of the difference can be clarified more easily by an analysis of the underlying analytical classification. Whilst an investigation of the amount of investment that takes place enables a judgment to be made at the level of the ‘sufficiency’ of that investment, ‘sweat of the brow’ in its use as a term of art, is a mutually exclusive opposite to the originality that copyright entails. ‘Sweat of the brow’ does not produce originality and therefore works that merely involve effort, no matter how time-consuming and how expensive, may not breach the originality barrier. On the other hand, at some stage, unless the database is entirely trivial, investment will reach a level that can be considered substantial. The court has one spectrum and is merely required to ascertain if the point in question has been reached. This means that our two databases may both be original but if the levels of investment are different then protection may differ. In most cases, the consequences of these two rules are likely to be the same in countries with a low originality threshold for copyright protection, but the process is sufficiently different to raise the possibility of different judicial responses. In particular, concentrating on investment directs the law’s attention directly onto the problem of free-riding. It also brings the sui generis database right closer to principles of unfair competition and also of trademark law.

This is effectively the approach that Laddie J took in considering the case. He noted that the information that was being used by the Defendants was available from various other sources but that in this case, the information used had come directly from the raw data feed supplied by SIS in a manner that had not been agreed by either SIS or BHB. The Defendants may well have made use of the information in the database before they opened their Internet betting site. They may well have used and paid for the use of this information in the different forms by which it came to them. However, the decision to put this information on the Internet where anyone who might be interested in the information can collect it (under the guise of placing a bet or otherwise) is a decision for the initial maker of the protected collection and not that of the user, so that, if desired, investment can be recouped. The database right ensures that the maker of the database will be able to make this decision. The Defendant’s actions had interfered with that recoupment and infringed the sui generis database right.

Re-interpreting the Database Right

By placing the protection of investment at the centre of his judgment, Laddie J has opened the way to find a clear alternative to copyright as the basis for the protection of databases. Indeed the database right begins to look more like rights in trademarks which also appear as rights in property that are limited in scope. There are of course some obvious differences. In most cases trademarks will be registered, although where there is a system of registration for trademarks this has not always entirely ousted protection of unregistered marks. Registration is not necessary for the database right.

But the similarities are more important. Trademarks themselves may be objects in the public domain that have changed as a consequence of an investment. The most obvious example of this being when a sole trader uses his or her own name under which to do business. Another similarity arises from the ability to extend the life of the database by continuing the investment in it so that substantial changes are made. The continued use of a trademark also permits its life to last indefinitely. In both cases the extension is based on an investment, for the database, an investment in facts, for the trademark, an investment in business.

Seen in the light of a trademark analogy, the database right also acts as a boundary marker to indicate the extent of the information collected by the right holder. The information in the database belongs to the owner of the database in the same way that the trademarks on the computer I am using to write this paper belong to the creators of its various parts. Infringement takes place when someone free rides on another’s business investment and so provides a property right which is connected to the database but not to the information underlying it. A person who accesses that information and legally extracts it from the database should be able to use that information, subject to any copyright or other restrictions as may pertain to it, with the same freedom as existed prior to the introduction of the right. The property right only relates to the collection of information as an entirety and will be infringed when enough information has been extracted so as to create an alternative competing product which interferes with the initial investment. The information itself moves into and out of the rights, according to use. By treating trademark law as the basis for an interpretation of the Directive, an alternative to copyright considerations has been found which provides the law with a model for the protection of information via a monopoly connected with the use of the subject matter and not its quality.

By interpreting database ownership in this way, many of the concerns regarding the ownership of information in terms of when a right to prevent copying arises and the appropriacy of limitations on copyright exemptions can be avoided. Although there have been various attempts by trademark owners to limit the manner in which their trademarks can be used or imitated, the use of the underlying product cannot be limited in the EU. If the lack of restraint on product use can be applied mutatis mutandis to extractions of information from a database which does not result in a...
substantial infringement of the investment in the database, then, a clear basis is provided to deny an infringement of the right. The same information can be collected by alternative means and presented in a similar way and this will establish a different boundary from the investment made in the preceding database and thus establish an independent database right. This echoes the situation where two trademarks might be thought to infringe on each other. In a similar manner, if either database starts making use of the other then there has been an infringement. The analogy produces the originally desired result. However, the limitations of trademark law, which confine a trademark’s functions to the worlds of business and the consumer are too restrictive to provide a complete model for database protection. What this model does point to is another area of the law in which trademark principles make a partial but important contribution, the law concerning unfair competition.

Many of the French cases that has been connected with databases have involved an element of this aspect of the law. It is an approach initially considered for databases by the EU. An analysis of the discussions that lead to the Database Directive shows that a weakening of an unfair competition approach took place. Initially there was a proposal, requiring in appropriate circumstances, the compulsory licensing of the information within the database. This was not accepted but the compromise result explicitly left open the possibility that rules concerning unfair competition might apply even if the application of competition law to licensing was not accepted there is still room to argue that the Directive does leave open an interpretation of how the right may be exercised against inappropriate use. Remedies could then be considered not in response to property based concepts but for rights based on the concept of unfair competition. This, in turn, fits with the manner in which bare information has been handled till now in a number of jurisdictions. This problem’s international perspective now comes to the fore. A consideration of the manner in which the courts have traditionally handled unoriginal information will confirm the importance of competition law principles. At the same time, by considering how the courts have habitually handled these matters, some insight might be gained into the manner in which the law concerning databases might accord with a number of national legal systems.

International News Services v Associated Press

An early example of the problems an investment in information technology and ‘mere fact’ can cause comes from the United States. During the First World War, the Defendant news service was excluded from obtaining news reports from the Allied Front because of a perceived bias towards the German position in its reporting. This clearly put them at a severe disadvantage when providing coverage of the war front. They sought to overcome that by obtaining the war reports made by the Plaintiffs’ employees on the East Coast through bribery of the employees of the subscriber newspapers there. These reports were then published as the Defendants’ own on the West Coast of the United States. The Plaintiffs took the matter to court, which at first instance, was quick to grant an injunction to restrain the bribery of subscriber employees. Yet it took the Supreme Court to find, in a decision which is still important almost a hundred years later, a right in the Plaintiffs to have the practice of copying their copy enjoined. A right of quasi-property was established

*inter partes* in favour of the Plaintiffs, because, the Court held the Defendants were reaping what they had not sown. It follows that a competitor who was using another’s database in the United States might face litigation under this cause of action.

Over the years the reach of this case has been somewhat curtailed in the United States and this may account for the reluctance of database owners to rely upon it. The restrictions have arisen because of the doctrine of pre-emption. This is a doctrine which stems from the relationship between the individual States and the Federal Government in America. Law concerning intellectual property is to be governed by the Federal Government. The courts have established that once a matter has been considered by the Federal Government, it is not for the States to impose their own rules, in a supplementary fashion. This was somewhat strengthened in the case of *Bonito Boats Inc. v. Thunder Craft Boats Inc.*

a case concerning the design of a boat hull in Florida. The hull could not be protected under the Federal law concerning design right and State law was amended to prevent a rival from simply purchasing a boat, making a mould of the hull and then using that mould to make boats of the same design. Rival boat builders can avoid the entire design stage of a new boat through this system, but the Supreme Court confirmed that since the Federal Government had not provided protection against this technique, protection could not be awarded by the States.

As a consequence of the application of *Bonito Boats*, the influence of *Associated Press* has clearly been reduced as regards the possibility of action by the States. However it has not been entirely washed away because the type of information relevant to the *Associated Press* decision was precisely not that information covered by copyright. Since it is expressly outside of Federal principles, at least until independent legislation concerning databases is introduced in the United States there is clearly room for unfair competition principles to guide the development of U.S. law on databases which when containing unoriginal information could be considered to be outside of the realm of the copyright clause of the constitution.

RTE & ITP v Commission Cases C-241 & 242/91 P Judgment of 6 April 1995; The Magill Case

A second case, this time from the European Union, concerning the application of unfair competition principles to ‘mere fact’ considered something which looks very similar to an unoriginal database. Television companies, as a by-product of producing and purchasing programs for broadcasting not only hold copyright in their program schedules but are the only people who know what the schedule will be prior to publication. For a long time in the UK, the two
television monopolies were the sole publishers of magazines revealing their schedules. This monopoly position was maintained by the copyright protection they held\(^{59}\). The legality of this use of intellectual property was challenged by *Magill*, a magazine publisher, in a case which ultimately went to the European Court of Justice.

In a similar manner to the contents of the *BHB* database, details of the television schedules were handed out to the press, or on various electronic information services, this time for free, but with copyright restrictions on their use. This ensured that the Defendants could establish a monopoly in any market where they wished to do so. As the various public and private broadcasting companies did not publish their program schedules in the same magazine, the people in Northern Ireland where the Plaintiff wished to publish, were forced to buy the two British weekly magazines and the Irish broadcasting service’s (*RTE*) magazine, if they wanted to learn about all the television schedules covering Northern Ireland on a weekly basis.

The Commission found that the use of copyright in these circumstances would be an abuse of the right\(^{60}\) and against the principles of competition required by the then Article 86\(^{61}\) of the European Treaty. This case puts factual information firmly in the unfair competition camp, especially since the court considered whether there was any reason not to make the information public\(^{62}\), a decision which intellectual property law usually reserves to the owner of the rights. As the influence of the case has not been excluded from the *Database Directive*, database owners will not be able to create inappropriate monopolies in any ‘relevant markets’ in the E.U. This implies very strongly that rights of lawful users of the database to obtain information will at least partially be determined by the principles underlying *Magill*. It also means that owners of a database will not be able to establish a prior claim over information created within a database, because that would establish an illegal monopoly contrary to *Magill*. Using the *BHB* case as an example, this means that *BHB* would not be able to argue that no one else could create the database they had created (subject of course to copyright provisions) because the information within it was theirs. The *Magill* case establishes that mere fact, even when in receipt of copyright protection for compilations, cannot be protected to the extent that unfair profits can be made. This is partially a question concerning return on investment and provides Laddie J’s interpretation of the database right with a further link to unfair competition law.

In one of those ironies that the law sometimes throws up, the *Magill* case was first considered by the ECI in another case concerning horse race betting and incidentally, the television industry, *Ladbroke v. Commission*\(^{63}\). The Applicants were a large betting agency in Belgium who wanted to be able to broadcast television pictures of horse races held in France, but could not get a license from the organizations that held the rights. The Court held that a betting agency would not need sound or pictures to be able to offer such a service, especially as broadcasts would take place after bets had been placed and therefore refused to apply *Magill*. At first sight this decision looks like a severe restriction on the application of competition principles to intellectual property. It is the position of this paper that the *sui generis* right need not be treated in the same way as traditional intellectual property and there are ways in which *Ladbroke* can be distinguished. This case concerns information which would be capable of attaining copyright protection under the new regime, even though the television schedules in the *Magill* case would not. As such the information is not unoriginal reporting of fact, but a series of copyrightable works. Further, the information in the *Ladbroke* case was not being traded as part of a database as there was no question of searching or accessing individual elements. The Plaintiffs wanted a live feed and the Defendants were not even requested to provide access to an archived database. Indeed, there was no evidence before the court that the broadcasts were or would be placed in a database. Since the two cases were decided on either side of the introduction of the *Directive*, it may well be that *Magill* has more predictive power over the handling of the database than the *Ladbroke* case.

The handling of ‘mere fact’ under principles of competition law has provided an important foundation for the apportionment of rights amongst people who want to make use this of sort of information. Before going on to consider how this might be more completely expressed by the database right, it is appropriate to consider some possible objections to schemes based on this assumption.

**Objections**

Objections to schemes which attempt to provide database protection via unfair competition principles come mainly in two forms. Some question the viability of the scheme and others question the need for it at all. In terms of necessity, it is true that once a database owner has invested in a database and made it available to the public, there may well be a significant barrier to competitors creating alternative products, if the database itself cannot be copied easily. Yet against this, it is necessary to balance the disincentive that comes from the possibility of expending a lot of work only to see it taken from under one’s nose by a competitor who then earns the profits\(^{64}\). Framing the problem in this way, clearly encourages a legal standard which considers the investments that have been made and provides protection for them, rather than merely investigating the manner in which the information itself has been handled. It also restates the proposition that intellectual property rights do not protect individual instances of products.

At the same time an investment based approach can avoid the problem of who owns the information. This is because the question of ownership in a particular part of the database, once it has left the database, need not arise unless that information is in turn used in the creation of a separate database. The cases that have arisen in the EU seem to be based on secondary usage, as in the *BHB* case, rather than the inappropriate use of a database by a user for private purposes. This is not surprising since an ordinary user will not normally be intending to compete with the database provider and is
therefore unlikely to cause damage to the database\textsuperscript{65}. [Ginsburg, 2001] supports this interpretation of the \textit{Directive} but queries whether this is sufficiently reflected in the respective countries implementing laws. She sees a ‘serious risk of overprotection’ appearing in the implementing legislation of the various countries\textsuperscript{66}. The use of competition law principles in the interpretation of those regulations as, it is submitted, the UK is choosing through \textit{BHB} may overcome any biases that do exist.

A second objection develops from this response. Secondary users of information, such as Yahoo.com are seen as providing a valuable service to ordinary users of the Internet through their directories of the Internet and their search facilities. However, rather than seeking protection for the databases that they have created, their concerns seem to be related to the problems that would arise if they had to pay for the information that they collect\textsuperscript{67}. A copyright based response would probably call for an exception based on ‘fair use’\textsuperscript{68}. The competition based response of Laddie J, actually permits the court to consider the activities of services like Yahoo.com as being investment enhancing. It is certain that a large number of Internet sites would never be discovered if it were not for the ability to make a simple search of the Internet\textsuperscript{69}.

There are also objections that could be made to interpreting the \textit{sui generis} right in terms of competition law. The fact that unfair competition law across the Union was not harmonized was a factor in the European Union’s decision to introduce a \textit{sui generis} right\textsuperscript{70}. The United Kingdom is somewhat of a special case because it does not even have a recognised remedy for unfair competition\textsuperscript{71}. Instead a number of alternatives actions, such as passing off, combine to provide the protection available in other jurisdictions. This may distort the interpretations of the UK courts in favour of competition policy principles but this also seems to be an inevitable consequence of the concentration on investment in the \textit{Directive}. It might be more appropriate to see this as a tactical withdrawal on the part of the EU in the face of such disunity rather than an outright discarding of competition policy in this area.

A more telling challenge comes from the fact that the database right is discussed in the literature as a property right\textsuperscript{72}, although this seems to be a consequence of the connection with copyright\textsuperscript{73} rather than any express statement which is relied on to show that the right is, in fact, a property right. While unfair competition policy is basically something which deals with the misuse of property rights rather than the grant of rights themselves, it could be argued that there are reasons to treat the \textit{sui generis} right differently\textsuperscript{74}.

There are a number of rights which a full property right could be expected to cover, such as distribution, translation, adaptation, communication and display which have not been included in the right itself\textsuperscript{75}. Despite the clear separation, some of these rights might possibly be interpreted as being within the extraction and re-utilization rights, but clearly translation is not. Given that copyright protection for the database’s arrangement remains a possibility, a lesser level of protection has to be defined, and if this is merely a lesser version of copyright then there was no need for a \textit{sui generis} right in the first place.

The database right does not apply to all databases, but only those that have received a substantial investment\textsuperscript{76}, and once that investment is withdrawn it will last for only another 15 years\textsuperscript{77}. These provisions make it clear that it is not originality or a contribution to progress that is being protected, simply the possibility of recouperating a profit, since further investment in maintaining accuracy does not create something new in the traditional copyright sense of the word. By bringing this policy objective out of the database right framework, emphasis is once again returned to the possibility of balancing the investment interest of the respective parties. As no extra protection is being offered for the information itself\textsuperscript{78} (The protection is for the entirety or a substantial part of the database) this makes the protection much more flimsy than a copyright analogy would suggest. A closer analogy can be seen in the type of \textit{lex specialis} dealing with unfair competition principles, common in European jurisdictions\textsuperscript{79}. There is no inherent necessity in the \textit{Directive} to interpret the right as a property right in the copyright tradition.

Another feature which distinguishes copyright protection is the ability to copy part of the database without limitation save as to amount. Lawful users are permitted to make permanent copies of some of the contents of a protected database (indeed it would be difficult see how this could be avoided), the mischief only begins when such users attempt to make their own publication of the data that they have found, or their copying has unreasonably prejudiced the legitimate interests of the database owner\textsuperscript{80}. This later provision appears to cover a case where a user has contracted to use a pay per use database and is no longer accessing the database because of the permanent copies that have been made. Cases where this might arise to the detriment of the database owner, in cases where there is also no copyright protection are, it is submitted difficult, to imagine. Consider for example the mobile phone user who has hundreds of telephone numbers recorded in a telephone’s personal database. This would clearly reduce the number of times a pay per use telephone directory database would be used, but attaching liability to this type of behaviour would surely be self-defeating\textsuperscript{81}. Framing the \textit{sui generis} right in a manner which does not catch this type of fact gathering by individuals is surely necessary to the future success of the Internet.

If the \textit{sui generis} right is not a fully-fledged property right there is still the question of how the relationship between provider and user can be regulated. One of the reasons the EU rejected a solution based on the harmonization of unfair competition law was precisely because such a solution would not regulate the relationship between the database provider and the subscriber\textsuperscript{82}. However as the \textit{BHB} case shows, the focus of the \textit{Directive} is orientated towards the subscriber who sets up a competing business or is getting a free-ride on the investment of the database maker. Other types of unlawful access to a database are likely to be independently protected by provisions such as the United
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Kingdom’s Misuse of Computers Act 1990 which penalize access to both computer and information without permission. Databases that are not made freely available to the public are also likely to benefit from a series of technical and contractual measures to ensure the level of protection the database owner requires. If there is any loophole in the supplier-subscriber relationship, it seems possible to see this as part of the intention of the legislature, who have expressly established a more complete copyright protection for authors who creatively construct their databases. By establishing a lesser right which includes the right to extract insubstantial sections of a database, the EU can be assumed to have intended to have left some holes remaining.

This section has considered some of the objections to the interpretation of the sui generis right merely in terms of unfair competition. However many of these objections are simply echoes of calls for copyright protection, which has not been granted. In considering how a database right interpreted in terms of unfair competition policy might be worked out in principle, it should be borne in mind that there will be a significant overlap with the type of problems which copyright law might usually be expected to remedy and it is to this part of the discussion that we now turn.

Unfair Competition and Database Right

Having established a basis for the interpretation of the EU database right in terms of established principles of unfair competition, the rest of this paper turns to consider two analogies which might be helpful in attempting to assess the extent of the protection available to a database right holder.

Passing off

In the online world it is a relatively straightforward matter to move information from one place to another. Less debated, but equally effective is the possibility of linking to information against the wishes of the creator. This opens the possibility of an on-line database, accessible via the Internet, being used by a competitor for their own purposes or as part of services being made available to another, by simply providing a hyperlink path to parts of a competitor’s database. This is a particularly difficult problem for copyright based solutions because nothing is being copied, or at least nothing is being copied that would not be copied in any manner different from what would have happened if a user had gone directly to the linked page themselves or for that matter, following the web site’s intended design. Perhaps as a consequence, operators of online databases, who are concerned by this activity, have discovered technical measures by which to prevent direct access to embedded pages.

However instead of considering the linking on the basis of the appropriateness of the copying, a consideration of whether the investment in the database is being compromised, offers, it is submitted a clearer standard for the establishment of liability. Information that is placed on the Internet without protection cannot be but copied, and the database operator often wants the access to take place albeit on its own terms. Unless deep linking is to be made illegal, which would reduce the utility of much of the Internet, the deep-linking service will make an important contribution to Internet activity. At the same time it cannot be denied that such services can come close to the edge of acceptable competition. By looking at the investment that has been, the value of both services can be measured and a more pertinent discussion of the merits take place.

The only aspect of unfair competition law which has taken hold in the UK is passing off. The standard case is where a person uses another’s trademark, thus benefiting from the reputation and goodwill of the trademark holder. By treating hyperlinking as a species of passing off, where the goodwill and reputation of the database creator is being appropriated by the creation of the hyperlinks, the investment of the original database maker can be protected. The quality and accuracy of the information is being guaranteed by the database maker after all and embedded linking is using that guarantee to draw attention to the linker’s services and perhaps advertisers.

An example of the possibility of applying the database right to hyperlinks in this manner comes from one of the significant number of Internet based services which involve searching for information requested by a customer either directly from a database or from the Internet in general. In the Dutch case of Dagbladen vs. Eureka Internetdiensten, the Defendants were Internet service providers who also made available a web page where headlines from national newspapers were collected as hyperlinks so that, on clicking them, users could be taken directly to the appropriate page. There was also an e-mail service sending similar links to subscribers. It has been difficult to establish that this type of activity is a breach of the original web page’s copyright and the court in this case expressly found that it would not be.

Whilst accepting that the newspapers had created a database, the court held that sufficient investment had not taken place in the creation of the database because it was merely a chronological listing of headlines that would have been created in the normal course of events. If this interpretation is upheld, then it is possible to protect unjustified interference with a database of this type, even though the newspapers were not successful on the facts. A German court has also upheld reasoning upon these lines in a case where a Dutch on-line recruitment company was deep-linking to positions on another’s site. This case also appears to fit with the investment based criteria that have been outlined in this paper so far.

Comparing this solution to that offered by copyright, there are clear advantages. The primary reason that the newspaper Plaintiffs brought this case to court was due to the loss of advertising revenue which was assumed to be occasioned because access to the pages in question came via an outside page rather than than a designated route. The court did not accept that damages had been proved in this case, but, by considering the question in relation to unfair
competition, the profit and loss factor can be fully discussed.

There is of course the further advantage that the database owner does not have to worry about making the database original enough. Although the lack of investment in this *Dagbladen* case appears to be related to the lack of originality in the collected information, this could also be interpreted to mean that the newspapers were not attempting to create a database in the first place. Without this sort of intention it would be difficult to argue that any investment had taken place to start with. Even so, it is submitted that future courts will have to consider the question of whether an on-line newspaper itself is a database. On such a definition this point would quickly be overcome.

**Misappropriation**

The more obvious ways that databases might be misused involve a simple straightforward copying, and this seems to account for many of the copyright analogies. Simple copies can be made in a variety of ways from downloading information to a different computer system, to pirating CDs or publishing paper printouts. In a copyright system any one of these actions could lead to an action for breach. However, with a little sleight of hand this sort of activity could be considered along the lines of trademark dilution or misappropriation. There are various places on the Internet where digital copies of public domain texts can be discovered. The very fact that these items are in the public domain means that there is no protection available for their use. However there is clearly a lot of investment in terms of the time taken to create the copies and the cost of organising texts and putting them on-line. A competitor who copied the whole database and provided their service via advertising revenues for free would likely avoid liability in copyright, but by protecting the investment via the database right there is clearly an arguable case for compensation.

The search for an alternative basis on which to discuss the unethical, if not yet illegal, copying of this type of product has been underway for sometime in the United States. The *Feist* case established that there were databases which would not be protected, and perhaps could not be protected by copyright provisions in the United States. This provided a spur for alternative types of database protection, including a number of legislative initiatives. One possible answer that is being discussed in the literature is that of *market failure*. This generally applies to situations where *laissez-faire* principles do not allow usual market conditions to subsist, effectively because there are aspects of the transaction which are externalized from the transactions costs. The archetypal example is the cost of pollution, that was for many years not included in the costs of much manufacturing. When hours of work can be copied in a second, there is clearly a possibility that the worker will not be able to obtain remuneration for the full value of the work. Copyright law tends to focus on this type of market failure. However if the cost of using copyright works is set too highly then the creation of new works might be held back since it is not just scholarly research which depends on access to previously created information for new ideas. With regard to intellectual property rights therefore, there are failures on both sides of the creator-copier equation. In such situations, an action for misappropriation has been called for as a way to provide protection to both parties.

Following [Karjala, 1994](#), we can see that a competitor who starts from scratch and re-enters the whole database from hand is not interfering with the initial investment of the database maker, since he is undertaking essentially the same work. This type of activity would be prohibited by copyright since the result would be exactly the same expression of the original idea and it would be next to impossible to show that the competitor had not been influenced by the initial right. The constraints established by the database right would not be so restrictive. The database right, interpreted in the manner proposed here would not be defeating the object for which it was created, that is, to encourage the creation of databases which would be of value to the public. However, the very fact that such extensive effort needs to be made in order to produce an exact copy of a database may well mean that the barriers to entry for a competing database owner will be too great, thus preventing competition and effectively establishing a monopoly in the database service being offered. After all, in the *BHB* case, *William Hill* are more content to undertake costly legal proceedings than create their own competing database. It will be at this point that the principles we have explored in the *Magill* case will be at their most important and by establishing a consistency in the principles to be applied, a more straightforward approach to database protection would be attainable.

**Conclusion**

A great deal of concern has been expressed with regard to the possibility that the Database Directive might provide database operators with the opportunity to collect information from the public domain and enclose it so that others lose the ability to access the information. The argument that I have introduced here shows that it is by no means inevitable that such a situation will arise. The *BHB* case shows that simply because information is in a database, people who obtain this information from another source will not be prevented from being able to use it. At the same time, extraction of information which impinges on the investment undertaken to create the database will not be ignored. This accords with the desire of the EU to encourage the creation of databases in two ways. Firstly it ensures that the database maker will obtain the possibility of reward in return for the creation of the database. Secondly, it ensures that database users will be able to take and use information for their own purposes without restriction.

By transferring the focus of the investigation from the type of information within the database to the investment undertaken to create the database and encouraging analogy from unfair competition principles rather than intellectual property law, an entirely *sui generis* right has been brought into the world of information law. Yet the principles behind
it fully mesh with pre-existing decisions that handle 'mere fact' and yet cover the typical cases of copyright infringement. The protection that database owners have been calling for can be offered to them without requiring a copyright style regime. American100 and Japanese101 proposals have also moved towards a competition law solution. And there is one final benefit, by focussing on investment and competition, the whole discussion gets shifted to a different level, where the private use of information, or its use for research and development for non-profit purposes can be accepted as an inevitable part of the use of non-copyrighted information, while at the same time protecting the real interests of the database maker in preventing others from using that information for their own products or services.

The line is more clearly delineated than the previously unregulated or perhaps copyright protected regimes, and ordinary users, not seeking to compete with the database maker, have a wide freedom to use information lawfully retrieved. Such usage will not have to fit within predefined fair use exceptions, with the concern that the exceptions will be narrowed. It is often said that competition law does not regulate the relationship between consumer and business, only relations between businesses. But it is only when the consumer’s actions imitate business, that a consumer acts in a way which does not respect the investment of the business, that the database right will kick in. The value of the business to the community comes not from the creation of new information, nor the use of information, but the use of the database. Since the database would not exist without the maker, there is reason to ensure its use is respected, and since the information was not created by the maker, its unbridled use, once outside of the database, helps to guarantee the future advance of knowledge.

NOTES

3 In the UK this now means, in the case of databases, s3A(2) Copyright Designs and Patents Act 1988, which requires a higher standard than other 'works' when the database is to be protected by copyright as a whole.
4 See note 1 above.
5 Berne 2(8).
6 See further [Cross, 1994].
7 See [Reichman and Uhlir, 1999] for the American debate.
8 In Japan, see Art 12bis of the Law of Copyright 1986, though mere facts are probably still not covered [Nawa, 1997].
9 For such a review see [Howell, 1998]
10 No 96/9/EC of March 11th 1996; for a general introduction see [Cornish, 1996].
11 Directive Art 16(1) [Powell, 1997] explains how implementation has progressed.
13 Directive Article 7(1).
14 Directive Article 1(2).
15 Directive Article 11.
16 Directive Article 10.
17 Directive Article 7(2)(a),(b).
18 Directive Article 7(3).
20 For a short introduction see [Hugenholtz, 2001], most litigation seems to have taken place in the Netherlands and Germany.
22 The Times 23 February 2001; 151 NLJ 271; An appeal has been made to the Court of Appeal who have in turn referred the matter to the European Court of Justice, the report is unpublished at the time of writing but available from the UK Courts service database at http://www.courts.gov.uk/judgments/judgment.html
23 Read as Mr Justice Laddie
24 As of May 2002, from outside the EU, the Nordic Countries and Mexico had legislation on their books introducing an independent right for database owners; see [El-Kassas, 2002]
25 [Wald, 2002]
26 Fourth Standing Committee on Delegated Legislation, 3 December 1997 (UK).
27 See para. 3ff.
28 see http://www.bhb-weatherbys.racingadmin.co.uk
29 Pope v. Carly (1741) 2 Atk 342.
30 There is some American authority to suggest that there would be no editorial copyright in a database of this type Victor Lalli Enterprises v. Big Red Apple, Inc. 936 F.2d 671 (2d Cir. 1991).
31 Ibid n12.
32 See for example, [Colston, 2001] accepting that the information in databases can effectively be monopolised when no one else would be prepared to make an equivalent investment. Since the BHB had been in existence prior to the coming into force of the Directive. Clearly, monopoly creation in this field is not a simple matter of the existence of legal rights.
33 Paragraph 16 ends with the following statement
“The Directive’s intention was to give protection to the structure of the database by copyright and to its contents against unauthorised extraction and reutilisation or both by the new right called ‘the sui generis right’” (Recital (58)).

34 [Colston, 2001] also in Sect. 4.1.
35 See Recitals 45 and 46 of the Directive.
36 Directive Article 8(1).
37 See BHB v William Hill at paras 31–37.
38 This concept is discussed below, see page 14.
39 Para 45.
40 At para 49 in particular.
41 At para 78.
43 See [Mincke, 1997] for a consideration of value as a foundation for a system of property.
44 And are seen as quasi-property by some commentators in America such as [Port, 1993] despite being described by the Supreme Court as property in The Trademark Cases. 100 U.S. 82, 92 (1879).
45 See in the U.K., the Trademarks Act 1994 s2(2) which still permits the owner of an unregistered trademark to pursue an action for passing off.
46 Directive Art. 7(5).
47 Case 15/74 Centrafarm BV v. Winthrop BV [1974] 2 CMLR 480; a case concerning parallel imports into what is now the EU. Case 102/77 Hoffman-LaRoche & Co. AG v. Centrafarm Gmbh [1978] ECR 1139 took the matter further by saying that goods that had been sold could be sold on, unless there were ‘legitimate reasons’ for the trademark owner to prevent further dealing.
48 [Hugenholtz, 2001].
50 See generally [Cook, 1996] at page 27.
51 248 U.S. 215 (1918)
52 Ibid. at 219.
53 Article 1(8)(8) of the Constitution of the United States
55 [Raskind, 1997]; Bonito Boats itself has also been reinterpreted but these changes do not interfere with the constitutional point at issue here [Benkler, 2000].
56 [Schatz et al., 1992].
57 [Ginsburg, 2001].
59 BBC and ITP v Time Out Ltd (1984) FSR 64. confirming the low threshold of copyright protection in the UK.
60 See note 53, para 23.
61 Now Article 82 of the Consolidated Version of the Treaty Establishing the European Union.
62 [Downing, 1995].
64 Competition law in the EU tends to include socio-political objects rather than pure Chicago School Market Efficiency principles favoured in America; see [Opi, 2001] at 416.
65 The Directive provides that protection only for the ‘whole or a substantial part’ of the database from extraction or re-utilization. (Article 7). However Recital 42 also makes clear that the purpose of this restriction is to protect the investment and not the information which would be protected by copyright if available under Article 3.
67 See in particular, the testimony of Matthew Rightmire, Business Director of Yahoo Inc., before the House of Representatives’ Subcommittee on Telecommunications, Trade and Consumer Protection, H.R. 1858 June 15, 1999 Serial No. 106-49.
68 See generally [Colston, 1995].
69 The Directive encourages an interpretation which will permit the use of insubstantial parts of a database by lawful users of databases when this database is made available to the public; Recital 49; Article 8.
70 Commission on the European Communities: Proposal for a Council directive on the Legal Protection of Databases, COM (92) 24 Final at 36, P 5.3.9.-10 (May 1992) [hereinafter Proposal on Databases].
73 The Directive Articles 3–6; and the call to harmonize intellectual property rights in Recital 4.
74 Another approach would be to follow the European Court of Justice which has consistently distinguished between the holding of an intellectual property right and its exercise. See Consten & Grundig v Commission Cases 56 & 58/64 [1966] ECR 299.
75 But remain part of the copyright protection offered in the directive Directive Article 5.
76 Article 7(1).
77 Article 10; this seems to be Laddie J’s interpretation of the position, see also [Lehmann, 1998].
78 The Database Investment and Intellectual Property Piracy Act, (1996), HR 3531; Collection of Information Antipiracy Act, HR 2652 (HR 354); Consumer and Investor Access to Information Act, HR 1858; see [Benkler, 2000] and [Wald, 2002] for comments
79 A proposal from the Institute of Intellectual Property in Tokyo suggests an unfair competition approach with protection of investment as one of a number of relevant factors, see [Honda, 1998], although the Japanese government appears to be content with the current copyright position (See Note 8 above.)
It would also have to be considered in the light of Article 10 of the European Convention of Human Rights which provides, that “everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”


Proposal on Databases at 36. See Note 65

See for example in the U.S, where a court has rejected claims based on copyright infringement, breach of contract and unfair competition, (though the unfair competition case was rejected on the facts) Ticketmaster v. Tickets.com 54 USP Q2d 1344 (C.D.Cal.2000), 27 March 2000; cf in the UK Shetland Times v Willis [1997] FSR 604, where in a case which was decided prior to the English Database Regulations, an interim injunction was granted with the court accepting that copyright could perhaps be argued. The case was ultimately settled.

See for example the New York Times website (www.nytimes.com) which prevents access to embedded links without the user registering and accepting a cookie.

At para 4.6.

Case No: AZ 28 0 692/00, Landgericht Köln, 28 February 2001.

For example, one of the more well known volunteer projects putting public domain e-texts on the Internet is Project Gutenberg. Its financial statement for the year 2000 envisages eventual expenses of over half a million dollars. See http://www.gutenberg.org

See Note 1 above.

See [Young, 1994].

Generally see [Young, 1994].


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