

Chapter 12

The Protection of Digital Libraries as Databases: An Ideal Choice or a Paradox?

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ABSTRACT

This chapter explains the application of EU Directive 96/9 to digital libraries. Digital libraries correspond largely to the broad definition of databases which is established by the Directive 96/9. The application of the database copyright and sui generis regime to digital libraries provides a safe and solid legal protection to digital libraries which fulfill the conditions of originality and investment set by the Directive. The chapter examines in detail the conditions for protection, the subject matter, the content and the extent of the Directive's 96/9 two-tier legal protection regime as it is applied to digital libraries. While the protection of the structure of a digital library by copyright law has not provoked any reactions both in Europe and in U.S.A., the possibility of protection of the digital library's contents by the quasi proprietary database sui generis right has been since the adoption of the Directive 96/9 a highly controversial issue. The defendants of the Internet dogma of free and open flow of information consider the sui generis right as an inappropriate and unbalanced legal mechanism which promotes the monopolization of the digital knowledge to the detriment of the public interest. The chapter also demonstrates the conflict between the proprietary interests of the digital library's maker and the interests of the lawful user of a digital library. Furthermore, a critical overview of the regime of exceptions to database sui generis right is provided. In order to justify and balance the attribution of the proprietary sui generis right, the author argues that the regime of database sui generis exceptions should be enriched and strengthened, especially when the purposes of education, research and information are served by the exceptions.

DOI: 10.4018/978-1-60960-031-0.ch012

INTRODUCTION

There is no legal definition of the concept of “digital library”. It is also not easy to define what a digital library is from a social and technical point of view, since the concept of digital library has multiple meanings that one might invoke in various contexts.

In our view, it should be avoided to define restrictively digital libraries as the digital supplements or the digital versions of traditional libraries, because then new forms of libraries which have been born by the Internet revolution will be neglected. Let’s take three examples: Firstly, the website of the European Library¹, which proposes various works from European national libraries, is beyond any doubt a digital library. Secondly, the famous Wikipedia² project should also be considered as a library of a new generation, because it integrates an element of interactivity.³ Thirdly, web sites which propose a very large offer of different software, classified by category and by type of operating system, are often called “software libraries” and could also enter into a large perception of the notion of digital library.

Thus, for the needs of this chapter, two criteria should be taken into consideration in order to define digital libraries. The first one is that a digital library corresponds to a will to gather an amount of information, in order to preserve it and ensure the access of a determined or large public to this information. The second is that a digital library must possess a pre-established system of classification of its contents. The question of the nature of the contents (books, Articles, music, images, etc.) as this of their origin (interactive or not) is irrelevant.

Electronic databases could be considered as digital libraries with certain particular features, while, on the other hand, every digital library could be regarded as a database. Digital libraries and databases share a common set of attributes. Firstly, they serve a set of common purposes. Hence, they are both used in order to collect, or-

ganize and provide accessibility to digitized items. Secondly, they seem to share a fundamental social function. Their substantial functional mission is the structured aggregation of human knowledge and its making available to the public.

The close relation between digital libraries and databases is confirmed by the legal definition of databases established by the Directive 96/9/EC.⁴ Article 1 of the Directive 96/9 provides that a “database” shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. It must be noticed that this is a comprehensive legal definition which was introduced by a European regulatory text for the needs of a specific legal protection and does not intend to serve as a technical definition of the term “database”.⁵

According to this definition, three basic conceptual elements must be met in order to define a database: (a) a collection of independent works, data or other materials, regardless of their nature⁶ (b) a systematic or methodical arrangement of these materials and (c) an individual access to these materials. We will briefly analyze these elements. Particular importance should be allocated to the requirements of the “independence” and of the “individual accessibility” of the database contents. The works, data or other materials shall be considered as “independent” only if they are intended to and also capable of being individually accessible as autonomous components of the database. The appreciation of the motivation of the function of these individual elements could be further completed by an empiric ascertainment; the elements of a database are independent only if they still maintain their importance or their informational value outside the database corpus (Panhaloux, 2000, p. 25; Gaudrat, 1998, p. 603).

In final analysis, database contents will consist of materials with self-existent informative value (Stamatoudi, 2002, p. 90), which are capable to function as self-reliant informative units and, thereby, they are capable of being individually

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