Chapter 8.13
Legal Protection of the Web Page as a Database

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ABSTRACT

Nowadays the Web page is one of the most common medium used by people, institutions, and companies to promote themselves, to share knowledge, and to get through to every body in every part of the world. In spite of that, the Web page does not entitle one to a specific legal protection and because of this, every investment of time and money that stays off-stage is not protected by an unlawfully used. Seeing that no country in the world has a specific legislation on this issue in this chapter, we develop a theory that wants to give legal protection to Web pages using laws and treatment that are just present. In particular, we have developed a theory that considers Web pages as a database, so extends a database's legal protection to Web pages. We start to analyze each component of a database and to find them in a Web page so that we can compare those juridical goods. After that, we analyze present legislation concerning databases and in particular, World Intellectual Property Organization Copyright Treatments and European Directive 96/92/CE, which we consider as the better legislation in this field. In the end, we line future trends that seem to appreciate and apply our theory.

INTRODUCTION

Nowadays, thousands of Web pages offer a heterogeneous variety of digital information (i.e., text, audio, video, and images). Such content can be available in a public way: an anonymous user could download, manipulate, and use them maliciously and, thus, establishing their ownership could be a serious problem in many circumstances.

The tendency is to face this problem at the same time, using technical and judicial approaches. On one hand, we can consider strategies oriented to the protection of the intellectual property, such as

insertion of watermarks or, directly, limitations in the possibility of fruition of the contents published in the Web page (Braudaway & Mintzer, 2000). Secondly, we can refer to the judicial disciplines created expressly for the protection of the copyrights on digital information. In the specific, in this chapter, we explain our theory, which trys to give legal protection to a Web page considering it as a database, judicial good that has a specific legislation.

The chapter is organized as follows. At first we look at a judicial generalization of the conception of database, analyzing its every component and, after we compare Web page and database, introducing the guardianship of the Web page as a database. In the last part, we refer to the future trends and propose our conclusions on this topic.

BACKGROUND

The first institution that issued a database protection is the European Community by the directive 96/9/CE. The course to give protection to a database was started on April 15th, 1992, when the European Commission issued a formal proposal for a Directive on the legal protection of databases, which was later amended by the Commission on October 4th, 1993. After four years of discussions and proposals in 1996, the last version was approved, and directive 96/9/CE issued.

The EU Database Directive was created to harmonize the intellectual property laws regarding databases of the 18 countries of the European Union, by supplementing copyright to protect databases produced by *sweat of the brow* (Boyle, 2001). The Directive creates a new kind of intellectual property protection: a *sui generis* right. *Sui generis* is a Latin expression that means that something is linked to a specific requisite for admission; in other words, this particular protection is given only to the database that meets all the requirements (Autelitano, 1999). It is im-

portant to observe that the term of protection is 15 years, but each time the database is updated significantly, the entire database, and not just the updated parts, receives another 15 years of protection. Consequently, active databases can be protected in perpetuity.

The Database Directive has created a two-tiered approach to the database's protection. On one hand, databases that, by originality of selection and arrangement qualify for copyright protection under national laws, will enjoy the same rights as other copyrighted works and, on the other hand, databases that do not meet such requirements will, nonetheless, be protected against unfair extraction under the terms of the Directive.

The top tier provided copyright protection for original selection and arrangement of facts in the database. In other words, the authorship is given when the Web page has the requirement of originality of selection and arrangement, and is important to observe that to have this legal protection, the author does not need to demonstrate his investments in term of money or time.

A second tier provided *sui generis* protection, prohibiting the unfair extraction of a substantial part of a database reflecting significant investment. A database could simultaneously receive both types of protection: copyright protection for the expression, in other words the selection and arrangement of the data; and *sui generis* protection against the extraction of a qualitatively substantial part of the data itself. In other words, the ownership, or *sui generis* protection, is given only when the author of the Web page could prove his investments, which must be considerable. About the concept of investment, the European Court of Justice, in the case C-444 02, established that *The expression 'investment in ...the obtaining ...of the contents' of a database in Article 7(1) of Directive 96/9 must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a data-*

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