Workshop session proposal

The European Database Directive is the key legal instrument when dealing with various databases of open scientific and raw data. This Directive (1) harmonizes the treatment of databases under copyright law and (2) it creates a new *sui generis* right for the creators of databases which do not qualify for copyright.

According to Article 3 of the Database Directive, for a database to receive legal protection, it must be 'original', i.e. the author's 'own intellectual creation' by reason of the selection or arrangement of the contents.[1] This level of 'originality' is the same as in Article 1 (3) of the Software Directive and Article 6 of the Terms of Protection Directive.[2] Considerable variety exists in the national Courts' approaches to the requirement of originality.[3] Whether collections of scientific research data will meet the criterion of 'originality' is a question that will be dealt with on a case-by-case basis. It depends on the interpretation of each national Court.

If the database qualifies for copyright protection under the Directive, the copyright-holder will hold 'exclusive rights' in respect to that data.

Article 5 of the Directive enumerates those 'exclusive rights'. The author of the work shall have the exclusive right to carry out or authorise:

A. Temporary or permanent reproduction by any means, in any form, in whole or in part;
B. Rights of adaptation, translation, arrangement and any other alteration;
C. Any form of distribution to the public of the database or of copies thereof (subject to Community exhaustion); and
D. Any communication to the public, display or performance to the public;
E. Any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).[4]

In all Member States of the Union, an exception exists for "all acts, which are necessary to obtain access to the contents of the database and to obtain normal use of the contents by the lawful user". This also applies to a part of the contents of the database.

Member States are also free to apply four exhaustive other exceptions to the 'exclusive rights' listed above. The possible exceptions are listed in article 6 (2):

- Reproduction for private purposes of a *non-electronic* database;
- Illustrative uses for teaching or scientific purposes as long as there is proper attribution and justification for this purpose;
- Public security, administrative or judicial procedure; and
- Other exceptions traditionally authorised in the Member State.

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[1] Article 1 of the Database Directive and C-05/08 *Infopaq International A/S v Danske Dagblades Forening*; C-393/09 *Bezpecnostni softwarova asociace v. Ministerstvo kultury* C-145/10 *Eva maria Painer v. Standard Verlag GmbH* and C-604/10 *Football Dataco v. Yahoo UK Ltd.*

[2] Hugenholtz, P.B.(1998), 'Implementing the European Database Directive', in: Jan J.C. Kabel and Gerard J.H.M. Mom (eds.), *Intellectual Property and Information Law, Essays in Honour of Herman Cohen Jehoram*, The Hague/London/Boston: Kluwer Law International, (187)183-200

[3] Tritton G. (1996), *Intellectual property in Europe*, London Sweet & Maxwell, 213

[4] Hugenholtz, P.B.,(1998), (187) 183-200

Note that unauthorized copying for private purposes is not permitted for digital databases.

How has the SGRDdirective been implemented in the different member states: share experiences

How do these national differences affect the ability to (crossborder) re-use PSI

What would be best practices with respect to licensing and disclaimers ?

These are some of the questions I hope to address during this session.

About

The Interdisciplinary Centre for Law & ICT (ICRI) is a research centre at the Faculty of Law of KU Leuven dedicated to advance and promote legal knowledge about the information society through research and teaching of the highest quality. ICRI is also among the founding members of The LEUVEN Center on Information and Communication Technology (LICT) and iMinds.

ICRI is committed to contribute to a better and more efficient regulatory and policy framework for information & communication technologies (ICTs). Its research is focused on the design of innovative legal engineering techniques and is characterised by its intra- and interdisciplinary approach, constantly aspiring cross-fertilisation between legal, technical, economic and socio-cultural perspectives. By conducting groundbreaking legal research in a spirit of academic freedom and freedom of inquiry, ICRI aspires to a place among the centres of excellence in the area of law & ICT in Europe and beyond.

Me

Freyja van den Boom obtained her Masters in Law (LLM) degree at Tilburg University. Before joining ICRI/CIR, She worked as a Trademark and Design attorney at one of Europe's largest consultancies specializing in intellectual property law and as a lecturer Law and Ethics at the Academy of Digital Entertainment.

Her research interests include legal issues related to open data, data protection and privacy, liability and intellectual property rights. She is currently doing research on the legal framework with respect to autonomous vehicles (Drones/RPA's and autonomous cars) and LAPSI 2.0 on Public Sector Information.

Current project: OpenScienceLink : a holistic approach to the publication, sharing, linking, review and evaluation of research results, based on the open access to scientific information through pilots and a legal framework for regulating and reusing open scientific data.

For more information on the project, you can consult: http://opensciencelink.eu/